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**F**ootball agents are one of the most important players (pun unintended) in the football ecosystem and play a crucial role in bringing the beautiful game to the fans. For so long, football agency, including the criteria for becoming and acting as a football agent, was left without substantial regulation and that aspect of football suffered as a result.

However, on December 16, 2022, the FIFA Council approved the FIFA Football Agent Regulation (the “Regulation”) to regulate the occupation of football agent following a prolonged controversy and debate.

This Regulation was made, amongst others, to ensure that the conduct of a football agent is consistent with the core objectives of the football transfer system as well as to set minimum professional and ethical standards for football agents, ensure quality of the service provided by football agents to clients at uniform fees, improve financial and administrative transparency, protect clients from rising incidents of unethical conducts by football agents and generally protect football players in their interaction with the football transfer system.

This Regulation, whilst being watershed in its own right and generally received as an improvement on current status quo, has been severely criticized by many renowned football agents, the major bane being that it sets a cap on the service fee football agents

can charge for their services. True to their threats, the Professional Football Agents Association announced on January 17, 2023 that they have commenced a law suit against FIFA at the Court of Arbitration for Sports regarding the Regulation.

Without attempting an examination of the previous regime or a comparison of same with the extant Regulation, this article seeks to briefly highlight some important provisions of the Regulation and particularly covers the applicability of the Regulation, eligibility criteria, representation by football agents, service fee cap, payment of service fees and its entry into force.

## **Application of the Regulation**

The provisions of the Regulation apply to all activities of football agents within the international transfer system or international transfer of players or other international transactions and to all Representation Agreements<sup>1</sup> with an international dimension.<sup>2</sup> For representations which are not of international dimension, allowance is made for the applicability of the national football agent regulations, if any, of the place where the client is registered or domiciled at the time the Representation Agreement is signed. The Regulation gives latitude to member associations to formulate and implement their national football agent regulations by September 30, 2023 to

<sup>1</sup> This refers to a written agreement for the purpose of establishing a legal relationship to provide Football Agent Services.

<sup>2</sup> A Representation Agreement will be deemed to have an international dimension when it either governs Football Agent Services related to a Specified Transaction in connection with an international transfer (or a move of a coach

to a club affiliated to a different member association from that of their previous employer or to another member association than that of their previous employer) or it governs Football Agent Services related to more than one Specified Transaction, one of which is connected to an international transfer (or a move of a coach to a club affiliated to a different member association from that of their previous employer or to another member association than that of their previous employer)



regulate the occupation of football agency in their respective territories insofar as those regulations are consistent with the Regulation and provides for the items stated in Article 3(2) of the Regulation.<sup>3</sup>

## Eligibility Criteria

By Article 11 of the Regulation, only a licensed person can act as a football agent or perform any football agency service(s). To be eligible to act as an agent, Article 4 of the Regulation provides that the prospective agent shall complete and submit a license application to the designated FIFA Platform, comply with the agent eligibility requirements provided in Article 5<sup>4</sup>, successfully pass the agent license exam conducted by FIFA and pay an annual fee to FIFA.

It is after a prospective agent passes the exam that a license is issued to the applicant which license shall be for an indefinite period, subject to the payment of the annual license fee.<sup>5</sup> A license so granted is personal to the applicant and is non-transferable.

However, the Regulation allows certain categories of persons to act as football agents even where they do not sit for and pass the agent licensing exam. In this regard, Article 23 of the Regulation exempts all persons who were formerly licensed as football agents pursuant to the FIFA Players'

Agent Regulations (1991, 1995, 2001 or 2008 editions).

To take advantage of this exemption, such persons are to submit an application for a license pursuant to the Regulation before September 30, 2023 providing proof of their previous license as well as compliance with the eligibility requirements under Article 5 of the Regulation, amongst other criteria including payment of the license fee. Such formerly licensed persons who show fulfillment of the conditions set forth in Article 23 of the Regulation are then issued a license to act as football agents in accordance with Article 8 of the Regulation and shall subsequently be subject to the licensing requirements under the Regulation.

Besides the exemption made for formerly-licensed agents, the Regulation contemplates and allows persons who, having not sat for and passed the agent license exam organized pursuant to the Regulation, are permitted to render services of the type rendered by football agents by a licensing system for sports agents under the national law of such persons permitting the rendering of such services in the country. Such laws may be recognized provided, however, that the law establishes an eligibility requirement for all applicants and licensees as well as requiring applicants to successfully pass an exam that includes questions related to football regulations or other substantial educational requirements.<sup>6</sup>

<sup>3</sup> See generally, Article 2 and 3 of the Regulation

<sup>4</sup> The eligibility requirements are rather too numerous to outline here. It suffice however to say that the Regulation seeks to ensure that prospective agent should be of good repute and should not have been found guilty of crimes such as drug trafficking, corruption, bribery, money laundering, tax evasion, fraud, match

manipulation, misappropriation of funds, conversion, breach of fiduciary duty, forgery, legal malpractice, sexual abuse, violent crimes, harassment, exploitation or child or vulnerable young adult trafficking, etc.

<sup>5</sup> See Article 7

<sup>6</sup> Article 24(1) of the Regulation



In this wise, it is tempting to ask whether lawyers should be generally treated as persons licensed to render football agent services? The Regulation defines Football Agent Services to mean *“football-related services performed for or on behalf of a Client, including any negotiation, communication relating or preparatory to the same, or other related activity, with the purpose, objective and/or intention of concluding a Transaction.”*

In some ways, there may be merit in the argument that lawyers are trained to perform football agent services given some of the items it covers such as negotiation and communications on behalf of a client. However, lawyers are not trained negotiators for sporting transactions and the licensing to practice law in many countries does not lay emphasis on the eligibility requirement under the Regulation and neither are Bar exams football regulation-centric. Perhaps, an argument can be made for sports (football) lawyers and even so, the member associations will do well to demonstrate compliance with eligibility requirements and other criteria to FIFA.

It is required that member associations who want FIFA to recognize their national licensing system must make an application to FIFA for such recognition and upon recognition, a person whose municipal licensing system has been so recognized shall be exempt from the agent license exam where he/she provides proof of their license

under the recognized municipal license system, comply with the eligibility requirements under Article 5 as well as pay the applicable license fee. Where these have been sufficiently shown, such persons shall be issued a license in accordance with Article 8 of the Regulation and shall subsequently be subject to the licensing requirements under the Regulation.

## Representation

This is provided for under Article 12 of the Regulation under which the basis for the representation of a client by a football agent is a duly-executed Representation Agreement between the agent and the client. Such Representation Agreements may not exceed a duration of two years<sup>7</sup> subject to renewal and with respect to an individual client, a football agent may only validly execute one Representation Agreement with the same Individual at any one time<sup>8</sup> and before such an agreement can be executed or amended, as the case may be, the agent shall inform the individual in writing that they should consider seeking independent legal advice in relation to the Representation Agreement and obtain the Individual's written confirmation that they have either obtained or decided not to seek such independent legal advice.

The Regulation forbids dual representation by a football agent. This means that a football agent can only represent one party

<sup>7</sup> A Representation Agreement concluded between an Engaging Entity (buying Club) or Releasing Entity (selling Club) and a Football Agent is however not subject to a maximum duration period.

<sup>8</sup> This is however different where A Football Agent is dealing with Clubs. Thus, an agent may execute multiple Representation Agreements with the same Engaging Entity or Releasing Entity at any one time, subject to those agreements relating to different Transactions





in a transaction/transfer with the exception that a football agent may perform football agent services and other services for an individual and an engaging entity (i.e., a buying club) in the same transaction if prior explicit written consent is given by both the individual and the club. Thus, the same football agent cannot represent both the player and the club in the renegotiation of an expiring contract, for example and neither can a football agent represent both the buying and selling club or the selling club and the player in a player transfer transaction.

It is to be noted that a player/club can conclude a transaction without engaging the services of football agents. However, where football agents are engaged, the details of such engagements must be well documented as information relating to same form part of the records/documents to be uploaded in the Transfer Matching System (TMS) during player registration.

## Service Fee Cap

This is the most controversial provision of the Regulation which has attracted the most criticism by stakeholders particularly football agents. Article 15 of the Regulation places fee cap on the services provided by football agents such that when a football agent represents an individual or the buying club, the agent's fee payable will be calculated based on the individual's remuneration and when representing a selling club, it will be based on the transfer fee payable to the club.

The Regulation does not leave things to conjecture and goes further to clarify that an agent representing an individual or buying club can earn up to 5% of the individual's annual remuneration where same is less than USD200,000.00 and 3% of the annual remuneration if above USD200, 000.00.

Where, however, an agent is representing both the buying club and individual, the agent may earn up to 10% of the Individual's annual remuneration if less than USD200,000.00 and 6% if above USD200,000.00 and where the agent acts for the selling club alone, the fee is capped at 10% of the transfer fee paid for the individual.

## Payment of Service Fee

By Article 14 of the Regulation, payment of the service fee under a Representation Agreement shall be made exclusively by the client of the football agent who may not contract with or authorize any third party to make such payment save for when a football agent is representing an individual and their negotiated annual Remuneration is less than USD 200,000.00 (or its equivalent), not reckoning with any conditional payments. In such a case, the buying club may agree with an individual to pay the service fee for that transaction to their football agent in accordance with the Representation Agreement.<sup>9</sup>

This is only possible provided that the fiduciary duty of the football agent to the individual is not thereby affected, the service

<sup>9</sup> In cases of permitted dual representation, the buying Club may pay up to 50% of the total service fee due.



fee so paid is not higher than the agreed service fee in the Representation Agreement between the individual and football agent and the service fee paid is not deducted from the individual's remuneration.

The Regulation also stipulates that service fees shall be paid after the closure of the relevant registration period and in installments of every three months for the duration of the negotiated employment contract<sup>10</sup> and only the remuneration actually received by a player shall be subject to the payment of a service fee, calculated on a pro-rata basis while a selling Club shall pay service fee to a football agent following receipt of each installment of the transfer fee. Generally, all service fee payments to football agents must be made through the all-important FIFA Clearing House in accordance with the FIFA Clearing House Regulation.

## Publication of List of Agents and Coming into Force

Under Article 19 of the Regulation, FIFA undertakes to publish the names and details of all football agents and the clients they represent, including the exclusivity or non-exclusivity of their representation and the expiry date of the Representation Agreement, the football agent services provided to each client and details of all transactions involving football agents, including the service fee amounts paid to football agents. This is no doubt intended to rid the system of unlicensed and unqualified football agents and is a welcome development. However, this author is

concerned that such elaborate publication may have data privacy implications as it intends to publish/process both information not directly necessary for the set aims of the Regulation. It is submitted that a publication of the names of licensed football agents in designated platforms is sufficient for this purpose.

With regards to the entry into force of the Regulation, Article 28 thereof provides for a phased implementation. Thus, Articles 1 – 10 and 22 – 27 of the Regulation generally dealing with licensing requirements and the processes for obtaining same will come into force on January 9, 2023 while the remaining Articles which deal more with the substance of the Regulation including service fee cap, qualification to act as an agent and a ban on unlicensed agents shall come into force on October 1, 2023.

## Conclusion

The jury is still out on whether the innovations introduced by the Regulation will have the intended effect and whether the Regulation will be allowed to see the light of the day. However, it is worth noting that the provisions of the Regulation are innovative, new and intended for the general good of football. The arguments against the Regulation is not entirely without merit and whatever the Court of Arbitration for Sports decides, football agency is in a watershed moment and it would be in the overall interest of football for all stakeholders to come round and take steps to ensure the integrity of football and football agency.

<sup>10</sup> But where a negotiated employment contract is less than six months in duration, payment shall be made in a single installment at the expiry of the negotiated employment contract.