

FIFA'S LATEST COMMENTARY ON ITS REGULATIONS ON THE STATUS AND **TRANSFER OF PLAYERS:** AN EXECUTIVE SUMMARY.



In keeping with its commitment to release a commentary on her Regulation on the Status and Transfer of Players (RSTP) bi-annually, the Fédération Internationale de Football Association (FIFA) issued a commentary on the RSTP on November 28, 2023. This release follows the previous edition of the commentary, which was issued on November 10, 2021.

These bi-annual commentaries, including the instant one, do not represent a formal position of the FIFA Football Tribunal on the FIFA Regulations on the Status and Transfer of Players (the regulations) concerning specific matters or future cases. Nevertheless, they serve as a fundamental resource for the FIFA Football Tribunal, its primary stakeholders, and the Court of Arbitration for Sports (CAS) to enhance their comprehension of the Regulations' application, particularly as the regulations have grown in technical and material complexity in recent years.

Drawing upon our expertise, we have endeavoured in this concise piece to offer a succinct executive summary of FIFA's current commentary on the regulations with the aim to facilitate a clear understanding of the content.

Scope and Purpose of the Regulations.

Team composition is crucial for success and competitive balance in football, a sport where teams vie against each other. As such, the rules governing player status, transfers between teams, and the overall regulatory framework for the international transfer system are integral to the essence of football. Therefore, the RSTP regulations play a critical role in ensuring the effective functioning of football's international transfer system.

It is important to note that while FIFA respects the independence of its member associations in handling domestic matters, it also holds a responsibility to ensure a certain consistency in domestic rules among all 211-member associations. This uniformity is crucial to establish fairness in the game and uphold the integrity of matches. To achieve this, fundamental and specific issues such as transfer of players, need global regulation, so as to protect players, clubs, and the integrity of association football itself. However, there are two exceptions to this

approach: the protection of minors and the determination of training compensation entitlement and calculation.

The RSTP Regulations outline a three-tier structure for the organized football regulatory framework globally: the "international tier" concerning international transfers, the "prescribed national tier," and the "flexible national tier." Additionally, there is an unofficial fourth tier acknowledged in practice but not explicitly stated in the Regulations, as it operates under the parties' discretion and authority.

By the commentary, FIFA makes it clear that the Regulations cover various aspects, including recognized player categories, conditions for participation in organized football, player-club relationships, and the criteria for transfers between clubs. They also address eligibility requirements for playing with a new club. Furthermore, the Regulations govern the interaction between member associations and clubs in both club and international football, regulating the release of players to national teams. Also, to enhance legal certainty in employment relationships, the Regulations, as of January 1, 2021, introduced provisions for coaches and their associations or professional clubs. Additionally, temporary employment and registration rules were included in the regulations in 2022 to address issues arising from the War in Ukraine.

Status of Players: Amateur & Professional Players.

The Regulation acknowledges solely two player categories: Professional and Amateur, without any intermediary classification. To be considered a Professional Footballer, a player must have a written contract with their club and receive compensation exceeding the expenses they incur in providing their football services. Failure to meet either criterion places a player in the Amateur category.

To preserve the integrity of competitions that are exclusively for amateurs or have a limited mix of amateur and professional participants, the regulation enforces a 30-day waiting period before a professional player can transition back to amateur status. This measure prevents potential abuse by individuals attempting to exploit the less stringent registration process and rules for amateur players. The waiting period acts as a safeguard against players seeking to

regain amateur status in hopes of gaining greater flexibility in terminating contracts unilaterally and evading provisions related to contractual stability.

It is noteworthy that by the Regulations, both professionals ending their careers at the contract's expiration and amateurs discontinuing their activity will stay registered with their last club's association for 30 months. This implies that a decision to retire becomes permanent after this period. During these 30 months, the player remains technically involved in organized football, abiding by the regulatory framework of the member association affiliated with their last club. This duration also affects the obligation to pay training compensation, preventing a potential new club from avoiding this requirement by de-registering and re-registering a player immediately. The 30-month period commences on the day the player makes their final appearance for their club in an official match as defined by the Regulations.

Registration of Players

To participate in organized football for a specific club, a player must not only be registered with the affiliated member association but also undergo electronic registration, with identification through a FIFA ID. This electronic system ensures accurate data collection, forming a responsible foundation for rule implementation.

Upon registration with a club, a player commits to adhering to the rules of organized football, including FIFA Statutes, regulations, and those of the confederations and member associations. Regardless of age level, a player can only be registered with one club at a time, precluding separate registration with both a "junior" and a "senior" club. While players can be registered for up to three clubs in a season, they are allowed to participate in official matches for just two clubs in a season, excluding technical registrations.

Transfers, whether permanent or on loan, must exclusively occur for genuine sporting reasons. Prohibited are any deceptive or dishonest transfers, including those conducted with the intent to defraud or evade football rules and national laws. CAS has recently emphasized that a bridge transfer is typically identified by lacking an apparent sporting rationale, with non-sporting motives behind the move. The primary purposes of bridge transfers often involve tax avoidance,

evasion of training compensation payment, or transferring a player to a bridge club for the club owner's benefit.

Clubs are mandated to adhere to registration periods, and court decisions confirm that these provisions don't impinge on players' freedom of movement. However, there are exceptions, such as unilateral termination by a player, professionals with expired contracts post-registration periods, and temporary replacement of a female player, including those on maternity leave.

For player registration, essential documents like passports, International Transfer Certificates, and player contracts are submitted to FIFA.

Concerning loan transfers, starting July 1, 2024, clubs will face limitations, allowing a maximum of six professionals loaned in and out at any given time during a season. There is flexibility for loan extensions, subject to player approval, without a set limit on the number of extensions.

Maintenance of Contractual Stability Between Professionals and Clubs.

The principle of contractual stability between professional players and clubs stands as a foundational element of the Regulations and a primary objective of the football transfer system. When FIFA introduced the new regulatory framework for the international football transfer system in 2001, it was acknowledged that stability in employment relationships between football players and their clubs holds greater significance in professional football compared to other industries. This recognition stemmed from the understanding that football clubs depend on stable contractual relationships to plan their squads effectively over time. Consequently, contractual stability became a cornerstone of the transfer system since its inception in 2001 and remains a vital aspect outlined in the current Regulations. As a result, football players and clubs are obligated to enter fixed-term contracts, a departure from many other employment relationships, as these contracts cannot be unilaterally terminated, for example, by merely adhering to an applicable notice period.

However, the regulations go beyond the established principles of contract and employment law to outline additional principles that form the regulatory framework ensuring contractual stability between professional players and clubs. These principles encompass: the requirement to respect contracts ("*pacta sunt*

servanda"); the ability to terminate a contract prematurely with just cause without incurring penalties; the obligation to provide compensation when a contract is terminated without just cause; the option to terminate a contract if a player has a "sporting just cause"; the prohibition of unilateral termination during the season; the joint and several liabilities of the player and their new club for compensation owed to the former club; the possibility of imposing sporting sanctions for unjustified contract termination; and the potential imposition of sporting sanctions on a club if it induces a player to terminate a contract without just cause.

It is important to highlight that, for a professional player to invoke sporting just cause for the premature termination of their contract, two essential conditions must be met. Firstly, the player must be deemed an "established professional." Secondly, their participation in official matches for their club during the season must be fewer than ten percent.

Third-Party Influence and Ownership of Players' Economic Rights

This regulation explicitly prohibits clubs from engaging in contracts that grant the opposing club(s) or any third party the power to influence their independence, policies, or control over employment and transfer-related matters. Essentially, it prevents third parties from controlling a club's decisions. The concept of influence, as per the regulation, prohibits external entities and clubs from exerting undue control over a club's affairs. Upholding a club's independence means that any agreements limiting its autonomy in transfer, employment, policy, or sporting decisions are considered invalid. Notable decisions emphasize that the potential for such influence, even if not realized, constitutes a violation. Article 18 specifically bars clubs and players from participating in contracts involving third-party investment in a player's economic rights, which concern the financial aspects of a player's transfer.

The determination of clauses constituting a violation of this regulation falls under the purview of the FIFA Disciplinary Committee, which assesses each case individually, considering all specific circumstances. While certain clauses like sell-on fees, performance-related bonuses, matching right options, buy-back options, automatic conversion of a loan agreement into a permanent transfer, and automatic payment of a fee upon contract renewal are generally unlikely to breach the regulation, there are circumstances where they might. To ensure

compliance with this obligation, engaging an expert is crucial for the meticulous preparation of transfer contracts.

Special Provisions Relating to Female Players

This section of the regulation extends the special provisions outlined in Article 18. The primary objective of this chapter is to safeguard female players' right to work and facilitate their 'return to work.' If a club unilaterally terminates a player's contract during pregnancy, it is considered termination without just cause. The player is entitled to full remuneration until the commencement of maternity leave, after which she receives $\frac{3}{4}$ of her salary. Clubs are prohibited from compelling a player to take specific days off during her maternity leave and are obliged to provide a conducive environment for breastfeeding. There is a presumption unless proven otherwise, that termination during maternity leave or pregnancy is related to the pregnancy.

International Transfer Involving Minors

One of the fundamental purposes driving the establishment of the RSTP is to ensure robust provisions safeguarding minors in the transfer system, shielding them from exploitation and mistreatment. The rule stipulates that players can only be transferred once they reach the age of 18, with five exceptions:

- a. The player's parents relocated to the country of the new club for non-football-related reasons.
- b. The player is aged between 16 and 18, and the transfer occurs within the territory of the European Union (EU) or European Economic Area (EEA), or between two associations within the same country.
- c. The player resides within 50km of a national border, and the desired club for registration is also within 50km of that border.
- d. The player is temporarily allowed to stay in the country of arrival or is recognized as vulnerable by the competent state authorities, fleeing their country of origin for humanitarian reasons, without their parents.
- e. The player, as a student, moves without parents to another country temporarily for academic reasons as part of an exchange program.

Despite the European Union's emphasis on freedom of movement, it takes a cautious stance in safeguarding minors from the inherent social risks associated with international player transfers. FIFA encourages a more lenient approach in this regard, prioritizing the maintenance of existing rules for the sake of legal certainty and the protection of the most vulnerable participants. When registering a minor through the FIFA Transfer Matching System, the burden of proof lies with the party applying to demonstrate compliance with all conditions. CAS has established that an exception may be granted only if the conditions are proven to the satisfaction of the FIFA Player Status Chamber.

The FIFA Disciplinary Committee enforces sanctions for infractions such as registering minors without requesting an International Transfer Certificate, requesting and issuing an International Transfer Certificate without the prior approval of the FIFA Player Status Chamber, and registering a foreign minor for the first time without the necessary prior approval. In cases where clubs register minors without meeting legal requirements, registration bans are commonly deemed appropriate sanctions.

Clubs are mandated to report all minor players enrolled in their respective member associations in the academy's operating territory. Private academies not affiliated with member associations exist beyond the scope of organized football and fall outside FIFA's regulatory capacity. Consequently, this situation opens avenues for evading regulations regarding the transfer of minors. To address this loophole, member associations and clubs are tasked with maintaining records of minors within their territory and reporting any misconduct by private academies.

Training Compensation and Solidarity Mechanism.

Training compensation is a mechanism developed to reward clubs that invest in players upon attainment of professional status. This is not applicable to women's football as the DRC noted that such an award could possibly hinder the further development of women's football. Training compensation shall be payable up to the age of 23 for training incurred up to the age of 21 save for exceptions like a player being transferred to a Category 4 Club. It is noteworthy that the obligation to pay compensation is without prejudice to any obligation to pay compensation for breach of contract. The deadline for payment of training

compensation is 30 days following registration. The principle of “first registration breaks the chain” generates when an amateur player is transferred nationally and acquires professional status, the subsequent international transfer prior to their 23rd birthday will only qualify the last club prior to the international transfer to a training compensation. Any compensation arising from national transfer is considered to have been dealt with by the member associations concerned. In order to determine compensation structure, member associations divide their affiliates into four categories depending on the level of training afforded to the players in their teams.

A solidarity mechanism is based on the notion of solidarity in football. Whilst training compensation is to reimburse clubs for their investments made, the solidarity mechanism is ‘designed to strengthen the sense of solidarity within the football community.’ Secondly, solidarity compensation is not limited to an age limit and the solidarity mechanism only applies if a professional player moves before their contract expires. CAS’ most recent position is that the buy-out clauses trigger a solidarity contribution payment.

Jurisdiction

Article 22 of the Regulations introduces FIFA's dispute resolution system, which includes the FIFA Football Tribunal. This tribunal consists of the FIFA Dispute Resolution Chamber, the FIFA Players' Status Chamber, and the FIFA Agents Chamber, serving as the decision-making body for disputes in alignment with FIFA's regulations.

Notably, FIFA's jurisdiction only extends to disputes with an international dimension. CAS has held that the international dimension relates to the nationality of the parties and not the dispute. In aspects of dual nationality, the courts will determine the nationality mentioned in the employment contract.

FIFA statutes prohibit instituting an action before an ordinary court for football-related matters. This prohibition does not cover all cases as employment-related cases may be brought before civil courts. In a DRC decision, a contract with a jurisdiction clause in favour of civil courts was heard and the panel confirmed that it can adjudicate with the consent of the respondent. Parties can also opt out of FIFA's jurisdiction and have their

disputes settled directly by CAS. FIFA is competent to hear disputes on the maintenance of contractual stability, employment-related disputes with an international dimension, disputes related to training compensation and solidarity mechanisms, and matters bordering on the Electronic Player Passport review.

All claims must be lodged within two years of the occurrence of the event giving rise to the dispute. In matters of recovering monies due, the limitation is applied to individual payments and when they became due and not the contractual relationship.

FIFA is bound by certain elements like the doctrine of *res judicata*, *Lis pendens*, and doctrine of preclusion from filing multiple claims for different amounts which could have fallen under the same proceeding.

Final Provisions

Transitional provisions are necessary to track the application of these Regulations so frequently published. The general principle of application is that the current Regulation will apply to all cases submitted after the publication of the Regulation. The applicable Regulation will be that which is in force as of the date of referral to FIFA.

Matters not covered by these regulations and cases of force majeure will be resolved by the FIFA Council, and its decisions are deemed final. This provision anticipates situations such as the COVID-19 pandemic, extending FIFA's jurisdiction to address issues not explicitly covered.

In cases of discrepancies among the English, French, or Spanish versions of the regulations, the English version is considered authoritative.

Conclusion.

The 2023 edition of FIFA's commentary, as afore-summarized, offers valuable insights into the Regulation on the Status and Transfer of Players (RSTP), which received approval from the Bureau of the FIFA Council on May 21, 2023. Its illumination of the essential provisions of the regulations holds significant importance for all players and stakeholders seeking to understand and appreciate these key aspects. As we anticipate FIFA's forthcoming commentary on this

matter in 2025, it is crucial to acknowledge the industry exhibited in releasing this 2023 edition.

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