
LEGAL INFORMATION NEWSLETTER

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We are pleased to provide you with the new issue of our legal information newsletter.

Topical legal questions are discussed and those related to issues that you might encounter.

We hope that you will find it of interest.

We would welcome any comment you might have.

**THE PHILIPPE MEXES CASE AND THE
FIFA REGULATIONS ON THE
OCCUPATION OF FOOTBALL
PLAYERS' AGENTS**

FIFA Regulations governing the application of the statutes

FIFA Regulations players' agents

FIFA Regulations on the status and transfer of players

FIFA Rules governing the procedures of the Players' Status Committee and the Dispute Resolution Chamber

INTRODUCTION: THE MEXES CASE – On 25 September 2006 FIFA suspended the license of the French players' agent, Olivier Jouanneux, for six months as from 30 August 2006 in accordance with a decision originally reached on 15 February 2006 by the FIFA Players' Status Committee.

Olivier Jouanneux had been involved in the unilateral breach of contract without just cause by his client, the player Philippe Mexes, against the French club, AJ Auxerre in summer 2004 within the protected period.* The players' agent was also fined CHF 50,000.

Jouanneux then lodged an appeal with the Court of Arbitration for Sport (CAS) on June 1st 2006, but eventually withdrew it, accepting

the sanction imposed on him by the FIFA Players' Status Committee.

The decision against Jouanneux was the final chapter in a major transfer dispute involving the player Philippe Mexes as well the clubs AJ Auxerre (France) and AS Roma (Italy).

Adjudicating on the contractual litigation between Mexes and his previous club, AJ Auxerre, the Dispute Resolution Chamber had ruled on 31 August 2004 that Mexes had unilaterally breached his employment contract with AJ Auxerre without just cause during the protected period.¹

The Players' Status Committee consequently opened an investigation against Jouanneux for his involvement in the breach of contract, which then led to the decision passed on 15 February 2006.

**STATUTORY REGULATIONS ON THE
ACTIVITY OF PLAYERS' AGENTS** – The main Statutory sources regulating the activity of football players' agents in Europe are those issued by the *Fédération Internationale de Football Association*, known as FIFA.

National statutory regulations, set forth by domestic Football Associations in accordance with the FIFA regulations apply as well to implement and enforce these rules at the national level.

REGULATIONS ON PLAYERS' AGENTS – Since 1994 FIFA adopted regulations governing the occupation of players' agents.

In accordance with the provisions of the 2008 Regulations governing the application of the FIFA Statutes, the players may use the services of agents to negotiate transfers.

PLAYERS' AGENTS - Within the meaning of the Players' Agent Regulation, a players'

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¹ Protected period: period of three entire seasons or three years, whichever comes first, following the entry into force of a contract where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional.

agent is defined as a natural person who, for a fee:

- 1) Introduces players to clubs with a view to negotiating or renegotiating an employment contract; or
- 2) Introduces two clubs to one another with a view to concluding a transfer agreement.

A specific FIFA statutory regulation is in force to govern the activity of players' agents.²

Only those agents in possession of a license issued by a national football association may act as football players' agents.

WHO CAN ENGAGE PLAYERS' AGENTS?

- Both players and clubs are entitled to engage the services of a licensed players' agent. The players' agent is entitled to be remunerated for the services he provides.

Players and clubs are forbidden from using the services of an unlicensed players' agent.

ADMISSIBILITY OF LICENSED PLAYERS' AGENTS - Players' agents' activity may only be carried out by natural persons who are licensed by the relevant national association to carry out such activity.

Only the players' agent personally is entitled to represent and promote the interests of players and/or clubs in connection with other players and/or clubs.

If he/she organizes his/her occupation as a business, the work of his/her employees is restricted to administrative duties connected with the business activity.

EXEMPT INDIVIDUALS - The parents, siblings or spouse of the player may represent him in the negotiation or renegotiation of an employment contract.

A lawyer, licensed to practice in a European Country (EU/EEA) in compliance with the rules in force in his Country of domicile, may represent a player or a club in the negotiation of a transfer or employment contract.

The activity of the above exempt individuals does not fall under the jurisdiction of FIFA.

² Regulations governing the application of the FIFA Statutes, Article 14

RESPONSIBILITY FOR ISSUING A LICENSE - Players' agent licenses are issued by the national football association of the Country of:

- Which the applicant is a national; or
- The nationality most recently acquired, in case of dual or multiple nationalities.

If the applicant has been continuously resident in another Country for two years or more, only the association of this latter Country is responsible for. The two year requirement does not apply if the applicant resides in a different EU/EEA Country from the Country of which he/she is a national.

PREREQUISITES FOR APPLICATION

- The applicant is required to submit a written application for a players' agent license to the relevant association.

The following prerequisites for applying for a license must be satisfied at all times throughout the players' agent's entire career:

- The applicant must be a natural person with an impeccable reputation. An applicant is deemed to have an impeccable reputation if no criminal sentence for a financial or violent crime has ever been passed against him/her
- The applicant may not hold a position as an official, employee etc. at FIFA, a confederation, an association, a league, a club or any organization connected with such organizations or entities.

By applying, an applicant agrees to abide by the statutes, regulations, directives and decisions of the competent bodies of FIFA, as well as of the relevant confederations and associations.

APPLICATION - National associations are responsible for ascertaining that an application satisfies the relevant prerequisites.

If any of the prerequisites is not met, the application shall be rejected. In such cases the applicant may submit all the relevant documents to the FIFA Players' Status Committee requesting a reassessment.

If the prerequisites are deemed to have been satisfied, FIFA shall instruct the relevant association to continue with the licensing procedure.

If the applicant is not eligible, he may subsequently reapply at such time as he/she is able to fulfill the prerequisites.

EXAMINATION PROCEDURE - If an application satisfies the relevant prerequisites, the association shall invite the applicant to take a written examination (multiple choice test – minimum mark set by FIFA).

Each applicant shall be tested on the following subjects:

- 1) Knowledge of the current football regulations, especially in connection with transfers (both the FIFA regulations and those of the association in whose Country the applicant is taking the examination)
- 2) Knowledge of civil law (basic principles of personal rights) and the law of obligations (Law of contract).

Any applicant who fails to attain the minimum mark at the third attempt may not take the examination again for another two years.

LIABILITY INSURANCE - If the applicant passes the examination, the association shall request him/her to conclude professional liability insurance, which shall adequately cover:

- Any risk that might arise from the players' agent's activity
- Any damages that may be incurred after the termination of the player's agent's activity but that were caused by such activity.

Instead of the professional liability insurance policy, the applicant may provide a bank guarantee from a Swiss bank for a minimum amount of CHF 100,000.

COMPLIANCE WITH THE CODE OF PROFESSIONAL CONDUCT - The successful applicant shall sign the Code of Professional Conduct governing his activity and agree to comply with its provisions.

ISSUANCE OF LICENSE - If all the prerequisites for the issue of a players' agent license are satisfied, including the signing of the Code of professional conduct and the conclusion of professional liability insurance or bank guarantee, the association shall issue the license.

The license is strictly personal, non-transfereable and it essentially allows the

players' agent to conduct his/her work in organized football on a worldwide basis.

If an applicant does not fulfill all prerequisites within six months of the date he took the examination, he/she shall have to re-sit the examination.

PUBLICATION - Each association is obliged to keep an up-to-date list of all the players' agents to which it has issued a license and publish it in an appropriate form.

The association shall inform FIFA about it, as well as about any sanction proceedings instituted and their outcome.

LOSS AND WITHDRAWAL OF LICENSE - A license is lost when it is withdrawn because the players' agent no longer fulfills the relevant prerequisites.

If the unfulfilled prerequisite can be remedied, the appropriate body of the association shall set the players' agent a reasonable time limit in which to satisfy the relevant requirement.

The association shall monitor on an ongoing basis whether players' agents still fulfill the prerequisites for holding a license.

RE-EXAMINATION - The license expires five years after its date of issue.

The players' agent shall send a written application to the relevant association to re-sit the exam before the date on which his/her license is due to expire.

If he/she does not do so within five years of the date of issue of the license, his/her license shall be automatically suspended. License suspension applies as well in case of failure of the new examination until such time as he/she passes.

TERMINATION OF ACTIVITY - Any players' agent who decides to terminate his/her activity is obliged to return his/her license to the association that issued it.

Failure to do so shall result into the cancellation of the license and publication of the decision.

REPRESENTATION CONTRACT - A players' agent shall be permitted to represent a player or a club only by concluding the

relevant written representation contract with that player or club.

If the player is a minor, the players' legal guardian(s) shall also sign the representation contract.

The representation contract shall be valid for a maximum period of two years. It may be extended for another maximum period of two years by a new written agreement and may not be tacitly prolonged.

The representation contract shall explicitly state who is responsible for paying the players' agent and in what manner.

Payment shall be exclusively made by the client of the players' agent directly to the players' agent.

However the player may give written consent for the club to pay the players' agent on his/her behalf.

For registration purposes, the players' agent is advised to send copies of the representation contract to his/her association and the association to which the player or club belongs within 30 days of their having been signed.

The client who enters a representation contract retains always the right to conclude an employment contract or a transfer agreement without the assistance of a representative.

CONFLICTS OF INTEREST - Players' agents shall avoid all conflicts of interest in the course of their activities.

A players' agent may only represent the interests of one party per transaction. In particular a players' agent is forbidden from having a representation contract, a cooperation agreement or shared interests with one of the other parties or with one of the other parties' players' agents involved in the players' transfer or in the competition of the employment contract.

REMUNERATION - The amount of remuneration due to a players' agent is calculated on the basis of the player's annual basic gross income, including any signing-on fee that the player's agent has negotiated for him in the employment contract.

Such amount shall not include the player's other benefits such as a car, a flat, point premiums and/or any kind of bonus or privilege which is not guaranteed.

The players' agent and the player shall decide in advance whether the player shall remunerate the players' agent with a lump sum payment at the start of the employment contract that the players' agent has negotiated for the player or whether he shall play annual installments at the end of each contractual year.

If the players' agent and the player do not decide on a lump sum payment and the player's employment contract negotiated by the players' agent lasts longer than the representation contract, the players' agent is entitled to annual remuneration even after expiry of the representation contract, until the relevant player's employment contract expires or a new employment contract is entered without the involvement of the players' agent.

If the players' agent and the player cannot reach agreement on the amount of remuneration to be paid or the representation contract does not provide for, the players' agent is entitled to payment of compensation amounting to three % of the basic income which the player is due to receive from the employment contract.

A players' agent who has been contracted by a club shall be remunerated for his/her services by a lump sum that has been agreed upon in advance.

RIGHT TO MAKE CONTACT, PROHIBITION ON APPROACHES - Licensed players' agents have the right to:

- 1) Contact every player who is not, or is no longer, under an exclusive representation contract with another players' agent
- 2) Represent the interest of any player or club that requests him/her to negotiate or renegotiate contracts on his/its behalf
- 3) Take care of the interests of any player or club requesting him/her to do so.

Players' agents are prohibited from approaching any player who is under contract to a club with the aim of persuading him to terminate his contract prematurely or to violate any obligations stipulated in the employment contract.

It shall be presumed, unless established to the contrary, that any players' agent involved in a contractual breach committed by the player without just cause has induced such breach of contract.

Every players' agent shall ensure that his/her name, signature and the name of his/her client appear in any contracts resulting from transactions in which he/she is involved.

ADHERENCE TO THE STATUTES, REGULATIONS AND LAWS APPLICABLE IN THE TERRITORY OF THE ASSOCIATION - Players' agents shall ensure that every transaction concluded as a result of their involvement complies with the provisions of the statutes, regulations, directives and decisions of the competent bodies of FIFA, the confederations and the associations, as well as the laws applicable in the territory of the association, especially those governing job placement.

Players' agents shall abide by the principles described in the Code of Professional Conduct.

ENGAGEMENT OF PLAYERS' AGENTS:

Players - If a player himself does not negotiate directly with clubs, he may only engage the services of a licensed players' agent to represent him in the negotiation or renegotiation of an employment contract, save for the possibility that parents, siblings or spouse of the player represent him in those activities

Clubs - If clubs do not negotiate directly with players, they are entitled to engage the services of licensed players' agents.

REFERENCE IN NEGOTIATED CONTRACTS - Any contract concluded as a result of negotiation conducted by a licensed players' agent who was engaged by either a player or a club shall specify the players' agent's name.

If either a player or a club do not use the services of a players' agent, this fact shall also be explicitly stated in the relevant employment/transfer contract.

PAYMENT RESTRICTIONS - No compensation payment payable in connection with a player's transfer may be paid by the debtor (club) to the players' agent.

Within the scope of a player's transfer, players' agents are forbidden from receiving any remuneration other than in the cases provided by the Regulation itself.

DISPUTES IN CONNECTION WITH PLAYERS' AGENTS' ACTIVITY:

Domestic disputes - To deal with domestic disputes in connection with players' agents' activity, as a last resort, the associations shall refer any dispute relating to the national players' agent regulations to an (i) independent, (ii) duly constituted and (iii) impartial court of arbitration, while taking into account the FIFA Statutes and the laws applicable in the territory of the association.

International disputes - In case of international disputes in connection with players' agents' activity, a request for arbitration proceedings may be lodged with the FIFA Players' Status Committee. (See articles 24-24, Regulations for the Status and Transfer of Players on the jurisdiction of the Players' Status Committee).

If there is a reason to believe that a case raises a disciplinary issue, the Players' Status Committee shall submit the file to the Disciplinary Committee together with the request for commencement of disciplinary proceedings in accordance with the FIFA Disciplinary Code.

The Players Status Committee shall adjudicate within 60 days. The proceedings shall be governed by the FIFA General Procedural Rules.

The Players' Status Committee entertain cases at FIFA in Zurich. Taking of evidence during the proceedings is allowed; oral hearing: held if circumstances appear to warrant it; decisions: simple majority vote after secret deliberations).

The Players' Status Committee shall not hear any case, if more than two years have elapsed from the event giving rise to the dispute or more than six months have elapsed since the players' agent concerned has terminated his/her activity. Application of this time limit shall be examined *ex officio* in each individual case.

The detailed procedures for the resolution of disputes in connection with the activity of players agents are further outlined in the FIFA

Rules governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber.

JURISDICTION AND LIMITATION:

Domestic transactions - In domestic transactions, the relevant association is responsible for imposing sanctions. This responsibility, however does not preclude the FIFA Disciplinary Committee to impose sanctions on a players' agent involved in a domestic transfer within an association other than the one that issued his/her players' agent license.

International transactions - In international transactions, the IFFA Disciplinary Committee is responsible for imposing sanctions in accordance with the FIFA Disciplinary Code.

In the event of any uncertainty or dispute regarding jurisdiction, the FIFA Disciplinary Committee shall decide who is responsible for imposing sanctions.

The associations shall ensure that after every channel at association level has been exhausted, parties sanctioned have the opportunity to lodge an appeal with an independent, duly constituted and impartial court of arbitration. Sanction proceedings may be initiated by the relevant association or by FIFA, either on its own initiative or upon request.

SANCTIONS - The following sanctions may be imposed on players' agents for violation of these regulations and their annexes in accordance with the FIFA Disciplinary Code:

- A reprimand or warning
- A fine of at least CHF 5,000
- A suspension of license up to 12 months
- A license withdrawal
- A ban on taking part in any football-related activity.

The license shall be withdrawn in case of repeated or serious infringement of the Statutes and regulations of FIFA, the confederations or the associations.

Only the association issuing the license may suspend or withdraw a players' agent license. If FIFA decides to suspend or withdraw a players' agent license, it shall address the necessary directive to the association that

issued the license. Sanctions may be imposed as well on players and clubs for violations of these regulations.

Sanctions on players typically include a reprimand or warning, a fine of at least a CHF 5,000, a match suspension and/or ban on taking part in any football-related activity.

Sanctions on clubs may include a reprimand or warning, a fine of at least CHF 10,000, a transfer ban, a deduction of points and/or even a demotion to a lower division.

CONCLUSIONS - The *Fédération Internationale de Football Association* (FIFA) is an association governed by Swiss law founded in 1904.

According to its statutes, its members are national associations which are groupings of amateur or professional football clubs.

In 1994, in order to put an end to certain practices, which were harmful to players and clubs, FIFA adopted regulations governing the occupation of players' agents.

These regulations, which were subsequently amended up to their current 2008 version, were primarily established to introduce professionalism and morality to the occupation of players' agent in order to protect players whose careers are short. In this connection the new following provisions under the FIFA regulations that:

- 1) To carry on the occupation of players' agent, a person must hold a license issued by the competent national association
- 2) The applicant must pass an examination as a prerequisite to obtain the license
- 3) The relations between the agent and the player must be subject of a written contract for a maximum period of two years, which may be renewed. The contract must specify the agent's remuneration, to be calculated on the basis of the player's basic gross salary
- 4) In the event of non-compliance with the regulations, a system of sanctions for clubs, players and agents is established.

do contribute to accomplish the above goals by introducing professionalism and morality standards for the exercise of the profession of players' agent and improving protection of the economic interest of football players.

Article contributed by Riccardo G. Cajola