

UAE's Adoption of FIFA's Regulations for Football Intermediaries

Raj Pahuja - Head of Corporate Commercial - Bahrain - Corporate / Mergers and Acquisitions / Capital Markets / Commercial
- Manama

FIFA removed a system that was primarily based on the qualification, recognition and registration of a certain limited number of agents and replaced it with a system whereby the barriers to entry were lowered but the scrutiny on specific transactions conducted using intermediaries was increased. The new regulation issued a set of guidelines to be implemented at the national level by football associations across the globe. Whilst these regulations proved controversial at the time, it attempted to bring about a uniform set of minimum standards to be applied across the board, with particular focus on disclosure and transparency in transactions and dealing with conflicts of interest.

UAE FA Guidelines

The UAE Football Association ("UAE FA") adopted the guidelines on 30th June 2015 ("Guidelines") and a summary of the key points of the Guidelines relating to the UAE are described below:

Article 1 - Definition of an Intermediary

Article 1 broadly defines an intermediary as a person (natural or corporate) who (i) represents players or clubs in negotiations with the goal of signing an employment contract between them, or (ii) represents clubs in relation to discussions with the goal of entering into transfer or loan agreements.

Article 2 - Implementation of the Regulation

The Regulations apply to the clubs and players using the intermediary's services.

Article 2 goes on to state that the implementation of the Regulations or any amendment shall not prejudice the validity of an employment contract or Transfer or Loan agreement.

Generally, in terms of the employment contract, FIFA's Professional Football Player Contract Minimum Requirements should be taken into account although these are subject to mandatory local law provisions. In relation to player contracts in the UAE, they are in fact subject to UAE Labour Law.

Article 3 - General Principles

Article 3 of the Regulations sets out general principles which include a requirement that an intermediary must be registered in accordance with the Guidelines and that players and clubs, when choosing their intermediaries must show 'best effort attempts', which means that clubs and players must use their best efforts to make sure that the intermediary engaged signs a representation agreement between them.

Article 4 - Registration of Intermediaries

This article states that the intermediary is required to record every transaction and that the clubs or players using intermediaries must submit the intermediary's registration and any other documents in relation to every transaction carried out using the intermediary. Therefore, the UAE FA is required to implement a registration system for intermediaries, who must be registered for each transaction that they are involved in. This attempts to allow for increased tracking of intermediary activities.

Article 5 - Requirements and Conditions for Registration

Even though no formal qualification is now required for an individual to be an intermediary, there are still minimum conditions in force which need to be met before an intermediary can be registered in the UAE and registration would still be subject to the UAE FA's approval.

To be registered the applicant must:

- present a Good Conduct Certificate
- have a license to be an intermediary and must have permanent residence.
- be a national, except for non-national intermediaries who must be registered with their local federations.
- have at least 5 years experience in the sport.
- adhere to signing all document required by these rules
- not have any affiliation with the national federation or regional federations since this would lead to a conflict of interest.

Article 6 – Fees

These fees are not set out in FIFAs regulations and are left to national federations to determine.

In relation the UAE, the Regulations deals with fees to be paid to the UAE FA, which states that the intermediary must:

- pay a fee of AED 20,000 annually.
- pay 5% of their fee for each transaction to the UAE FA if they have a local office, otherwise they must pay 10%.

Article 7 – Conditions of the Agreement

This article addresses the minimum conditions relating to the scope of the intermediary's services and which must be included in the representation agreement between the intermediary and the club or player. These conditions include:

- setting out the legal nature of parties relationship;
- setting out details of the contract which, at a minimum must contain the names of the parties, description of the intermediary's services, the term, fees, general terms for payment, date of the agreement and termination provisions. The agreement must also be properly signed by the parties; and
- The intermediary must disclose his contract for every transaction.

Article 8 – Disclosure of Information

In general:

- players and clubs must declare to the UAE FA all details of fees or payments paid or to be paid to the intermediary.
- players and clubs must, at the request of the UAE FA provide all contracts and agreements signed with the intermediary, for investigation purposes.
- all contracts stated in paragraph 2 above must be provided together with the employment contract or transfer contract, for the player's registration.
- all employment contracts and transfer agreements must contain the name and signature of the intermediary, in addition to a statement if there is no intermediary.

- The UAE FA shall at the end of May each year via its electronic platform, tally all the names of registered agents and transactions participated in. Then it will announce the total fees and payments made to them.
- The UAE FA must look into all transactions that are not in adherence with these rules.

It is interesting to note that there is a requirement that a player and a club using an intermediary report that fact to the UAE FA on a transaction-by-transaction basis, along with all financial details. This attempts to deal with FIFA's concern regarding transparency of transactions.

Prior to the implementation of the FIFA rules it was believed that at an international level (not necessarily relating to the UAE), there had long been an under-reporting of agent involvement in international transfers. This has occurred for reasons of confidentiality, to disguise side-agreements and incentives, to avoid administrative compliance, to reduce timelines for deal-making and numerous additional reasons.

Article 9 – Payments to Intermediaries

This important article deals with intermediaries' remuneration. The Regulations state that:

- the fee collected by the intermediary for a player or club shall not exceed 3% of the total monthly salary of the player for the entire term of the employment contract.
- the intermediary's fee where it represents a club in a transfer or loan shall not exceed 3% of total salary of a player for the entire period of the employment contract.
- the intermediary who represents a club is entitled to an advance fee prior to completion of the service, which shall be incorporated and taken into account into the total 3% to be collected.
- the clubs shall not make player transfer payments or loan payments via the intermediaries or to them and must not ask that payments relating to players are made to the intermediary.
- in accordance with paragraph 6 of Article 9 and subject to Article 10, the intermediary must be paid immediately after the performance of its service.
- after completion of a contract between the club and player and if incorporated into the terms agreed between the player and its intermediary, a payment may be made via the intermediary.
- directors/managers are not permitted to receive any payment from the intermediary and any such breach will lead to disciplinary measures.
- clubs and player shall not pay any fees to the intermediary if the player is incapacitated in some way as per the rules of transfer of players.

It is interesting to note that when adopting the FIFA guidelines the UAE FA went a step further in relation to commission fees earned by an intermediary. The FIFA guidelines made a recommendation that fees paid to intermediaries are limited to 3% of the player's basic gross income or of the transfer compensation. The UAE FA's Regulations however, made it a mandatory requirement to limit intermediaries to 3% commission on the fixed salary of a player. Compliance with the Regulations is at odds with the previous practice (a default 3% unless otherwise specified in the contract) and a broadly accepted international expectation that agents could anticipate a commission between 5%-10% as well as a percentage of transfer fees.

It is important to note that the FIFA guidelines clearly state that any payments made to intermediaries acting on behalf of minor players are strictly prohibited.

Article 10: Conflict of Interest

FIFA had a significant concern that on an international basis there were increased conflict of interest issues with player transfers. The UAE Guidelines state that:

1. players and clubs must ensure there is no conflict of interest before using an intermediary.
2. there shall be no conflict of interest where an intermediary has beforehand declared his actual or potential conflict, and the other parties have agreed in writing to let him proceed in the negotiations.
3. if the player or club wants to complete a transaction in line with Article 2 above, they must state in writing their consent beforehand and disclose the identity of the party that will be paying the fee to the intermediary. The parties must also inform the UAE FA and submit all written documents during registration in accordance with the Regulations.

Article 11: Disciplinary Measures

Disciplinary measures can apply to the following offences by an intermediary:

- if any false information is presented to the UAE FA in breach of the Regulations or if there are any breach of the Regulations;
- breach of obligations under the contract;
- inducement of a player to end the contract or breach it; and
- breach of the provisions of the Regulations or articles of association of the UAE FA or regulations of the UAE FA or its circulars, or the non-fulfilment of obligations in relation to decisions made.

The sanctions against an intermediary include one or a combination of the following:

1. written warning;
2. fine of AED 20,000 – AED 100,000;
3. temporary cancellation of a license;
4. permanent cancellation of a license; and
5. ban from participating in any football activity.

In addition, each player or club in violation of the Regulations will be disciplined in accordance with the Regulations of the UAE FA. The Regulations provide for a committee to be set up to look into any alleged breaches.

Overview

With the Intermediaries Regulations, FIFA has delegated responsibility for managing the regulations and increasing transparency of matters relating to intermediaries to over 200 national associations. FIFA has attempted to implement a uniform set of standards across the different federations, as in the past there were differing standards and qualifications relating to football agents. The range of enthusiasm, resources and motivations for implementing the regulations across those national associations varies widely. While the electronic transfer management system (“TMS”) provides a platform for transparency, only fully declared and disclosed agent activity and documentation is entered and only keen management, oversight and enforcement by national associations can make the system work effectively. By adoption and implementation, the UAE FA has implemented the Regulations but the new system is just a year in process. To date there are only six registered intermediaries on the UAE FA website and the level of reported transfer activity is unclear. It therefore remains to be seen over the next few years how the Regulations are adopted and administered.

Raj Pahuja (r.pahuja@tamimi.com) is Head of Corporate Commercial in the firm’s Bahrain office (previously working with the firm in the UAE) and a key member of Al Tamimi’s dedicated Sports and Events

Management practice. He has previously acted for the Bahrain International Circuit for several years advising on various aspects, including the F1 Grand Prix. Raj has also advised on the inaugural and subsequent Dubai Tours Cycle Race and in relation to a T20 cricket tournament.