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ISBN 978-88-943373-2-7

Sports Law and Policy Centre
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Price EUR100.00

TEASER

Issue I-2022 **ISSN 2039-0416**

SPORTING SUCCESSION IN FOOTBALL

J. Cambreleng Contreras – S. Samarth – J.F Vandellós Alamilla (eds)

Foreword
by
José Juan Pintó and Ulrich Haas

G. Cai – J. Cambreleng Contreras – L. Cassiano Neves – M. Cavaliero – M. Colucci – C. Etter – M. Flores Chemor – V. Garza Valenzuela – A. Graeser – P.J. Greene – M. Hovell – V. Hugo Almeida – L. Kabelskaya – H. Kahlert – Z. Kallimani – A. Liverko – J. López Batet – S. Malvestio – D. Menz – S.M. Moreno – M. Motta – S. Ng – S.P. Spera – H. Paris – P. Pivovarov – A. Reck – S. Samarth – A. Stângaciu – A. Tamayo Iannini – J.F. Vandellós Alamilla – R. Vermeer

2022

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FOREWORD

by *José Juan Pintó* and *Ulrich Haas*

It is obvious that academic legal works shall be useful for practitioners and stakeholders, but also opportune and timely in their elaboration and launch. After having gone through this book, there is no doubt that it meets by far all these requirements.

On one side, it contains the (to my knowledge) most complete and vast compilation of guidelines, commentaries, regulations and jurisprudence on sporting succession, one of the most controversial issues in sports law today, so it constitutes a very practical and powerful tool for all sport lawyers, arbitrators and institutions. On the other hand, the book has been designed, prepared and launched precisely in the moment when the controversies around sporting succession have "peaked", so it reaches the market just in the appropriate time, when we all need a comprehensive work of this kind.

Today, in football law it is difficult to find a matter that is generating more level of debate than sporting succession. The number of CAS decisions on this specific topic especially in the last 5 years has been extremely significant, recent regulatory modifications have taken place in the FIFA Regulations in this respect and different approaches to the matter can be observed by reading the CAS jurisprudence and the opinions of some scholars on this matter. This is why the emergence of this book is so relevant and pertinent, as it will contribute to give some light on a subject which in some cases, still has shadows.

The book will help to understand the rationale behind the FIFA provisions on sporting succession (and the previous CAS jurisprudence on it), the cases/transactions in which sporting succession may operate, the elements that are deemed relevant to determine when sporting succession takes place, the standard of proof to be applied and to which extent the diligence of the creditor is important or not in proceedings involving sporting succession, *inter alia*. All those issues and others are specifically tackled in detail in this book, and the lengthy explanations and sources cited by the authors will undoubtedly be a reference for all of us.

Moreover, this book dares to address complicated situations such as the relationship between sporting succession and insolvency law and the procedural matters that may surround the sporting succession cases, which can be many and not always easy to sort out. The relevant chapters of this book descend to detail in these tricky issues without circumventions, which is highly appreciated. We may share the authors' approach/opinions on these delicate issues or not, but it cannot be denied that there is not a single issue on sporting succession on which the book has deliberately remained silent.

This aim of exhaustivity is also reflected in the willingness not to refer only to sporting succession in football at an international level. The sports practitioners have easy access to the FIFA Regulations and CAS jurisprudence on sporting succession in football, but it is more difficult to find how this matter works at national level, so the chapter specifically devoted to this is of utmost help. The same can be said with regard to the reference to sporting succession in other sports, practically unknown for the general public and which is carefully treated in the relevant part of this work. It is thus clear that the editors and authors made a determined bet in favour of avoiding comfortability and have wanted to go one step beyond, for which we shall thank them.

Finally, I can only conclude this preface by stating that it has been an honour and pleasure for me having been requested to prepare it, and by congratulating all the authors and editors, for which I have the highest esteem, for the great work done and the initiative they had. I shall sincerely recommend the thorough and detailed reading and revision of this book to all the sports law practitioners when they have to face a sporting succession case in the future. None of you will regret doing so.

Barcelona, 25 June 2022

José Juan Pintó

President of Pintó Ruiz & Del Valle,
Honorary President of Rexsport, *CAS Arbitrator*

* * *

The football industry is a costly and risky endeavour. It is costly because clubs need to spend a lot of money, if they seek to contract the services of the best players and coaches. It is risky, because sporting (and thus economic) success depends on a multitude of different and unpredictable variables.

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The rules of the football industry heavily focus on provisions on how to access the football market and the standards that need to be complied with while operating within it. The backbone of these provisions is to be found in the Rules on the Status and Transfer of Players ("RSTP") that cover – *inter alia* – the status of players, their registration, the autonomy of players and clubs to regulate their contractual relationship, training compensation or the solidarity payments in case of transfer.

Despite the fact that economic failure and entrepreneurship are two sides of the same coin and inseparably interconnected in a commercialized world, there are practically no provisions in the football industry addressing the withdrawal of clubs from the market and the consequences thereof. One exception to this rule, however, is the concept of sporting succession that has been developed by CAS jurisprudence and then introduced into FIFA's rules and regulations (Article 15.4 of the FIFA Disciplinary Code). The provision seeks to protect certain (international) creditors of a club going into liquidation or otherwise ceasing operations. According thereto, the creditor may enforce his or her original claim – under certain conditions – against a third party, i.e. the sporting successor. Whether the third party qualifies as a sporting successor of the "old" club is assessed based on a set of criteria in light of the individual circumstances of the case.

The concept of sporting succession is complex and raises substantive and procedural issues. On a substantive level this instrument of creditor protection must balance opposing interests of different stakeholders such as – e.g. – the interests of players in upholding the principle of *pacta sunt servanda*, the interests of the creditors of the distressed club to maximize the proceeds in the context of its liquidation, the interests of the club's competitors in maintaining a fair and level playing field, the interests of a bona fide debtor to restructure itself, the interests of investors to engage in the football industry, the principle of *casum sentit dominus* or the interests of the football industry to allow for a transparent and efficient reallocation of resources. There is – obviously – no simple solution to this problem. The latter is clearly evidenced when looking at the meandering CAS jurisprudence pertaining to sporting succession over the recent years.

On a procedural level the concept of sporting succession raises issues in relation to the right to be heard, since the debt of the "old club" is enforced against the sporting successor without giving the latter the opportunity to challenge the liability of the "old club". Furthermore, the applicable rules do not provide for a consolidated procedure in which the question of sporting succession is definitely and uniformly settled vis-à-vis all creditors of the "old club". Instead, the question of sporting succession is addressed in disciplinary enforcement proceedings as a

preliminary question only, which entails the risks that the outcome of these proceedings may differ depending on the individual creditor concerned.

The present book undertakes – for the first time – an in-depth analysis of the concept and consequences of sporting succession of football clubs. Renowned experts in the world of football law have approached the issue from different angles. This impressive book will leave its footprint among practitioners of the football industry, be it investors, club owners, lawyers, agents, players, regulators or arbitrators. The book is structured into nine sections that cover – *inter alia* – the characteristic features of a football club, the rationale behind the concept of sporting succession and its forms of appearances in practice, the procedural, financial and disciplinary consequences of sporting succession, the concept of sporting succession at national level and in other sports and concludes with a critical assessment if and to what extent the existing provisions need to be amended.

The book fills a painful gap in the legal literature and will give guidance and legal security to the practitioners operating in the football industry. The authors can only be congratulated on this comprehensive and compelling project.

Hamburg – Zurich, 15 July 2022

Prof. Dr. Ulrich Haas

Professor at Law, *University of Zurich*
CAS Arbitrator, *President of BAT*

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WHO IS GOING TO PAY ME? AND AM I EVER GOING TO GET PAID? A SHORT OVERVIEW OF THE ISSUES RELATED TO INSOLVENCY AND SPORTING SUCCESSION OF FOOTBALL CLUBS

by *Michele Colucci*[*]

Professional football has become a business like any other, thereby requiring sound management, rigorous corporate budget rules, investments, yielding incomes, and profits while targeting the best sports results.

The club management's vagaries can bring success but also poor average as well as profitless performances, and total failure. In the last case, a club can lose from both a sporting and an economic perspective and face insolvency.

This can have serious consequences on players, staff, other creditors but also on supporters who risk to see their beloved clubs disappear from the sports landscape. Nowadays we read more about prestigious clubs which are said or declared on the verge of bankruptcy or in a dire financial situation.[1] After all, the insolvency of football clubs has a long history in Europe and worldwide. The football clubs are torn between the fair books balance target and the urge to increase the investments, spending a lot of money in order to reach a playing level with their competitors.[2]

---

[*] Member of the Dispute Resolution Chamber of the FIFA Football Tribunal.

[1] See for instance K. Teiwani, Chelsea, Barcelona, Real Madrid and the clubs in the most debt, available on https://www.footballtransfers.com/en/transfer-news/es-la-liga/2022/05/chelsea-barcelona-real-madrid-clubs-most-debt.

[2] In thar regard, K. Duffy has stated, "the piles of debt stem from the huge competition between the teams. They're all fighting to win the most trophies, nab the best players and be the best in the league. As a result, they hike up players' salaries and transfer fees", The European Super League has raised questions about how football clubs are funded and why they end up swimming in debt. Here's what the experts say, available at https://www.businessinsider.com/european-super-league-football-club-funding-debt-jpmorgan-2021-4?r=US&IR=T.

Unfortunately, and other than ordinary business, football has few success stories and too many adverse shocks (e.g., non-qualification to the final stage of a competition, relegation, pandemics, wars, non-availability of some key players) which can surely lead to financial distress.

When a football club is in a status of insolvency, like any other business, it can enter administration and/or go on liquidation. It has been rightly pointed out that administration doesn't necessarily bring an end to a football club but balancing the books when they are in deep red is never easy; on the contrary, liquidation means a last resort when debts have reached a stage that the administrators can find no way to settle them for the club's survival.[3]

In both precarious circumstances, clubs' creditors (players, coaches, clubs, goods and services suppliers) struggle to get duly paid given the poor enforcement measures in some legal systems.

This is what emerges from this unique book which provides the readers with an extensive and analytical collection of national and international rules, procedures, and practices governing the financial concerns of sports creditors.

In fact, the authors focus on the current legal situation concerning financial claim proceedings against insolvent football clubs and sporting successors as reviewed by FIFA judicial bodies and the CAS case law.

Even more, they extensively examine the flaws of the international sports legal system, the unavoidable deficiencies of the national relevant legal frameworks' fragmentation and their individual enforcement measures, which multiply the risks and the damages linked to club's insolvencies.

Finally, they sharply guide the readers through the procedures and the formal and substantial issues that the creditors need to take into account in order to successfully face and overcome a football club insolvency through the concept of sporting succession and in different national jurisdictions.

Greece, *India*, *Italy*, *Malaysia*, *Mexico*, *Romania* and *Spain* have adopted as rule of law the concept of "sporting succession". This notion applies whenever a sports entity meets certain criteria[4] to be held

[3] I. Liddle, *What happens when a football club goes into administration*, available on https://www.farleys.com/what-happens-when-a-football-club-goes-into-administration/.

[4] The Court of Arbitration for Sport has over the years affirmed the view that "the identity of a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of tively players, historic figures, etc. that allow it to distinguish from all the other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity that manages it has been recognised, even when dealing with the change of management companies completely different from themselves. See CAS 2018/A/5618, *Shabab Al Ahli Dubai Club v. Shanghai SIPG Football Club*, para. 135; TAS 2013/A/3425, *Adelante Tiburones, A.C. c. Club Sante Fe CD*, para. 139.

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liable for debts accumulated by another sports entity, even beyond the mere application of the laws regarding the limitation of corporate liabilities.

On the contrary, sporting succession has not been recognized (at least not yet in the regulations) in other countries such as *Argentina*, *Brazil*, *China*, *France*, *Portugal*, to name a few.

In any case, the Authors wisely advise the sports creditors to always register their credits following the procedure established by the relevant national law on insolvency and/or bankruptcy.

This is really important because each legal system has its own regulatory and enforcement procedures.

In *Greece*, for instance, creditors are subject to specific rules requiring due diligence in order to be able to claim a maximum of 50 % of their credit from the sporting successor.

The same applies to *Argentina* where there are no specific sports provisions on clubs' insolvency. Yet a special regime under ordinary law applies to football clubs: under the supervision of the ordinary insolvency judge, the old management is replaced with a committee composed of a lawyer, an accountant and an expert in sporting management for a period of nine years aiming at making the relevant club(s) solvent again.

In *Colombia*, then, in case of sporting succession, creditors cannot easily get their money back because civil law and sports rules are not compatible and the former may take precedence over the latter. In fact, following a decision of the civil law courts, the new club, legally identified as the sporting successor, cannot be held liable for the debts of the previous insolvent club.

In *France*, a professional football club is composed of two "inseparable" entities, on the one hand the association, which remains the sole holder of the affiliation number delivered by the FFF, and on the other hand, the *commercial company*, which is subject to commercial law in general and insolvency law in particular, with some peculiarities due to the specificity of sport.

When the commercial company of a club starts the insolvency collective proceedings, the club side is entitled to waive the restitution of most of its debts (except e.g. salaries), and its creditors will have to register their claims within the ongoing proceedings.

Finally, if the association enters into collective proceedings, the commercial company will be jointly and severally liable to implement the safeguard or rehabilitation plan. However, the association will not be jointly liable in the event that it is the commercial company that undergoes business difficulties. This highlights that the *association* can survive without the commercial company, the opposite is not true.

In the international football world *Germany* has no cases of insolvent clubs and, as a consequence, the principle of "sporting succession" has never been applied thanks to the strict licensing requirements imposed by the national federation and leagues. Even in extremely exceptional events of financial difficulty, the relevant national legislation provides that in case of insolvency the club can endorse a plan aiming to reorganize the club rather than to transfer the liability to successor clubs.

In *Italy*, the enforcement of credits accrued towards the old club follows two separate pathways, depending on whether the creditors were registered with the old club or not. In the latter case, the enforcement follows the rules of bankruptcy law and the creditors' interests are protected by the sale of the business assets. In the former case, creditors might have the possibility to get paid by the new club if the latter wants to have the so-called "sporting title", i.e. the recognition by the Italian Football Federation of some economic and technical requirements in order to participate in a given competition.

In *Portugal* and in *Romania* all creditors must act with diligence and register their credits according to the relevant ordinary judicial proceedings, in order to not fall foul of the well-established jurisprudence of FIFA and CAS on sporting succession.

In *Portugal*, following the insolvency of the clubs, the successors are required to re-start their activities from the lower division available in order to reset their sporting rights. Moreover, they are also allowed to resume their activities free of any debts and other liabilities to the detriment of the sports creditors of the insolvent entities.

In *China*, claims linked to insolvency of a club can be brought only before the ordinary judges since the football federation has no competence in the matter nor it recognizes the concept of "sporting succession".

In *Russia*, although there is no provision on sporting succession, the current enforcement and sanction system, seems to be able to protect creditors adequately.

In *Spain*, creditors are also very well protected thanks to the full-fledged set of sporting and ordinary rules aiming at protecting the creditors of insolvent clubs.

Finally, the *USA* is really a unique case because FIFA has recognised that some of its own rules may not apply systematically to American soccer, considering the specificity of the US leagues. Similarly, FIFA could still decide that the concept of "sporting successor" as developed in its case law and regulations, does not apply to them.

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The above scenarios and the number of controversies submitted to both FIFA and CAS testify how complex the concept of sporting succession and the variety of insolvencies are. Nevertheless, a good knowledge of the relevant case law, proceedings, and national systems as thoroughly analysed in this unique book can surely help sports stakeholders and creditors in getting their credits restituted. My sincere congratulations to the editors and the authors for this remarkable publication.

Brussels, 20 July 2022

Michele Colucci

CHAPTER I

TEASER

WHAT IS A FOOTBALL CLUB?

by *Josep F. Vandellós Alamilla*[*]

1. Introduction

Defining what constitutes a football club is not an easy task and it will certainly depend on the angle from which we see it. I remember a few months ago my nine-year old daughter came to me and told me that she and her friends decided to make a *club* in their class. "*A club of what*?" I curiously asked her. To which she replied: "*A club of friends*". And the truth is that nobody could argue with her or her friends that they indeed founded their own club even if they will never sign an act of incorporation or register it as an association anywhere.

As simple as it may sound, even my daughter's *club of friends* explains very well the difficulties faced in football also when we attempt to describe what a club is. The notion of club to a Manchester United fan goes far beyond the Glazer's ownership or the corporate structure embodying it. It is in a way an intangible concept, a feeling of belonging no different than my daughters' club with her friends. Your football club, whichever it is, has arguably, a soul of its own that will survive no matter what happens to the circumstantial owners ("custodians" as they are often called in English football) or to the corporate structures that embody it.

From the legal standpoint instead, things are not as simple. The soul also needs a body. The legal personality of an entity and its existence as such shall only take place if the criteria required in accordance with the laws of the place of incorporation are met. Football clubs are no exception to it and, to exist and be recognized by its member association they will need to embody some sort of legal structure under the umbrella of which ownership, employees, assets, management, affiliation et cetera are orderly organized under the law.

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That dual nature of football clubs (also existing in the corporate world) can sometimes be the source of tension which national laws have channeled through the regulation of the consequences in cases of transfers of undertakings, the piercing of the corporate veil in cases of fraud, etc.

Football clubs might – as any other legal entity – disappear and reappear, change their corporate structure, be sold, merged, be transformed from a public entity into a private company or undergo a plethora of other circumstances affecting its legal personality and/or its status as an affiliated member of the national member association. The equation to solve when that occurs is how the intangible nature of football clubs, explicitly acknowledged in the football regulations and by the CAS jurisprudence, must play out and be addressed by FIFA and other football governing bodies to best safeguard its statutory objectives but also, to be able to coexist with different mandatory national legislations.

The departing point to answer the question must, in view of this author, be necessarily to understand what a football club is in the eyes of FIFA.

1.1 According to the FIFA Statutes and Regulations

1.1.1 The FIFA Statutes

As the world governing body of football, FIFA naturally has, among its statutory objectives,[1] the task of drawing up regulations and provisions governing the game of football and related matters and to ensure their enforcement.

Defining and regulating the status of football clubs is undoubtedly a matter related to the game and in that context, it has established a definition that is aware of the diverse legal systems of their member associations and is meant to ensure that the regulations and policies it adopts are respected from the top of the football pyramid to the bottom.

Thus, according to the FIFA Statutes *for a club to be a club*, the latter must in the first place, comply with a formal requirement consisting in obtaining the recognition by its member association, followed by a substantive requirement consisting of effectively taking part in competitions:

Definition 14 - Club: a member of an association (that is a member association of FIFA) or a member of a league recognised by a member association that enters at least one team in a competition.

[1] Article 2 Objectives let. (c) of the FIFA Statutes (Ed. 2022).

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a) The recognition requirement

The *recognition* requirement crystalizes through the act of affiliation of the club to the national member association or to a recognized league. Through the affiliation to a FIFA member association, a club, regardless of its name, legal form and whether incorporated as an association, a limited liability company or a public entity, accepts to abide by the different rules and regulations adopted by FIFA.[2]

It is not the concern of FIFA which kind of legal vehicle will be used to conduct the affairs of the club, what matters is that the entity shall have the status of affiliation to a member association or a recognized league. Accordingly, issues like the legal nature, the legal capacity, the capacity to act, etc.[3] of the entities in which a club may be embodied will be governed by the law of the state under which the entity is organized or incorporated.

Article 20 Status of clubs, leagues and other groups of clubs

2. Every member association shall ensure that its affiliated clubs can take all decisions on any matters regarding membership independently of any external body. This obligation applies regardless of an affiliated club's corporate structure. In any case, the member association shall ensure that neither a natural nor a legal person (including holding companies and subsidiaries) exercises control in any manner whatsoever (in particular through a majority shareholding, a majority of voting rights, a majority of seats on the board of directors or any other form of economic dependence or control, etc.) over more than one club whenever the integrity of any match or competition could be jeopardised.

[…]

[2] CAS 2013/A/3365, *Juventus Football Club S.p.A. v. Chelsea Football Club Ltd* & CAS 2013/A/3366, *A.S. Livorno Calcio v. Chelsea Football Club Ltd*, para "2. *One may become a member of an association either by participating in the founding meeting and approving the articles of association or, at a later stage, by being accepted via membership application. Becoming a member after the founding of the association implies the formation of a specific contractual relationship whereby the candidate expresses its intent to join the association and the association expresses its consent to the candidate's application. This exchange of mutual and concordant assents constitutes a contract, the scope of which is limited to the acquisition of membership. As soon as the applicant acquires the status of member, it is no longer bound to the association by a contractual relationship, but by a specific relationship, associative in nature*".

[3] This is compatible with the provisions of Article 155 et seq. of the Swiss Private International Law Act on the applicable law to companies.

CHAPTER II

TEASER

WHAT IS SPORTING SUCCESSION OF A FOOTBALL CLUB?

by *Jaime Cambreleng Contreras*[*] – *Saksham Samarth*[**] –
Josep F. Vandellós Alamilla[***]

2.1 The Regulation of Sporting Succession

The concept of sporting succession has only been recently codified in FIFA's regulations: in particular in the FIFA Disciplinary Code in July 2019 and in the FIFA Regulations on the Status and Transfer of Players in January 2021.

However, this concept had already been applied before for several years as it was created mainly through the case law of FIFA's deciding bodies and of the Court of Arbitration for Sport as a result of certain football-related disputes that could only be resolved by constructing a specific figure that enabled the delivery of justice in certain specific circumstances.

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At national and continental level, different sports organisations have somehow sought to tackle similar issues as those that led to the creation of this concept through different regulations (e.g. UEFA's Club Licensing and Financial Fair Play Regulations,[1] the Football Creditors' Rules in England, Article 52.3 of the Internal Federal Organizational Rules [NOIF] of the Italian Football Federation,[2] or the Regulations on Membership, Name and Seat of the Mexican Football Federation,[3] to name a few).

Turning back to the origin of this concept in the international scene, it appears that the main problem that triggered its creation resulted from the transfer between different companies of football clubs enrolled in leagues that held a sort of *quasi*-franchise regime.

In particular, in 2004 and 2005, the FIFA Dispute Resolution Chamber was confronted with two separate but similar situations concerning different clubs that had terminated the contracts of two of their respective players without just cause in 2002. The clubs' defences revolved around the argument that the clubs that were being requested to answer to the players' claims in 2004 and 2005 respectively (and therefore being accused of terminating the contracts without just cause) were not the same clubs that had entered into the employment contracts with each player three years before. The reason behind such an argument in both cases was the change of the company that owned and administered each football club between the termination of the contracts in 2002 and the start of the disputes before FIFA in 2004 and 2005 respectively.

In the 2004 case, the FIFA Dispute Resolution Chamber concluded that the new club "*has reinstated* [the old club] *and taken the place of the latter in the national football competition, should* [the new club] *be considered a completely different entity, which cannot be held liable for the actions of*

[1] Edition 2010, Article 12.2: "*The membership and the contractual relationship (if any) must have lasted – at the start of the licence season – for at least three consecutive years. Any alteration to the club's legal form or company structure (including, for example, changing its headquarters, name or club colours, or transferring stakeholdings between different clubs) during this period in order to facilitate its qualification on sporting merit and/or its receipt of a licence to the detriment of the integrity of a competition is deemed as an interruption of membership or contractual relationship (if any) within the meaning of this provision*".
This provision was replaced by Article 14.02 of the currently named UEFA Club Licensing and Financial Sustainability Regulations (Ed. 2022): "*By the start of the licence season, the membership and/or the contractual relationship (if any) must have lasted for at least three consecutive seasons. Furthermore, the licence applicant must have participated in the official competitions for at least three consecutive seasons (hereinafter: three-year rule)*".
[2] Norme Organizzative Interne Federali della FIGC.
[3] Reglamento de Afiliación Nombre y Sede de la Federación Mexicana de Fútbol.

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[the old club], *it should normally have started its activities in the lowest division of the* [association's] *championship, therefore,* [the new club] *and* [the old club] *must be considered one and the same party in the present dispute*".

Similarly, in the 2005 decision, the FIFA Dispute Resolution Chamber pointed out that despite the change in ownership, the Mexican football club had maintained the same identity and continued to compete in the same league.

As a result, in both cases, the FIFA Dispute Resolution Chamber ordered the existing clubs to take responsibility for the debts left behind by the original clubs.

In 2007, the FIFA Dispute Resolution Chamber established that a successor club must be considered as the club that entered into the contractual relationship with the player via the employment contract concluded by the original club. Therefore the successor is liable for any commitment entered into by the original club towards the player.[4]

In 2008 a CAS panel[5] decided on the effects deriving from the transfer of the rights to compete in the Romanian first division between two clubs. As summarised recently by CAS, in that case "[*t*]*he dispute arose between two clubs which were using a similar name, identical colours and logo, liable to create confusion therewith. The first club took action against the second club for the illegal use of its personality rights and obtained a favourable ruling from the CAS ("First Ruling"* [2006/A/1109]*), which ordered the second club a) to use its earlier name, or adopt another name that would not create any confusion and b) to pay a compensation to the first club. However, during the proceedings before CAS, the second club assigned its rights to a third club, which was not a party to the CAS proceedings and which, therefore, claimed that it was not bound by the First Ruling. In a subsequent ruling (i.e. CAS 2007/A/1355), the CAS Panel held that the third club was indeed not the same legal person as the second club and that the two clubs "have separate juridical personalities and were different kinds of artificial legal person:* […]. *It does not however follow that the [third club] is not bound by the original CAS decision. The [third club] acquired the rights of the [second club] (with which it is plainly closely connected) to participate in Liga 1 and thereafter treated itself as being bound by the Award. It was for all practical purposes the successor of [the second club] which was then reduced to turning out junior and youth teams. The original*

[…]

[4] FIFA DRC decision 271322 of 23 April 2007.
[5] CAS 2007/A/1355, *FC Politehnica Timisoara SA v. FIFA & Romanian Football Federation (RFF) & Politehnica Ştiinţa 1921 Timisoara Invest SA*.

CHAPTER III

TEASER

SPORTING SUCCESSION AND PROCEDURAL MATTERS

by *Marc Cavaliero*[*] – *Jaime Cambreleng Contreras*[**] – *Carol Etter*[***]

3.1 The Parties in Sporting Succession Cases

3.1.1 Relationship Between a Club and its Underlying Legal Entity

There is no clear indication in the FIFA regulations on who should be the parties in cases of sporting succession. While the FIFA Statutes contain a definition of what a "club" is,[1] there is no reference to this term in Article 15.4 FDC.

It is usual in the football world that a club holds a license to participate in a championship and is a member of a member association of FIFA but is being run by a legal entity in the background. Consequently, for legal proceedings before any state court it would be the legal entity "behind" the club that would be a party to the proceedings and not the club (i.e. the sporting name) itself who might not even have a legal personality in the sense of civil law.

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[1] Definition 14 FIFA Statutes: "*a member of an association (that is a member association of FIFA) or a member of a league recognised by a member association that enters at least one team in a competition*". For additional insight on this definition, see Chapter 1.

In earlier horizontal disputes, the relation between the sporting name of the club and the legal entity behind it was analysed. For example, in Mexico there is a certain formal identity between the club (i.e. sporting name) and the legal entity behind it. The Sole Arbitrator in a matter concerning the sporting succession of a Mexican club held:[2]

> "*55. In this regard, there is no doubt that the "football teams" or "football clubs", in their purely sporting sense or as they are publicly recognized, lack a specific legal personality by virtue of which they can be subjects of rights and obligations, but behind or above them there is a legal person that administers them and that does have legal recognition, being the one that acts in the legal sense in the various relations of the club with third parties. It is for this reason that the legislation of each country regulates the way in which professional soccer clubs must be legally organized, since it is a notorious fact that nowadays these are real companies that develop profitable and lucrative activities and therefore must be subject to the general regulations applicable to this type of companies, in addition to the particular regulation of football*".

In the same matter, the Sole Arbitrator pointed out that the regulations refer to the club (i.e. the sporting name) and not the legal entity behind it. By way of example, only the club can change its (sporting) name.

Since FIFA member associations do not have a harmonized way of regulating (if any) the relationship between the club and the legal entity behind it, it is extremely difficult (not to say impossible) for FIFA to create one rule to settle this matter. By way of example, while in Germany a club is free to choose its legal form of operations, it is imperative that an association ("*eingetragener Verein*") must hold at least 50 plus 1 shares of the company that is running the club (some clubs continue to be entirely run by the association). On the other side, in Switzerland the professional clubs must be run by a corporation (i.e., *société anonyme* or S.A.).

But even in Switzerland, the emphasis in the regulation lies on the sporting name and not on the operating entity:

> "*Article 12 Requirements for club names*
>
> *1. Club names must not contain references to companies, charitable organizations and the like.*

[2] TAS 2011/A/2614, *Oscar Adrian Ahumada v. Club Tiburones Rojos de Veracruz.*

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> *2. Any risk of confusion with other clubs must be excluded. This does not apply in the relationship between a club organized as a société anonyme and the club organized as an association which preceded the club organized as a joint-stock company.*
>
> *3. For clubs organized as a société anonyme, the provisions of the statutes and of these implementing regulations concerning the name of the club shall apply exclusively to the name under which the club is listed in the official ranking list and under which it is known to the public (so-called sporting name)*".[3]

Since sporting succession cases usually revolve around what happened to the legal entity behind a club, the question therefore arises which entity shall be called as a party to the proceedings.

While in the above quoted award TAS 2011/A/2614 the question of the relationship between the club (i.e. sporting name) and the legal entity was discussed to analyse who might be considered a sporting successor, another CAS Panel had to discuss this issue from the perspective of the standing to sue principle. Indeed, when the same Mexican club was the appellant in an arbitral procedure, it chose to appeal the matter in the name of the legal entity only and not on behalf of the club. The Sole Arbitrator came to the conclusion that the legal entity lacked standing to sue:

> "*152. In fact, the Sole Arbitrator emphasizes that, since the dispute on the merits is a dispute between clubs from different associations, there cannot be a federative rule that would result, even indirectly, in the loss of FIFA's competence to hear disputes between clubs from different associations; as would be the case here if the Appellant had to resort to the Mexican civil courts to safeguard the right of credit derived from the*
>
> […]

[3] Regulations governing the application of the Swiss Football Association's Statutes. Original: "Artikel 12 Anforderungen an Namen der Klubs
1. *Die Klubnamen dürfen keine Hinweise auf Unternehmen, wohltätige Organisationen und dergleichen enthalten.*
2. *Jede Verwechslungsgefahr mit anderen Klubs muss ausgeschlossen werden. Dies gilt nicht im Verhältnis zwischen einem als AG organisierten Klub und dem als Verein organisierten Klub, welcher dem als AG organisierten Klub vorangegangen ist.*
3. *Für die als AG organisierten Klubs gelten die Bestimmungen der Statuten und dieser Ausführungsbestimmungen über den Namen des Klubs ausschliesslich für den Namen, unter welchem der Klub in der offiziellen Rangliste geführt wird und unter welchem er in der Öffentlichkeit bekannt ist (sog. sportlicher Name)*".

CHAPTER IV

TEASER

FINANCIAL AND DISCIPLINARY CONSEQUENCES OF SPORTING SUCCESSION

by *Mark Hovell*[*]

As seen in Chapter 2 parties involved in sporting succession cases no longer need to rely upon FIFA and/or CAS jurisprudence for their basic remedy, as they can refer to the first line of Article 15.4 of the FIFA Disciplinary Code (FDC), which states:

> "*The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision*".

However, again, this Article is never as clear as it seems.

For the purposes of this chapter, we will use a simple example of a Player that was employed by Club A, but never paid by it. After his arrears had built up over a few months, he left Club A and claimed just cause to terminate his contract. The FIFA DRC agreed with him and awarded him EUR 1,000,000 (EUR 200,000 for arrears of salary under the contract and EUR 800,000 for the balance of the contract). Club A never respected the FIFA DRC Decision, ended up insolvent and went through a formal insolvency procedure. A little while later a new club, Club B, appeared and the Player asked the FIFA DC to determine that Club B was the sporting successor of Club A and to apply Article 15.4 FDC, determining that Club B was non-compliant with the FIFA DRC Decision and should therefore be disciplined under Article 15 FDC.

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There are a number of possible outcomes to this example:

- the FIFA DC determines that Club B is not the sporting successor of Club A;
- that would be appealable, and CAS might disagree and find that Club B was the sporting successor;
- the opposite is also possible, with the FIFA DC determining that Club B is the sporting successor and CAS could disagree with that;
- as is the possibility that both the FIFA DC and CAS decide the issue the same way.

However, after determining the issue of sporting succession there are a number of other issues that may come into play:

- What if the FIFA DC has imposed additional sanctions (for example a fine) on Club B and that is appealed to CAS?
- Can CAS impose sanctions on Club B when it considers the matter?
- What if the Player managed to get another, better contract with Club C immediately after the FIFA DRC Decision and effectively mitigated EUR 500,000 of his damages that were awarded to him?
- What if Club B paid to the insolvency practitioner/court of Club A enough money for the business and assets of Club A to enable a payment to the creditors of Club A (including the Player) of 50% of the total debts and the Player had received or would receive his share, again in the sum of EUR 500,000?
- What if the above was true, but the Player did not bother to make a claim/register his credit with the insolvency practitioner/court?
- What if Club A has not gone into liquidation, but is still registered and continuing to field a team, but its identity was transferred to Club B?
- What rights does Club B inherit? If it is the sporting successor to Club A, can it claim training compensation, sell on fees, solidarity payments that were due to Club A?

Nothing is straightforward with what is a short and simple provision in the FDC, but some of the answers to these questions have been considered already:

4.1 *Not a Sporting Successor*

In the event that the FIFA DC determines that Club B is not the sporting successor of Club A (and either the decision is not appealed to CAS or it is, and CAS

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agrees with the FIFA DC Decision and dismisses any appeal) then the Player's claims against Club B fails and Club B has no liability towards the Player. As one CAS Panel concluded:

> "*For the reasons exposed hereabove, the New Club is not the sporting successor of the Old Club and, as a consequence, it has not taken over the Old Club's obligations. In particular, the New Club is not bound by the award rendered…by the FIFA DRC and, therefore, cannot be sanctioned for not complying with it*".[1]

The Player may still have the ability to claim in any insolvency of Club A and could technically explore ways to appeal any CAS decision to the Swiss Federal Tribunal (SFT), had there been a failed appeal at CAS (this would be on very limited grounds and unlikely to result in the SFT itself reconsidering the sporting succession issue), but otherwise that is the end of the matter.

4.2 *Where There is a Straightforward Finding of Sporting Succession*

In a case where the FIFA DC (and CAS, if there was an unsuccessful appeal by Club B), finds that Club B is the sporting successor of Club A and that the Player has done all he needs to do, then what are the consequences?

A typical decision of the FIFA DC will state that Club B "*is found guilty of failing to comply in full with* [the FIFA DRC Decision] *according to which it was ordered to pay to the* [Player EUR 1,000,000]" along with any interest. The FIFA DC will usually impose a fine on Club B and give it a final grace period (typically 30 days from the date of notification of the FIFA DC Decision) to comply with the FIFA DRC Decision.

The FIFA DC Decision then stipulates what will happen next if Club B does not comply, which tends to be "*a ban from registering new players, either nationally or internationally will be imposed on* [Club B]". This ties in Club B's Football Association to ensure that it enforces such a ban at national level. Typically, the FIFA DC provides further details as to what the ban covers:

> "*The transfer ban shall cover all men eleven-a-side teams of the Debtor – first team and youth categories –* [Club B] *shall be able to register new players, either nationally or internationally, only upon the payment to* [the Player] *of the total outstanding amount. In particular,* [Club B] *may not make use of the exception and the provisional measures stipulated*
>
> […]

[1] CAS 2020/A/6873, *Benjamin van den Broek v. FIFA & FC Universitatea Cluj*.

CHAPTER V

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SPORTING SUCCESSION AND INSOLVENCY LAW

by *Jaime Cambreleng Contreras*[*] – *Saksham Samarth*[**] –
Josep F. Vandellós Alamilla[***]

During the 8th RFEF Congress on Football Law held in Madrid in 2019, Josep F. Vandellós Alamilla had the privilege to give a presentation on insolvency law and football regulations.[1] The author remembers describing the relationship between the two as a story of tension between areas of law aiming at achieving different objectives and having different interests, although the description remains valid, the truth is that in the past three years CAS jurisprudence has shed more clarity on many of the clashes that exist between these two areas of law. Unfortunately, the same cannot be said of cases involving sporting succession where despite CAS Panels having been very prolific, they have also been very inconsistent and erratic in the outcomes.

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[1] The full presentation is available *on line* here: https://www.youtube.com/watch?v= HrmHq7Wn7WM.

This subchapter comes therefore as the perfect opportunity to complement the presentation in Madrid, and should allow the author, along with his two esteemed and learned colleagues Saksham and Jaime, to calmly reflect upon the myriad of situations and questions that arise when insolvency law meets sporting succession of clubs.

The interaction between insolvency law and sporting succession is not defined in the FIFA regulations and different CAS panels have come with different points of view, making this topic fascinating and important.

References in this section to how insolvency and/or bankruptcy proceedings operate, are done on a general basis following basic principles common to most known systems. However the purpose of this book is not to perform a comparative analysis of the different insolvency and/or bankruptcy laws existing worldwide.

The authors anticipate the readers that no final answers will be given, although the authors will do their best to present their views whenever possible, always without prejudice to a better opinion, the possible evolution in time of the jurisprudence, the regulations and of course as in any other investigation/ assessment, the risk of even being wrong.

5.1 Insolvency and Sporting Succession of Football Clubs – General Overview

The relationship between football regulations and insolvency law is particularly important because sport in general and football specifically, is an industry with peculiarities that make it different from any other market.

One of the aspects that makes organised football special is that it operates as a closed market of competitors where all clubs participating in a league, or a championship must necessarily be (i) affiliated to their national federation and (ii) qualify to play on the (sporting) merit basis. In other words, no club can decide overnight to start playing in a league of its choice, as it would conversely be the case for example of a newly created consultancy company that could perfectly start competing and rendering its services with all other consultancy companies active in the market.

In that light, it is evident that the financial viability of the clubs taking part in a football competition shall directly affect the integrity of the competition (which becomes a commercial product in itself), and for that very reason all clubs playing in the same league, although competitors at all levels (not only on the pitch but also commercially) shall also – as opposed to any other industry – be interested in the economic soundness of the rest.

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Nowadays, most of the legal literature and CAS jurisprudence relating to insolvency law concurs that the main objective of modern insolvency law is to save (rather than to punish) those entities who are under serious financial risk or unable to pay its creditors and in that endeavour, attain distributive justice between all its creditors in the same measure. In the words of Professor Haas during the 2022 FIFA Football Law Annual Review:[2] *insolvency, is an instrument for the good governance of clubs*.

A common feature of insolvency-related legislations around the world is that when a company (i.e. a club) enters administration it will no longer be allowed to freely manage and/or dispose of its assets as from the date of the opening of the proceedings. The immediate effect is that most, if not all, individual claims against the company's estate shall be suspended by act of law and re-negotiated in a collective manner within the insolvency and this will impact the original credit and of course, the on-going proceedings at many levels, both of procedural and substantive nature. Insolvency law, therefore, protects the debtor from its creditors, with whom it will negotiate from the moment of entering administration only in a collective manner, and also protects the creditors against potential malpractice or mismanagement of the debtor.

With the help of a judicial receiver and under the supervision of the creditors and the insolvency judge, the insolvency proceedings shall primarily aim at restructuring the historical debt of a club (i.e. the debtor) and remodel its financial and organizational structure to avoid bankruptcy and liquidation. Insolvency law will aim at implementing the necessary measures to continue business as usual and hence preserve the company's estate (i.e. the assets of the club) and its status (e.g. eligibility to obtain the licence to participate in a competition) ensuring that all creditors are treated equally and protected, under the principle that guides and forms insolvency, which is the *par conditio creditorum*.

National insolvency laws will determine the legal status of claims against an insolvent debtor. Typically, a difference will exist between claims that have arisen before the opening of the insolvency proceedings, from those that have arisen after the opening of the insolvency. Claims arisen before the opening of the insolvency are normally claims incumbent on the estate, and therefore shall be negotiated in a collective manner with all creditors, and only enforced through the participation in the insolvency proceedings, while claims arising after the entering of the insolvency, shall be considered as being on-going expenses that can be freely discharged by the debtor at any time, and hence enforced in accordance with the contract at its origin, and through the mechanism implemented by the FIFA regulations.

[…]

[2] https://www.fifa.com/legal/education/flar/football-law-annual-review-2022.

CHAPTER VI

TEASER

SPORTING SUCCESSION AT NATIONAL LEVEL

Argentinian Football Association ("AFA")

by *Ariel Reck*[*]

A. Applicable Regulation of the Member Association

There are no specific rules regarding sporting succession in AFA's regulations and/ or statutes.

To understand the legal structure of football clubs in Argentina, it is important to know that football clubs in Argentina are civil associations and also have a special regime in cases of insolvency. The result is that since the beginning of professional football in Argentina there were only a handful of cases of dissolution and bankruptcy that lead to the disappearance, disaffiliation or merger of football clubs at professional level. Therefore, the issue of sporting succession is, as such, not a real problem up until now.

B. Relevant National Laws

There is one specific situation of succession addressed in the national labor law. Article 30 of the law 20.744 (Labour Act) provides for the joint liability of those who totally or partially transfer, sub-contract or assign a business.

Such an article has also been applied to football clubs in cases were the club was at some point managed by a private company.[1]

As explained above, clubs in Argentina are civil associations. The legal ways for a private company to manage a club are limited: one is via the approval

[…]

[*] Argentinian lawyer focused exclusively on the sports sector, mainly the football industry.
[1] See as examples: Labor Court Appeal Chamber, Branch VI, case 39314/2010. Decision 67949} of September 30, 2015 "GRANESE FABIÁN ENRIQUE C/ RACING CLUB Y OTRO S/ DESPIDO and Labor Court Appeal Chamber, Branch VIII, case 3.524/09. Decision 40088 of March 13, 2014 "SILVA JORGE LUIS C/ BLANQUICELESTE S.A. Y OTRO S/ DESPIDO".

Brazilian Football Confederation ("CBF")

by *Marcos Motta, Stefano Malvestio & Vitor Hugo Almeida*[*]

A. Applicable Regulation of the Member Association

Neither the CBF Transfer Regulations (*Regulamento Nacional de Registros e Transferência de Atletas de Futebol – RNRTAF*) nor the CBF's National Dispute Resolution Chamber Regulations (*Regulamento da Câmara Nacional de Resolução de Disputas – RCNRD*) contain any specific provision on sporting succession, as sporting succession cases have not been common in Brazil until the date of publication of this article.

Given the absence of any specific regulations in the national regulations, it is possible that sporting succession cases dealt with at the national level would take into consideration, in addition to the national laws, the *Fédération Internationale de Football Association* (FIFA) regulations on the matter.[1]

B. Relevant National Laws

The Brazilian Labor Law (CLT) foresees in its Articles 10, 448 and 448-A the labour succession, which occurs when the ownership of a company is transferred to another and, with that transfer, a new employer replaces the previous in the employment relationship. In such cases, the employment contracts and eventual labour debts with employees are also transferred from the company being sold to the acquiring one. Similarly, Article 1.146 of the Brazilian Civil Code provides that the acquiring company shall be liable for the existing debts of the company being acquired, provided that they are expressly recorded, with the exception of tax and labour debts, which shall be the responsibility of the acquiring company even if they are not recorded.

In both cases, the legislation sought to protect the vested interests of the creditors regardless of any change in the legal structure of the company.

[…]

[*] Sports lawyers from Bichara & Motta Advogados.

[1] Article 86 of the CBF Transfer Regulations indeed states that "*in cases of omission, as well as in all matters and issues involving international transfer, the norms of the FIFA RSTP shall apply, which shall become an integral and inseparable part of these Regulations*" (Free translation of the following extract, in Portuguese: "*Em casos omissos, bem como em todas as matérias e assuntos que envolvam transferência internacional, aplicam-se as normas do FIFA RSTP, que passa a fazer parte integrante e inseparável deste Regulamento*".).

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Chinese Football Association ("CFA")

by *Guo Cai*[*]

A. Applicable Regulation of the Member Association

The latest edition of CFA's Regulations on the Status and Transfer of Players dates back to 2015, which contains no provision on sporting succession. Unlike the FIFA Disciplinary Code, the 2022 version of the CFA Disciplinary Code does not touch upon sporting succession either. Currently, there is no specific regulation on sporting succession at the association level.

Given that the CFA internal dispute resolution mechanism usually considers clubs that ceased operation or being denied a license fell out of its competence, claims against such clubs falling out of CFA competence could only be resolved by Chinese judiciary pursuant to the laws of the People's Republic of China ("PRC", before the sports arbitration mechanism is formally put into place in China). In practice, resorting to the People's Courts could be more efficient than the football mechanism in certain cases because of strong enforceability by the State compared to a sport association such as the CFA; however, taking an overdue salary claim to the People's Courts could also at times become a lengthy process due to the standard provision in football contracts which prohibits taking disputes to regular national courts pursuant to the CFA and FIFA Statutes.

B. Relevant National Laws

The operating entity of each football club is a limited liability company under PRC law, which could be subject to the bankruptcy procedure pursuant to the PRC Enterprise Bankruptcy Law. Although in practice players' overdue salaries had been treated by the People's Court as part of "employee salary" entitled to prioritized compensation, it is almost unlikely to expect effective compensation out of the bankruptcy procedure because, all football clubs that had undergone bankruptcy procedure, based on public available record, appeared to bear debts far exceeding any assets in their possession. As a result, employees including the

[…]

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Colombian Football Federation ("FCF")

by *Andrés Tamayo Iannini*[*]

A. Applicable Regulation of the Member Association

The Colombian Football Federation (FCF) is affiliated to FIFA, and therefore, everything that is not regulated in the internal regulations of the FCF will be governed by the FIFA regulations. Therefore, with regard to sporting succession, it is necessary to refer to the FIFA regulations as the FCF regulations do not contain any specific dispositions.

B. Relevant National Laws

In Colombia, Law 1116 of 2006,[1] regulates the so-called "insolvency regime" and "judicial liquidation process", which seeks the use of the debtor's assets, based on principles of good faith to ensure that the creditors receive the payment of their outstanding credits.

The aforementioned law is applicable to companies that are part of the sports industry, more specifically to professional football clubs, by virtue of the precedent and the practical cases that have taken place. Thus, one could argue that the concept of sporting succession has derived from the existence of an insolvency proceeding and subsequent liquidation or at least this could be one of the reasons.

It should also be noted that the Colombian Code of Commerce[2] regulates the mergers of companies and sale and purchase of assets. However, there are no examples of Colombian professional football clubs availing themselves of such provisions.

Taking into consideration the decisions issued by the ordinary tribunals, it is not possible for a new company, in this case a new professional football club, which has similar distinctive signs to an old professional football club that was subject to an insolvency process, to be liable for the debts of the latter.[3]

[…]

[*] Secretary General of the Colombian Football Federation.

[1] Law 116 of 2006: https://www.sic.gov.co/recursos_user/documentos/normatividad/Ley_1116_2006.pdf

[2] Colombian Code of Commerce: http://www.secretariasenado.gov.co/senado/basedoc/codigo_comercio.html.

[3] Ruling of the Colombian Supreme Court of Justice Colombia SL 2593-2018 MP. Martín Emilio Beltrán, 25 de julio de 2018.

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The Football Association ("FA")

by *Mark Hovell*[*]

A. Applicable Regulation of the Member Association

In English football the Football Association maintains authority over the English Football Pyramid, however it has delegated the responsibility to run the professional leagues to the Premier League (the "PL") and the English Football League (the "EFL").

The PL is of little interest in relation to this book. At present even the lowest placed club receives in excess of £100m per season in central distributions. Only one club has found itself in critical financial difficulties, but it was eventually relegated to the EFL and was dealt with under the EFL's regulatory system. Conversely, a large number of clubs in the EFL have found themselves in such financial difficulties and many have had to go through a formal insolvency procedure, often seeing the business and assets of the old company being transferred into a new company. There have been numerous clubs that have gambled to get into the PL, failed and suffered the financial consequences.

In England, the clubs are limited companies (some PLCs), as are the Leagues. Each club is a shareholder in the League it plays in, so each of the 72 clubs playing in the EFL holds a share in EFL Limited.

There is no licensing system, such as we see in many other countries, rather regulations that require financial hygiene for the clubs and rules within the EFL's constitution (its articles of association) that deal with football creditors and insolvency. If a club becomes formally insolvent, then the EFL's Insolvency Policy can come into play too.

Most disputes between players and an EFL club will be dealt with in England, but an overseas club, that has a dispute with an EFL club, may look to take that dispute through FIFA. As such, if there are decisions from FIFA and/or CAS, the issue of sporting succession and Article 15.4 FDC, could arise.

B. Relevant National Laws

The main legislation is the Insolvency Act 1986, supplemented by the Insolvency Rules 1986.[1] There are numerous other Acts, statutory instruments and cases

[…]

[*] Arbitrator at the Court of Arbitration for Sport and Partner, Mills and Reeve, UK.

[1] Replaced in England and Wales from 6 April 2017 by the Insolvency Rules (England and Wales) 2016.

French Football Federation ("FFF")

by *Hugo Paris*[*]

A. Introduction

French football is organized by the FFF, which is entrusted with this task by the French Sports Minister through a "public service delegation" ("*délégation de service public*").[1] Concerning the organization and management of professional football (*Ligue 1* and *Ligue 2*), the FFF delegates in its turn this task to the *Ligue de Football Professionnel* (LFP), through an Agreement ("*Convention FFF/LFP*") signed by the two entities.[2]

It is important to note that the legal form of a French football club is an *association,* which is affiliated to the FFF.[3] In order to participate in professional competitions (*Ligue 1* and *Ligue 2*), a club must create a *commercial company* which will be in charge of the commercial activity of the club.[4] The association and the company shall sign a managing agreement ("*Convention*"), for a duration between ten and fifteen years, foreseeing *inter alia* the use of the club's facilities and the conditions for the transfer of the association's name, trademark or other distinctive signs to the company.[5]

[…]

[*] The author is a French lawyer with international academic and professional background. He has worked on numerous football-related cases before the FIFA Legal Bodies and CAS.
[1] Article L.131-14 of the Sports Code: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000043982791.
Article 1 of the FFF Statutes: https://www.fff.fr/11-les-reglements/index.html.
[2] See supra. Article L.131-14 of the Sports Code.
Article 32 of the FFF Statutes; Article 4 of the LFP Statutes: https://www.lfp.fr/statuts-reglements.
[3] Article 2 para. 1 FFF Statutes; Article L.121-1 of the Sports Code: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006547500/.
[4] Article 101 of the LFP Administrative Regulations. Moreover, under French law, it is compulsory for a club to create a commercial company when it reaches a certain level of yearly income (EUR 1,200,000) and/or when the total yearly payroll reaches a certain amount (EUR 800,000).
Article L.122-1 and R. 122-1 of the Sports Code: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006547509/ and https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006547814.
[5] Article L.122-8 and R. 122-8 of the Sports Code: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000039261846 and https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006547821.

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German Football Association ("DFB") / German Football League ("DFL")

by *Alexander Graeser*[*]

With reference to the three highest football leagues in Germany, the two divisions Bundesliga and 2nd Bundesliga maintained by the DFL as well as the 3. Liga maintained by the DFB (DFL and DFB together as the "Associations"), there are no known cases in which the principles surrounding "sporting succession" have been applied. Reasons for this may include the licensing requirements of the Associations.

A. Principles of Club Licensing in Germany

The task of the DFL and DFB as licensing bodies is, for the benefit and preservation of stable and successful leagues, to carefully check the background of those clubs applying for a licence in their leagues. In addition to sporting criteria, the clubs must also fulfil legal, personnel, administrative, infrastructural and financial/economic criteria. By fulfilling these criteria, it should be avoided as far as possible that sporting competition is distorted by the failure of a club and that the value of the product is damaged. Especially the proof of the economic performance of the applicant is subject to high requirements. The checks by the DFL and DFB are carried out before each season and continue during the season. Successful fulfilment of all requirements in the pre-season licensing procedure leads to the conclusion of a licensing agreement allowing participation in the competition.

B. Applicable Regulations of the Member Associations and Entry of a New Club

Section 1 of the Licensing Regulations (LO) of the DFL reads as follows:[1]

1. the licence is the supreme personal entitlement of the licensee to use the club facilities of the Bundesliga or the 2nd Bundesliga and is not transferable.

[…]

[*] The author is working as a Legal Counsel in the Deutscher Fußball-Bund e.V. He regularly advises on commercial and contractual issues in Sports.
[1] Only the statutes of the first three football leagues in Germany were considered. For reasons of simplification, only the statutes of the German Football League (applicable to the 1st and 2nd Bundesliga) are referenced; the statutes of the German Football Association provide almost identical regulations in this respect.

Hellenic Football Federation ("HFF")

by *Zografenia Kallimani*[*]

A. Applicable Regulation of the Member Association

HFF Regulations on Football Matches Ed. July 2021[1]

Annex 1 Article 4 – Sporting successor's obligations
In the cases of articles 2 and 3, when the founding club of a relegated football S.A. succeeds anew its promotion to a professional category, the new football S.A. that it will be established, according to the provisions of article 5 hereof, will be liable for the football debts (indicatively debts towards football players, other clubs, coaches, trainers and in general coaching staff, intermediaries, leagues, Federation, FIFA, UEFA), which have been confirmed with final decisions of the judicial bodies of the HFF, FIFA and UEFA and have been created by the football S.A. which was relegated, at a rate of 50%, jointly and severally with the relegated football S.A. The payment of these debts will be executed in the manner provided by the Regulations of the HFF, while the compliance of the newly established football S.A. with its obligation will be controlled by the licensing body in accordance with its applicable Regulations. The new football S.A. will be liable for the aforementioned football debts of its direct sporting predecessor only and not of all preceding Football S.A.s […].
The above obligation of the new football S.A. applies for the football S.A.s that did not declare participation or withdrew from the professional championship on or after the sporting season 2016-2017.

Annex 1 Article 5 – Relegation/dissolution-insolvency
1. In case a football S.A. is relegated to an amateur division, the company is dissolved and enters into liquidation according to the applicable provisions.
[…]

[*] The author is a Sports Lawyer currently working as a Legal Counsel at AEK FC in Athens, Greece. She is responsible for providing advice on legal and regulatory issues to all departments within the Club and for representing the Club before the various judicial bodies of HFF and FIFA.
[1] HFF Regulations on Football Matches (Ed. July 2021) can be accessed at: https://www.epo.gr/media/files/KATASTATIKO_KANONISMOI/2021-2022/KAP_2021.pdf.

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All India Football Federation ("AIFF")

by *Saksham Samarth*[*]

A. Applicable Regulation of the Member Association

AIFF RSTP 2021[1]

Article 31A – Implementation of decisions and confirmation letters
1. The sporting successor of a debtor shall be considered the debtor and be subject to any decision or confirmation letter issued pursuant to this article. The criteria to assess whether an entity is the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned.

B. Relevant National Laws

In cases where sporting succession is a consequence of insolvency and/or bankruptcy, creditors should refer to the Insolvency and Bankruptcy Code of India[2] ("IBC") to register their credits and possibly fulfil the requirements of diligence which is now a well-established principle before FIFA and CAS.

Both secured and unsecured creditors should register their credits as per the IBC. Football creditors will, most likely, be considered as unsecured creditors under the IBC and thus, registration of credit is of paramount importance to show that they meet the minimum required degree of diligence.

In case where there is a sporting succession due to a transfer of an undertaking, football creditors specially players and coaches will have to resort to resolution mechanisms within the AIFF Regulations as football players sign 'service contracts' as opposed to 'employment contracts' and hence, they are
[…]

[*] The author is an International Sports Lawyer currently working at Vandellos Ssports Law in Valencia, Spain. He primarily works in sports dispute resolution and regularly advises on regulatory, commercial and contractual issues in sports. The author has represented both creditors and debtors before the FIFA Football Tribunal, Judicial Bodies and CAS in cases of sporting succession.
[1] AIFF RSTP 2021 edition can be accessed at: https://www.the-aiff.com/media/uploads/2021/06/AIFF-Regulations-on-the-Status-and-Transfer-of-Players-June-2021-edition-.pdf.
[2] The Insolvency and Bankruptcy Code of India can be accessed at https://ibbi.gov.in//uploads/legalframwork/e9cca2f4d2cf3508f3c823f070429be8.pdf.

Italian Football Federation ("FIGC")

by *Saverio Paolo Spera**

A. *Applicable Regulation of the Member Association*

Norme Organizzative Federali Interne (NOIF)[1]

Article 52(3) NOIF provides the conditions upon which a succession in the sporting title of a professional football club which has been disaffiliated from the FIGC (for instance as a consequence of a declaration of insolvency) can occur:[2]

> *The sporting title of a club whose affiliation has been revoked pursuant to art. Art. 16, paragraph 6, may be assigned, within the deadline of 10 June of the current season, to another club by decision of the President of the FIGC, subject to the binding opinion of COVISOC if the sporting tittle concerns a professional championship, on condition that the new club, based in the same municipality as the previous club, demonstrates within the peremptory deadline of five days prior, excluding public holidays, to said deadline: 1) that it has acquired the entire sports company of the insolvent club; 2) that it has obtained affiliation to the F. I.G.C.; 3) to have assumed and to have settled all the sporting debts of the club whose affiliation has been revoked or to have guaranteed the payment of such debts by means of a first demand guarantee issued by banks, insurance companies and companies enrolled in the Albo Unico pursuant to art. 106 TUB, having the requisites envisaged for the bodies obliged to issue guarantees, required by the System of National Licences in the professional sector, in the latest version published prior to the presentation of the application for the attribution of the sporting title;*

[…]

* The author is a qualified Attorney-at-law (Rome bar) and King's College LL.M graduate, currently Senior Legal Counsel at the FIFA Litigation Department. Any opinions expressed in the context of the present discussion represent the author's view and not FIFA's.

[1] NOIF can be accessed on the FIGC's website at https://www.figc.it/it/federazione/norme/norme-organizzative-interne/.

[2] For editorial reasons, the present discussion is limited to an overview of the main aspects of the discipline. It is the case to note, however, that Article 52 NOIF (in its entirety) needs to be read in conjunction with other provisions such as, *inter alia*, Article 16 NOIF concerning the revocation of the sporting title, Article 20 NOIF concerning other types of succession in the sporting title, Article 110 concerning the release of players from their contractual obligations vis-à-vis a club whose affiliation to the FIGC has been revoked.

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Football Association of Malaysia ("FAM")

by *Susanah Ng**

A. *Applicable Regulation of the Member Association*

FAM RSTP 2021[1]

Article 24B – Implementation of decisions and confirmation letters
1. *The sporting successor of a debtor shall be considered the debtor and be subject to any decision or confirmation letter issued pursuant to this article. The criteria to assess whether an entity is the sporting successor of another entity shall be having similarities such as its headquarters, name, registration, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned.*

B. *Relevant National Laws*

Due to the mandatory privatisation of football clubs in Malaysia, football clubs are now owned by Companies. The liquidation of a company is governed by the Companies Act 2016. Generally, if an entity is wound up, the creditors will be required to litigate and obtain a judgement in court before proceeding to file a "Proof of debt" at the Insolvency Department. Secured creditors shall have priority in receiving payment of their debt over unsecured creditors. If a new company then purchases the sporting license of the wound-up club, this new company shall be viewed as a separate entity and not responsible for the debts of the wound-up company.

In cases where there is a sporting succession due to a transfer, the new entity usually assumes all assets and liabilities (unless expressly excluded between the two entities). If the latter occurs, creditors can nevertheless review their existing contracts with the old entity to see if there is a "legal successor" clause to bind the new entity. Similarly in the case of football players, coaches and other employees of the club, these groups of people will be able to sue the new entity for performance of their respective employment contracts in the national courts if their employment contract has such a clause. Apart from national courts, the players and coaches (as well of those falling within FIFA's definition of "Parties")

[…]

* The author is an International Sports Lawyer and has her own boutique legal practice, specialising in sports law.

[1] FAM RSTP 2021 edition is currently not accessible online (unofficial translation).

Mexican Football Federation (“FMF”)

by *Víctor Garza Valenzuela*[*]

A. Applicable Regulation of the Member Association

The concept of sporting successor had not been regulated in the regulations of the FMF until its recent incorporation in the year 2021. The aforementioned concept is regulated in Article 14 of the Regulation of Sanctions for the 2021-2022[1] Season, which, literally reads:

> “[...] *The sporting successor of a debtor shall also be considered debtor and, therefore, it shall be subject to the obligations of the article herein. The criteria to decide whether an entity is the sporting successor of another entity are, among others, its name, headquarters, legal form, team colors, players, shareholders, stakeholders or proprietors and the competitive category in question*”.

B. Comments and/or Remarks

As mentioned above, for several years, the FMF regulations did not include the concept of “sporting successor”, however, it did consider the “replacement of affiliation”,[2] by which, the holder of affiliation rights of a Professional Club requests the separation from the FMF and its place is taken by another legal entity able to comply with the requirements considered by the Regulations of Affiliation, Name and Headquarters (RANS), prior authorization of the Executive Board and the FMF Assembly.

In that regard, upon performing a replacement of affiliation, the new legal entity is subrogated to the rights and obligations of the previous legal entity, including any financial defaults, if any. Therefore, the new legal entity shall have to address those debts.

[…]

[*] Currently, the author is the Head of Normativity and Compliance of the FMF, formerly, worked as President of the Commission of Reconciliation and Resolution of Disputes for 8 years, as well as in several positions at Liga MX.

[1] The Rules on Disciplinary Sanctions for the season 2021-2022 can be found in: https://fmf.mx/docs/Reglamentos/Reglamento_de_Sanciones_2021_2022.pdf.

[2] Articles 30 and other applicable of the Membership Regulation, Name and Headquarters of the FMF, which can be found in: https://fmf.mx/docs/Reglamentos/Reglamento_ANS_2021.pdf.

TEASER

Portuguese Football Federation (“FPF”)

by *Luis Cassiano Neves*[*]

A. Sporting Succession in Portugal: Introductory Remarks

Before 2013, virtually all clubs in Portugal were organized as civil non-profit associations. On 3 April 1997, Decree-Law No. 67/97 was approved, and it established the legal regime governing the sporting companies applicable to the sports’ clubs that wish to take part in professional sporting competitions (it has since been amended by Decree-Law No. 10/2013, of 25 January). Under this legal regime, sporting companies can originate in three different ways: (i) from scratch; (ii) as a result from the transformation of the sporting club, i.e. the civil non-profit association; and (iii) through the legal personalization of a team that takes part, or wishes to take part, in sporting competitions (in other words, the rights and obligations attached to a given team or teams are used to incorporate a new sporting company).

Article 21 of Decree-Law No. 10/2013 sets forth that [*i*]*n the relations with the federation which, in relation to the sport in question, holds the statute of public sporting utility, and within the scope of the professional sporting competition, the sporting company, when incorporated under the terms of subparagraphs (b) and (c) of Article 3, represents or succeeds to the club that gave rise to it*. In other words, under Portuguese Law, a football sporting company is the sporting successor of its founding club (i.e. the civil association that gave rise to sporting company) in respect of the relations with the Portuguese Football Federation and, one should add, with the Portuguese Professional Football League. In practical terms, this means that when a sporting company is incorporated as a result of the legal personalization of a team, the federative rights previously held by such team are transferred onto the new legal entity (i.e. the sporting company), along with – presumably – all the rights and obligations associated with such rights.

This principle of succession – strictly within the confines of corporate form – is confirmed by Article 6 of the Disciplinary Code of the Portuguese Football Federation, which states that the “*disciplinary liability of clubs shall not be extinguished in the event of its transformation into sporting company*

[…]

[*] The author is a founding partner of 14 Sports Law and holds an LL.M in Sports Law from the Nottingham Trent University. He primarily works in sports dispute resolution and regularly advises on regulatory, commercial and contractual issues in Sports.

Romanian Football Federation ("FRF")

by *Adrian Stângaciu*[*]

A. *Applicable Regulation of the Member Association*

Despite the fact that the issue of "sporting succession" is a topic of great interest in Romania, there is no regulatory provision defining this notion and/or directly regulating the rights and obligations of a club (the new club) resulting from holding this status in relation to the previous club (the old club).

However, in Romania, a distinction must be made between the two situations that can generate, in practice, the "replacement" of one club with another.

Thus, there is the usual situation (*Situation 1 or first situation*) (common and which can be encountered in any other country) when a club "disappears" and ceases its sporting activity (usually due to insolvency or bankruptcy), and then, after a period of time, a new club with a similar name is founded (usually at the wish of the authorities, supporters, etc.).

There is also a second situation (*Situation 2 or second situation*), when, for various reasons (usually limitations imposed by the legal rules in force, including those concerning the financing of sports structures organised in a certain legal form to the detriment of others), certain clubs transfers their sports activity to new clubs, to be replaced by them.

If, as already mentioned, in cases related to the first situation there is no regulatory provision, in cases related to the second one there are some provisions regulating such situations.[1]

B. *Relevant National Laws*

Similar to Section A above, the applicable national law, in case of "sporting succession" situations, will be different.

In the first situation (in which sporting succession is a consequence of insolvency and/or bankruptcy), creditors should be aware and act in accordance with the Law No 85/2014 on insolvency prevention and insolvency proceedings.[2]

[…]

[*] Head of the Legal Department of the Romanian Football Federation, member of the UEFA Legal Committee and member of the several judicial bodies of Romanian Sports Federations.

[1] Please see Section C of this Chapter for details.

[2] The Law No 85/2014 can be accessed here: https://lege5.ro/gratuit/gm4tsobzga/legea-nr-85-2014-privind-procedurile-de-prevenire-a-insolventei-si-de-insolventa.

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Russian Football Union ("FUR")

by *Pavel Pivovarov*[*] *and Lizaveta Kabelskaya*[**]

A. *Applicable Regulation of the Member Association*

Currently, the FUR Regulations do not have provisions which reveal the concept of sporting succession similar to Article 15.4 of the FIFA Disciplinary Code. Thus, for a possible claim of sporting succession parties to the dispute rely on the criteria provided in the relevant article of the FIFA Disciplinary Code and CAS/FIFA jurisprudence.

B. *Relevant National Laws*

Russian legislation as well does not explain the notion of "sporting succession" as opposed to "legal succession".

Generally, sporting succession may be a consequence of a) insolvency and/or bankruptcy; b) reorganisation of a legal entity (merger, affiliation, division, branching off, transformation).

Unfortunately, in Russia a huge number of football clubs face financial problems (for instance, FC Tosno, FC Kuban, FC Amkar). In 2018, about 11 clubs withdrew from the competitions and in 2021 about 9 clubs ceased to exist in the first half of the year.

In case when sporting succession is a consequence of insolvency and/or bankruptcy, creditors should refer to the Federal Law No 127-FL of 26 October 2002 "On Insolvency (Bankruptcy)" (the "Bankruptcy Law")[1] to register their credits in the bankruptcy proceedings of the former club. Claims of football creditors (i.e. players and coaches) in a bankruptcy procedure of a football club refer to the second priority.

It is worth mentioning that there is a special procedure for salary arrears formed before the recognition of a club as bankrupt. As a rule, football creditors (i.e. players and coaches) do not need to take any action (for instance, lodge a complaint with the court, etc.), since a bankruptcy trustee provides such information independently, based on the accounting documents of the organization. However, the employee needs to monitor the actions of the bankruptcy trustee and if the

[…]

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[**] Junior Legal Counsel at J.S.C. «FC «Dynamo-Moscow».

[1] The Federal Law No 127-FL of 26 October 2002 "On Insolvency (Bankruptcy)" can be accessed at: https://base.garant.ru/500185181/.

Royal Spanish Football Federation (RFEF)

by *Jordi López Batet*[*]

A. Legal Framework

Article 104.1c) III of the Spanish FA[1] General Regulations ("Reglamento General de la Real Federación Española de Fútbol") stipulates that clubs are obliged to pay the debts referred to in Article 192 of said Regulations,[2] and also the following in its para. 2:

> "*When a club disappears or stops competing without having paid such debts, the payment obligation will fall on the newly created club that irrespective of its name, shares any of the following circumstances with the club that disappeared or stopped competing:*
>
> - *Matches are played in the same stadium or pitch, even if its name was changed.*
> - *It has the same social domicile.*
> - *Any of the founders or executives of the new club was a founder or executive of the disappeared club.*
> - *The new club and the disappeared one have the same basis sporting structure.*
> - *The new club uses the same or similar shirt.*
> - *The new club uses the same logo.*
> - *In general, any indication inducing to confusion between both clubs and when objective and subjective similarity or identity exist between them.*"

[…]

[*] Lawyer & CAS Arbitrator.

[1] Real Federación Española de Fútbol ("RFEF").

[2] Due and payable debts with football players, coaches or other clubs, acknowledged or accredited by the federative jurisdictional bodies and Mixed Commissions ("Comisiones Mixtas"), compliance with labour final and binding decisions which object cannot be treated by the federative bodies and Mixed Commissions, debts with the RFEF and the Regional Associations, and other debts deriving from the sporting relationship which are beyond the scope of knowledge by the federative bodies and Mixed Commissions (even if in the latter case, the provision of guarantees is acceptable). See full content of art. 192 of the RFEF General Regulations for details.

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The United States Soccer Federation ("US Soccer")

by *Paul J. Greene*[*]

US Soccer has long been treated differently by FIFA when compared to the way other national bodies are treated that govern the sport of soccer worldwide. In other words, FIFA has determined that its rules do not always apply to US Soccer because FIFA does not want to jeopardize the development of the game in the United States of America (USA) which FIFA has described as "*a comparatively fragile and embryonic football culture and difficult legal and economic environment*".[1]

FIFA's unique approach to the USA was illustrated in the *Miami FC & Kingston Stockade FC v. FIFA, CONCACAF & USSF*, CAS 2017/O/5264, 5265 & 5266 case where FIFA took the position that American professional soccer leagues (primarily Major League Soccer (MLS)) were exempt from the application of the FIFA rule regarding promotion and relegation.[2] Because of FIFA's position that its promotion/relegation rule did not apply to US Soccer, the CAS Panel rejected a claim by a lower tier American club seeking the implementation of promotion and relegation in the USA:

> "*USSF is not required to implement the principle of promotion and relegation between its professional leagues, while FIFA and CONCACAF are not required to undertake any action against USSF in this respect*".[3]

A. Applicable Regulation of the Member Association

US Soccer's unique treatment by FIFA is highly relevant when it comes to the issue of whether FIFA's sporting succession rules would apply to US Soccer and American soccer clubs. The reality that FIFA's rules do not always apply to US Soccer and its member clubs is embodied in US Soccer's rules. US Soccer Bylaw 103 states:

[…]

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[1] CAS 2017/O/5264, 5265 & 5266, *Miami FC & Kingston Stockade FC v. FIFA, CONCACAF & USSF*, para. 58.

[2] *Id.* at 58.

[3] *Id.* at 63.

Uzbekistan Football Association ('UFA')

by *Angelina Liverko*[*]

A. The Current State of Affairs

Sporting Avenue

At the national level, the principle of sporting succession is enshrined in the latest edition of the Uzbekistan Professional Football League Competition Regulation dated 2022 ('Regulations').

According to Article 6.11. of the Regulations:

> "*6.11. If a club ceases its activities, it shall be removed from the list of participants in the competitions organized by the Professional Football League of Uzbekistan (PFLUz). In the future, any other club participating in such competitions has no right to use the suspended club's name, elements, attributes, symbols, and history. If the suspended club intends to resume its activities, such club has an opportunity to participate in the Second League competitions held by the regional football associations*".[1]

Further, the Regulations contain Article 6.12. stipulating the following:

> "*6.12. If a football club changes its name or legal form, this club with a new name or the legal form shall be considered to be the successor of the former club. It shall be fully responsible for all outstanding salaries and other rewards due to football players, coaches, and other club employees, for all debts owed to the UFA, PFLUz, and tax authority of the Republic of Uzbekistan. The participation of this club in tournaments organized by the PFLUz is subject to a permit by the UFA Executive Committee. In case a new owner of the club assuming responsibility for*
> […]

[*] The author graduated from the University of London (LLB) and holds a Master's Degree in Medical and Sports Law from the Charles University (LLM). The author is an in-house lawyer in a football club in Uzbekistan and a founding partner at "Themis Legal" law firm specialized in sports law. "Themis Legal" law firm advised clubs in Uzbekistan on the change of ownership and sporting succession.

[1] PFLUz Competitions Regulation 2022, Section 6, Art. 6.11. (tr.).

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CHAPTER VII

MOVING FORWARD: CONSTRUCTIVE CRITICISMS AND PROPOSALS FOR IMPROVEMENT IN SPORTING SUCCESSION REGULATIONS

by Roy Vermeer[*] – Mario Flores Chemor[**]

7.1 FIFPRO's View

When FIFA announced in 2019 that it was introducing a provision in the FIFA Disciplinary Code ('FDC') by means of which it would tackle the issue of sporting succession, FIFPRO very much welcomed such a decision. The International Federation of Football Players had previously encouraged FIFA to address the topic, as it had been a recurring frustration for many unpaid players to note the ease with which clubs would disappear and re-enter the football scene as a supposedly different entity, mainly in Greece, Bulgaria, and Romania. These newly established clubs would convey publicly to be the same club as before, whilst informing the players of the 'old' club that they should obtain their credits in the bankruptcy procedure of the 'old' club. In other words, the new club would publicly tell fans and sponsors that they were the same club as before, but privately and specially towards creditors they would argue that they were a completely different entity and that the debts were not theirs.

Until 2019, players and player unions affiliated to FIFPRO actively pursued the sporting successors in proceedings at FIFA and CAS, with different degrees of success. A notable case in this regard was CAS 2018/A/5647[1] where the Panel ordered FIFA to render a formal decision concerning the liability of a new club towards the debts of the old club. As from that moment, FIFA could no longer suffice in sending a letter to a creditor closing proceedings on the mere basis that the old club was no longer affiliated to a member association of FIFA.

[*] Legal Director at FIFPro. He is the author of section 7.1 of this chapter.

[**] Head of Sports Legal at the European Club Association (ECA). The opinions expressed in this article are those of the author. They do not purport to reflect the opinions or views of the ECA or its members. The designations employed in this publication and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the ECA or its members. He is the author of section 7.2 of this chapter.

[1] CAS 2018/A/5647 *Civard Sprockel v. FIFA & PFC CSKA Sofia.*

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Instead, the FIFA Disciplinary Committee would have to pass a formal decision on the liability of the new club, if the creditor would request FIFA to do so.

In announcing the implementation of Article 15.4 in the FDC,[2] FIFA assigned this provision under the section of 'financial justice', stressing that FIFA would "*act against the sporting successor of a debtor, a practice that has unfortunately become more common in recent years as clubs attempt to avoid mandatory financial responsibilities towards other clubs, players, managers, etc.*" It may be obvious that FIFA also wanted to create legal certainty for parties as, until then, there was not one consistent approach from both FIFA and CAS.

Whereas FIFA's objectives for implementing Article 15.4 in the FDC were fair and appropriate, over time, the interpretation of said provision by both the FIFA Disciplinary Committee and CAS has made it doubtful whether those objectives have actually been achieved. Indeed, the interpretation by the FIFA Disciplinary Committee and especially CAS has been inconsistent and not in line with the objectives of the provision. This already started with the application of Article 15.4 FDC on the level of the FIFA Disciplinary Committee. In its decisions, the FIFA Disciplinary Committee held that it was relevant for the legal assessment of a case of sporting succession whether the player had been diligent or not and filed his or her credit in the bankruptcy procedure of the old entity. In coming to this consideration, the FIFA Disciplinary Committee would often refer to the conclusions drawn by the Panel in CAS 2011/A/2646[3] where the registration of the credit in the bankruptcy was an important element.

Yet, for FIFPRO, it appeared odd that the FIFA Disciplinary Committee supplemented a provision introduced in the FIFA Disciplinary Code in 2019 by means of a CAS Award from 2011. In other words, if FIFA wanted to add the registration of the credit by the player in the bankruptcy of the old entity as a condition precedent to hold the new club liable, FIFA should have codified this requirement in the FDC. Absent such written requirement there is, in FIFPRO's view, no reason to create an additional burden given that the provision in itself is clear and unambiguous: if there is a sporting successor it shall also be considered

[2] FIFA Circular no. 1681 dated 11 July 2019.

[3] In CAS 2011/A/2646, *Club Rangers de Talca v. FIFA*, the Panel mentioned: "[…] *it appears relevant for the legal assessment of this case, to analyse the diligence of the Creditor in recovering his debt in order to assess as to whether a sanction can be imposed on the new Club, i.e. whether the player also contributed to create the breach of art. 64 of the 2017 FDC as it could be that his credit would have been paid in the bankruptcy proceedings and therefore no sanction may be imposed*".

non-compliant. Objectively, there is no reason to depart from the plain text of Article 15.4 FDC.[4]

Having mentioned the above, and whereas at least the jurisprudence of the FIFA Disciplinary Committee is consistent, the jurisprudence of CAS is getting more and more inconsistent and it has come to the point that players from the same club can obtain conflicting decisions, which is clearly undesirable. A key component of the conflicting CAS jurisprudence is that some arbitrators deem that sporting succession and the potential economic liability of the new club should be analyzed separately: once sporting succession has been established, it is not uncommon that a Panel then turns to the question whether this also means that the new club is liable for the debts of the old club. For FIFPRO, this seems rather far-fetched given that the literal text and objective of the provision make it evident that sporting succession entails economic liability. Indeed, the sporting successor will be considered 'non-compliant' for the FIFA DRC decision and it is recalled that FIFA's objective was to create financial justice for creditors.

It is fair to say that the success of a player in an appeals procedure greatly depends on the chairperson of the Panel. Of course, this to an extent is true for any case at CAS, but it is certainly more prevalent in cases of sporting succession where, as mentioned before, there seems to be a principle divide between arbitrators on the concept of sporting succession in itself.

To illustrate the above, perhaps the most striking example is the case involving the Bulgarian club, CSKA Sofia. In CAS 2020/A/6831[5] the Panel came to the conclusion that there was sporting succession. Yet, the majority of the Panel held that the new club was not liable towards the player since the liability of the new club should be decided on the basis of Bulgarian bankruptcy law. It added that "*national bankruptcy proceedings are the domain of domestic commercial (bankruptcy) law, not of FIFA Regulations.*" In CAS 2020/A/7504,[6] the Panel also concluded that there was sporting succession. Contrary to the *Sprockel* decision though, the majority of the Panel then held that the liability should not be considered in the framework of domestic law, but

[…]

[4] For the sake of good order, it also needs to be emphasized that the relevance of a credit registration in a bankruptcy procedure of a football club can be questioned. In practice, a pay-out in the bankruptcy procedure of a football club rarely happens. In the vast majority of cases, players are left without being paid a single penny, mostly because these clubs rarely have any assets. In other cases, the bankruptcy proceedings are dragged out years and years without any realistic view on obtaining a final judgment. For example, FIFPRO is aware of bankruptcy proceedings of Romanian clubs that are ongoing for more than 8 years.

[5] CAS 2020/A/6831, *PFC CSKA-Sofia EAD v. FIFA & Civard Sprockel.*

[6] CAS 2020/A/7504, *PFC CSKA Sofia v. FIFA & Sergio Felipe Dias Ribeiro.*

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CHAPTER VIII

SPORTING SUCCESSION IN OTHER SPORTS

FIBA (Fédération Internationale de Basketball)

by *Dr. Heiner Kahlert* and *David Menz*[*]

8.1 Applicable Regulations

Within the regulatory framework of the Fédération Internationale de Basketball ("FIBA"), the issue of sporting succession arises in respect of the honouring of arbitral awards issued by the Basketball Arbitral Tribunal ("BAT"). While the BAT is an independent court of arbitration outside the structures of FIBA,[1] FIBA has put in place rules according to which it may impose disciplinary sanctions on a party that chose to[2] submit itself to BAT arbitration but then failed to honour an award issued by the BAT.

Under certain circumstances, FIBA may extend such disciplinary sanctions for failure to honour a BAT award to a third party that is, or reasonably appears to be, a legal or sporting successor of the award (judgement) debtor.

[*] The authors are attorneys at Martens law firm in Munich. In addition, they are Head of Case Management, respectively Deputy Head of Case Management, at the Basketball Arbitral Tribunal (BAT). Even though the BAT is not in any case involved in any post-award matters, the authors still wish to emphasize out of prudence that any and all views expressed in this chapter are their personal views only.

[1] See D.-R. Martens, *Basketball Arbitral Tribunal – An Innovative System for Resolving Disputes in Sport (only in Sport?)*, 11(1-2) The International Sports Law Journal, 2011, 54; E. Hasler, *The Basketball Arbitral Tribunal – An Overview of Its Process and Decisions*, in A. Duval and A. Rigozzi (eds.), Yearbook of International Sports Arbitration 2015, 112.

[2] Contrary to some other sports, where the regulations of the relevant international federation provide for the jurisdiction of internal bodies and/or courts of arbitration in relation to financial disputes, FIBA has deliberately left it to the parties of contracts in basketball to choose their preferred dispute resolution mechanism. Accordingly, the BAT has jurisdiction only if the parties to the relevant contract agreed on an arbitration clause in favour of the BAT. See H. Radke, *Basketball Arbitral Tribunal (BAT) as a 'lawmaker': the creation of global standards of basketball contracts through consistent arbitral decision making*, 19(1-2) The International Sports Law Journal, 2019, 61.

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The relevant provision on the honouring of BAT awards is Article 3-336 of the FIBA Internal Regulations ("FIBA IR"), which also includes the rule about extending sanctions to a third party.[3] Article 3-336 of the FIBA IR reads as follows:

> "*HONOURING OF BAT AWARDS*
> *336. In the event that a National Member Federation, club, player, coach or agent participating in a BAT arbitration (the "first party") fails to honour a final award, order or any provisional or conservatory measures (collectively, the "decision") of BAT or CAS, the party seeking the honouring of such decision award (the "second party") shall have the right to request that FIBA sanctions the first party, subject to article 3-315.e.*
>
> *The sanctions that FIBA may impose are the following:*
> *a. A monetary fine of up to CHF 150,000. This fine can be applied more than once; and/or*
> *b. Withdrawal of the FIBA license if the first party is a player's agent or of the WABC membership if the first party is a coach; and/or*
> *c. A ban on international transfers if the first party is a player; and/or*
> *d. A ban on participation in international competitions with the player's national team and/or club if the first party is a player; and/or*
> *e. A ban on registration of new players and/or a ban on participation in international club competitions if the first party is a club.*
>
> *The above sanctions can be applied cumulatively and more than once.*
>
> *The above sanctions can be extended, in FIBA's sole discretion, to natural or legal persons that are directly or indirectly linked to the first party, either from a legal or a sporting perspective. In particular, such linkage exists if the relevant natural or legal person is, or reasonably appears to be, a legal or sporting successor of the first party, which may include, without limitation, a consideration of the following: its headquarters, stadium, name, team colours, players, coaches, management, ownership, websites, social media channels, and/or public statements*".
>
> […]

[3] Articles from the FIBA IR are commonly (and hereinafter) referred to in the format "*x-yyy*", with "*x*" denoting the relevant Book of the FIBA IR, and "*yyy*" denoting the relevant article in that Book.

FIM (Fédération International de Motocyclisme)

by *Sara María Moreno*[*]

8.2 Applicable Regulations

Generally, international sports federations are afforded an extraordinary degree of self-regulation. Those based in Switzerland such as the International Federation of Motorcycling (FIM), benefit from an autonomy recognized by the Swiss law of associations.[1] This has resulted in the reluctance of Swiss national courts to intervene in internal affairs of the sports world, especially in relation to sport subject matters that are governed by the *lex sportiva*. Recourse to arbitration, in particular to CAS, for the settlement of the internal disputes has also reinforced the autonomy of international sport federations.[2]

Accordingly, international sport federations have the discretion to decide to which extent their sport regulations intervene in the governance of their respective sport; and the means for the resolution of related disputes.

It shall be pointed out that, the rules of an international sport federation can only govern internal affairs and those with third parties who have agreed to abide the rules of the sport governing body. Consequently, as long as the rules or codes of the sport governing bodies regulate a subject matter related to their sports, such provisions should prevail over the ordinary national applicable laws.

Some international sport federations have opted for having extensive regulations not only in the disciplinary field but also in the fields of horizontal disputes which, originate on a legal relationship amongst individual members. Horizontal disputes are usually conflicts relating to the performance or termination of sport related contracts. In this respect, the regulations of some sport international sports federations impose extensive rules regarding the execution, content and termination of sports contracts involving generally clubs, players, agents etc.[3]

[*] Sara María Moreno is a lawyer admitted to the French and Peruvian Bar. She currently works as the Legal Advisor of the International Motorcycling Federation (FIM) based in Geneva, Switzerland. She is also an active member of the Women in Sport Law (WISLaw) and of the International Association for the Protection of Intellectual Property (AIPPI). She has previously worked in the international arbitration and litigation departments of different law firms in Europe and Latin America. She has experience in media and licensing contracts, intellectual property and data protection law.

[1] Associations and federations subject to Swiss law are governed by articles 60–79 of the Swiss Civil Code.

[2] Baddeley, Margareta "*The Extraordinary Autonomy of Sports Bodies under Swiss Law: Lessons to be Drawn*", The International Sports Law Journal (2020) 20,3–17.

[3] CAS 2020/A/7144, *Raja Club Athletic v. Léma Mabidi*, para. 93.

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This may be also the case of regulations related to succession of clubs.

Despite its broad capacity to govern, the FIM has limited itself to regulate mainly disciplinary disputes. The FIM current sport regulations do not provide for the adjudication of horizontal disputes before the FIM internal dispute resolution bodies. Therefore, only vertical disputes of disciplinary or ethical nature might be submitted to the above-mentioned bodies.

In the FIM Statutes and By-Laws there are no provisions allowing the FIM to intervene in the governance of matters between the FIM motorcycling clubs, neither in relation to the succession of sport entities. Unlike other sport international federations that have decided to include these sort of provisions in their statutes and disciplinary internal regulations, it seems that the FIM has let these issues to be regulated independently by the ordinary national applicable laws.

The individual participation of riders in various FIM motorcycling world championships,[4] seems to have discouraged an active intervention of the FIM in the regulation of relationships between motorcycling clubs and teams. For this reason, the FIM regulatory framework is mainly focused in governing the membership status of motorcycling teams and clubs.

Pursuant Article 11 of the FIM Statutes, motorcycling clubs and/or teams may be considered as associated members of the FIM. To obtain this recognition, the FIM national motorcycling federation of the country of origin of the club or team, must certify the recognition of the latter.

According to Article 4 of section II of the FIM By-Laws, associated members of the FIM may be expelled by resolution of the FIM Board of Directors if, they failed to pay their debts to the FIM. The same provision states that the dissolution of an Associated Member results automatically in the loss of its membership rights.

8.2.1 Remarks

The FIM world championships and prize events are organized either in partnership with a contractual promoter or with a local motorcycling organizer from the place where the event takes place. Local organizers are frequently motorcycling clubs recognized by the FIM national motorcycling federations. It is basically in this context that, sporting succession issues and disputes mainly arise at the FIM.

Promoters and local motorcycling clubs are the licensees of the FIM exclusive rights over the organization of the motorcycle world championships. To this end, licence agreements are concluded. Thus, only symmetrical contractual relationships exist in this scenario.

[…]

[4] *See* Article 30.1.1 of the FIM Sporting Code.

CHAPTER IX

TEASER

CONCLUSIONS

by *Jaime Cambreleng Contreras – Saksham Samarth – Josep F. Vandellós Alamilla*

9.1 Future Challenges in Regulating Sporting Succession in Football

The principle of sporting succession in football has recently experienced a major development as a result of its codification in FIFA's regulations and the ensuing emergence of numerous cases on the topic. While approximately ten awards were rendered by CAS on this matter between 2007 and 2018, the amount has tripled (and continues to grow) since then.

This recent explosion of disputes revolving around sporting succession has forced practitioners and arbitrators to scrutinise numerous elements that conform this principle in an unprecedented manner.

Given the complexity of this concept, the broad codification of this principle and the heavy reliance on case law that has no binding precedent, the overall outcome of these recent disputes has led to a plethora of interpretations and solutions that, to a certain extent, have created a legal uncertainty.

For example, even though the main consequence sought by the principle of sporting succession – i.e., economic succession – appears to be commonly accepted by CAS arbitrators, the path to such conclusion and the scope of such economic succession has differed considerably. The following general lines of thought can be identified:

– Full succession: i.e. the sporting successor must offset the total debt left unpaid by its predecessor regardless of the insolvency and/or bankruptcy procedure affecting the latter;[1]
– Partial succession: the sporting successor must only be responsible to pay a certain part of the total debt that the predecessor club was liable for:

[1] CAS 2019/A/6461, *Tartu Jalgpallikool Tammeka v. FIFA,* CAS 2020/A/7504, *PFC CSKA Sofia v. Sergio Felipe Dias Ribeiro*; CAS 2020/A/7505, *PFC CSKA Sofia v. FIFA & Francisco Moreno Ruano*, CAS 2020/A/7543, *Fotbal Club Rapid 1923 SA v. Julio Cesar da Silva & Souza & FIFA*, CAS 2020/A/7481, *Aris Football Club v. FIFA*.

a. because the other part of the debt could be paid in the context of the bankruptcy procedure of the predecessor club;[2] or
b. because the amount to be paid can only be the one decided by the bankruptcy authorities in accordance with national law.[3]

Some other aspects in which there is no consolidated approach in decisions rendered by FIFA and CAS' awards are, for example, (i) the rationale behind this principle, (ii) which body is competent to rule on sporting succession, (iii) the concept of sporting continuity and transfer of federative rights or (iv) the expected conduct of creditors and debtors.

These are just some examples of the numerous points that must be analysed in disputes involving sporting succession and which have led to different – and sometimes opposing – outcomes in recent years. It is rather alarming that part of the current debate still circles around very basic and general aspects.

This book has sought to compile the conclusions on the numerous elements that must be taken into account in sporting succession disputes in order to serve as a (hopefully useful) guide to stakeholders that find themselves affected by this principle.

However, if the deciding bodies continue to pursue different lines of thought and the legal uncertainty continues to grow – or at the very least exist – it is probable that certain actions will be taken with the intention of reducing or eliminating the current grey areas.

It seems plausible that FIFA will take on board some aspects of the most predominant jurisprudence to regulate certain elements of the sporting succession principle in order to narrow down the scope of the adjudicators' task and reduce the possibility for opposing decisions to be passed in similar cases.

For instance, in the authors' opinion it would seem convenient for FIFA to codify its Disciplinary Committee's competence to analyse the existence of a sporting succession after a horizontal dispute was already decided in a final and binding manner against the predecessor club. By doing so, the existing debate on which internal body of FIFA is competent to rule on this matter would disappear, and stakeholders would no longer struggle when selecting the body before which they will have to file a sporting succession claim.

Some stakeholders might feel that it is important to regulate the concept of the expected diligence of the creditors in disciplinary cases in which sporting succession and insolvency dovetail, as this could provide additional clarity on the

[…]

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[2] CAS 2020/A/7423, *PFC CSKA Sofia v. FIFA & Nilson A. Da Veiga Barros*; CAS 2020/A/7424, *PFC CSKA-Sofia v. David Bernardo Tengarrinha & FIFA*.
[3] CAS 2020/A/6831, *PFC CSKA-Sofia EAD v. FIFA & Civard Sprockel.*

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