



Playing Across Borders: Mastering Contracts in the World of Football



Introduction

Football is undoubtedly the most popular sport globally,¹ as such, it involves numerous cross-border transactions. With the increase in internationalisation of clubs, players, and competitions, cross-border contract negotiations have also become a key element in managing player transfers, sponsorship deals, and broadcast rights. These contracts are fundamental to defining the relationship between the players and sports organisations, forming the basis for the services players provide. Given that cross-border contracts often span across multiple jurisdictions, there are

different regulatory frameworks, and legal standards, and these present significant complexities. For teams, players, agents, and legal counsel, it is however crucial to understand these intricacies to ensure that agreements are binding, enforceable, and beneficial for all parties involved. This article explores the best practices for navigating these contracts and how parties can protect their interests in such complex, high-stakes negotiations.

¹ Topend Sport, 'Top-10 List of the World's Most Popular Sports', <https://ipv6.topendsports.com/world/lists/popular-sport/fans.htm>. Accessed on 17th October, 2024.

Understanding the Legal Frameworks

Football cross-border contracts involve multiple jurisdictions, involving the player's home country and the club's country. Understanding relevant legal frameworks is crucial for effective management. The relevant frameworks include:

1. National Laws

Football contracts are governed by the national laws selected by the parties, requiring careful negotiation to ensure compliance. Key laws include labour laws guaranteeing fair pay, working conditions, and protections against wrongful termination; contract law and dispute resolution law.² For contracts involving minors, specific national laws such as Nigeria's Child Rights Act³ protect against exploitation and support their development as per international standards. Additionally, constitutional rights like freedom of association and the right to work are essential considerations.⁴

2. FIFA Regulations

Fédération Internationale de Football Association ("FIFA") is the apex body governing and regulating football in the world, as such it is pertinent to understand FIFA's regulations regarding cross-border football contracts. A major regulation of FIFA on cross-border

contracts is the Regulations on the Status and Transfer of Players ("RSTP"), which govern all transfer agreements in football, including international transfers.⁵ The key provisions include:

- a. Training Compensation and Solidarity Mechanism:⁶ Clubs that train players between ages 12-23 are entitled to compensation when those players are transferred internationally.⁷
- b. Protection of Minors: The regulation also prohibits the international transfer of players under 18, with exceptions such as transfers within the European Union/ European Economic area or where the player's family moves for non-football-related reasons.⁸
- c. Contract Stability: The regulation also ensures that contracts are respected, allowing termination only under just cause, with sanctions imposed for unilateral breach during the protected period.⁹ A recent European Court of Justice ("ECJ") ruling in Diarra's Case¹⁰ has the potential to change the RSTP regime particularly as it relates to the provisions of Article 17.¹¹

² In Nigeria key dispute resolution laws, such as the Constitution of the Federal Republic of Nigeria, 1999, the Arbitration and Mediation Act 2023 and the Various Rules of Court in Nigeria, are to be considered while negotiating cross border contracts.

³ Nigeria: Act No. 26 of 2003, Child's Rights Act, 2003, 31 July 2003, <https://www.refworld.org/legal/legislation/natlegbod/2003/en/105082> [accessed 19 October 2024].

⁴ Section 17 of the Constitution of the Federal Republic of Nigeria 1999.

⁵ To safeguard players' rights and the integrity of the sport, the RSTP creates the framework for player mobility between clubs and makes sure that transfers are carried out fairly and openly.

⁶ Article 20 and 21 of the RSTP.

⁷ Training compensation and solidarity mechanism, <https://www.easportslaw.com/news/training-compensation-and-solidarity-mechanism> accessed 19th October 2024

⁸ Article 19 RSTP.

⁹ Article 17 FIFA RSTP.

¹⁰ ECJ decision in the Diarra case: some of FIFA's players transfer rules are incompatible with EU law <https://www.whitecase.com/Insight-alert/ecj-decision-diarra-case-some-fifas-players-transfer-rules-are-incompatible-eu-law> accessed 19th October 2024.

¹¹ In this case between Lassana Diarra and FIFPRO v. FIFA and URBSFA, the applicability of FIFA's compensation and contract violation provisions was contested, with particular attention to how the rules strike a balance between the interests of clubs and players. The case has pushed FIFA to reconsider and potentially reform certain transfer regulations, particularly concerning the financial and contractual obligations of players and clubs in instances of breach of contract. This ruling reflects the ongoing discussions about amending the RSTP to better reflect the current state of cross-border football transfers.

3. International Convention and Agreements

International agreements, particularly within regional blocs like the European Union ("EU") and the African Union ("AU"), help streamline cross-border football contracts by harmonising legal standards. The EU's free movement policy under the Treaty on the Functioning of the European Union ("TFEU") allows players to relocate within member states without

nationality restrictions,¹² supporting the Bosman ruling, which permits free transfers after contract expiration.¹³ Similarly, the African Continental Free Trade Area Agreement ("AfCFTA") enhances free trade and worker movement among African countries, potentially benefiting sports labour laws. Understanding these agreements is crucial as they significantly impact contract negotiation and enforcement in football.

Representation by an Agent

FIFA's 2022 Football Agent Regulations enforce transparency and fairness by requiring agents to be registered, licensed,¹⁴ and adhere to a capped fee structure.¹⁵ Agents representing only players in transfers can earn up to 3% of the player's salary. Those representing both the player and the buying club may receive up to 6%,

applying to both domestic and international deals.¹⁶ Agreements between players and agents must be clear, detailing commission, services, and the player's rights, especially in cross-border transfers involving different legal systems, to protect players' interests and ensure dispute resolution aligns with FIFA's standards.¹⁷

Cross-border Contract Structure And Key Clauses

In cross-border football contracts the following key clauses are to be noted:

1. Term and Duration

The RSTP stipulates that player contracts must be a minimum of one year and a maximum of five years.¹⁸ Any agreement that

exceeds five years is only allowed if the employment laws of the country where the player is engaged permits.¹⁹ It is essential for both the club and the player to clearly outline the starting and ending dates to prevent disagreements regarding contract renewal or termination.

¹² Article 45 TFEU.

¹³ Union Royale Belge des Sociétés de Football Association ASBL v. Jean-Marc Bosman (Case C-415/93) [1995] ECR I-4921. . 'Top-10 List of the World's Most Popular Sports. <https://ipv6.topendsports.com/world/lists/popular-sport/fans.htm>. Accessed on 17th October, 2024.

¹⁴ New FIFA Football Agent Regulations set to come into force <https://inside.fifa.com/legal/football-regulatory/agents/news/new-fifa-football-agent-regulations-set-to-come-into-force> accessed 19th October 2024.

¹⁵ FIFA Football Agent Regulation <https://www.easportslaw.com/news/fifa-football-agent-regulations> accessed 19th October 2024.

¹⁶ Article 15 FIFA, Football Agent Regulations (2022).

¹⁷ Article 12 FIFA, Football Agent Regulations (2022).

¹⁸ Article 18 of the RSTP.

¹⁹ Article 18(2) of the RSTP

2. Remuneration

Player salaries and bonuses must be transparently agreed upon and comply with local tax laws. Clubs should withhold taxes per national laws and double-taxation agreements to avoid penalties or conflicts.

3. Image Rights for Commercial Deals

Cross-border agreements should address image rights as the essential for a player's marketability, often requiring separate contracts. These agreements must comply with local intellectual property laws, as non-compliance could infringe on player rights, especially in countries with varying protections.

4. Release and Buyout Clauses

The RSTP²⁰ allow for contract termination by mutual consent and

permit the inclusion of buyout and release clauses.²¹ These provisions detail the amount due if a club wishes to release a player from their agreement. It is important to align these clauses with the RSTP provisions.

5. Termination Clauses

Termination clauses in cross-border contracts must align with FIFA's RSTP, requiring contracts to be honoured unless mutually ended or if just cause exists.²² Players can unilaterally terminate contracts only for significant breaches by the club. FIFA enforces penalties for unjustified terminations, including fines and transfer restrictions. Clear termination terms ensure contracts comply with both FIFA and national laws, supporting fair, manageable career transfers.

Tax and Anti-money Laundering Consideration and Compliance

Cross-border football contracts must comply with tax and anti-money laundering ("**AML**") regulations, adhering to both the player's and club's national tax laws, including income reporting and double-taxation agreements. AML compliance ensures transparency and prevents illicit financial activities, attracting scrutiny from tax authorities and financial regulators due to substantial contract sums. FIFA's Transfer Matching System ("**TMS**")²³ and UEFA's Financial Sustainability Regulations ("**FSR**") ensure transfer

transparency and financial discipline. TMS records transaction details, while FSR require clubs to balance player spending with revenue, promoting financial stability and fair competition.²⁴ Clubs that do not comply with these standards may face penalties, including fines, transfer bans, or exclusion from competitions. The recent case involving Manchester City, and the Premier League²⁵ addressed the Profit and Sustainability Rules ("**PSR**") a rule with similar intent with the FSR.²⁶

²⁰ Article 13 and 17 of the RSTP.

²¹ Terminating a contract between a football club and a football player. Accessed 23rd October 2024.

²² Article 13 and 14 of the RSTP.

²³ FIFA International Player Guide July 2024. Accessed 20th October 2024.

²⁴ What Is Financial Fair Play & What Are The Rules? <https://jobsintojob.com/blog/what-is-financial-fair-play/> Accessed 19th October 2024.

²⁵ Premier League and Manchester City BOTH welcome result of landmark legal challenge: Full statements after panel decides on APT case. Accessed 20th October 2024.

²⁶ In this case the tribunal found that the Premier League's Associated Party Transactions ("APT") rules were partially unlawful. The matter was referred to arbitration where Manchester City is faced with allegations of violating these rules by inflating sponsorship revenues and underreporting expenses and the tribunal decided that the procedural handling of Manchester City's sponsorship deals with Etihad Group and First Abu Dhabi Bank was flawed, as the Premier League did not provide comparable transaction data in time, leading to unfair decisions. However, the tribunal upheld the broader purpose and framework of the APT rules, which aim to maintain financial integrity in the league.

Dispute Resolution Mechanisms

In cross-border football contracts, it is essential to spell out clear mechanisms for resolving disputes. The following dispute resolution forums are available and should be adopted in cross-border contracts for the resolution of disputes:

1. FIFA Dispute Resolution Chamber (“FIFA DRC”)

The FIFA DRC²⁷ serves as the main authority for addressing disputes pertaining to employment contracts between players and clubs, as well as issues related to transfers. Operating under FIFA’s RSTP,²⁸ the DRC manages cases that involve international transfers and player-club conflicts of a cross-border nature.

2. Court of Arbitration for Sport (“CAS”)

Besides the FIFA DRC, disputes in football may also be addressed by the CAS.²⁹ CAS functions as an independent entity located in

Lausanne, Switzerland, and deals with appeals regarding FIFA DRC decisions, along with direct disputes among football stakeholders. The arbitration process at CAS is regulated by the Code of Sports-related Arbitration, and parties must specifically mention CAS in their contracts to utilise this forum.³⁰

3. National Courts

In certain instances, national courts may possess jurisdiction over disputes, particularly when the contract does not designate FIFA DRC or CAS as the dispute resolution authority. This can create challenges in enforcing decisions, especially when multiple jurisdictions are involved or when local laws conflict with FIFA regulations. Neglecting to incorporate precise dispute resolution clauses may lead to extended legal battles, inconsistent results, and difficulties in enforcement, especially when parties from different nations are involved.

Data Protection Compliance

Data protection compliance is crucial in cross-border football contracts, particularly when managing players’ personal information. The General Data Protection Regulation (“GDPR”) and other EU data privacy laws are crucial.³¹ Even if a club operates outside of the EU, the GDPR nonetheless applies to any club or agent that handles the personal data of players based in the EU. Players must provide a clear, unambiguous agreement for their

data to be used, and clubs must protect that data and limit its usage to what is necessary. To prevent legal penalties and safeguard player privacy, the regulation also controls the cross-border movement of personal data, which must be strictly adhered to. In international transfers, when personal data frequently shared between jurisdictions, it is important to abide by the data protection regulations of each of the contracting parties.

²⁷ Football Tribunal <https://inside.fifa.com/legal/football-tribunal> accessed 20th October 2024

²⁸ Article 22.

²⁹ CAS rulings are acknowledged worldwide and offer an international framework for enforcing awards across various jurisdictions.

³⁰ Article R27, CAS Code.

³¹ In Nigeria, the legal regime for data protection is governed by the Nigeria Data Protection Act (NDPA) 2023.

Cultural And Language Considerations

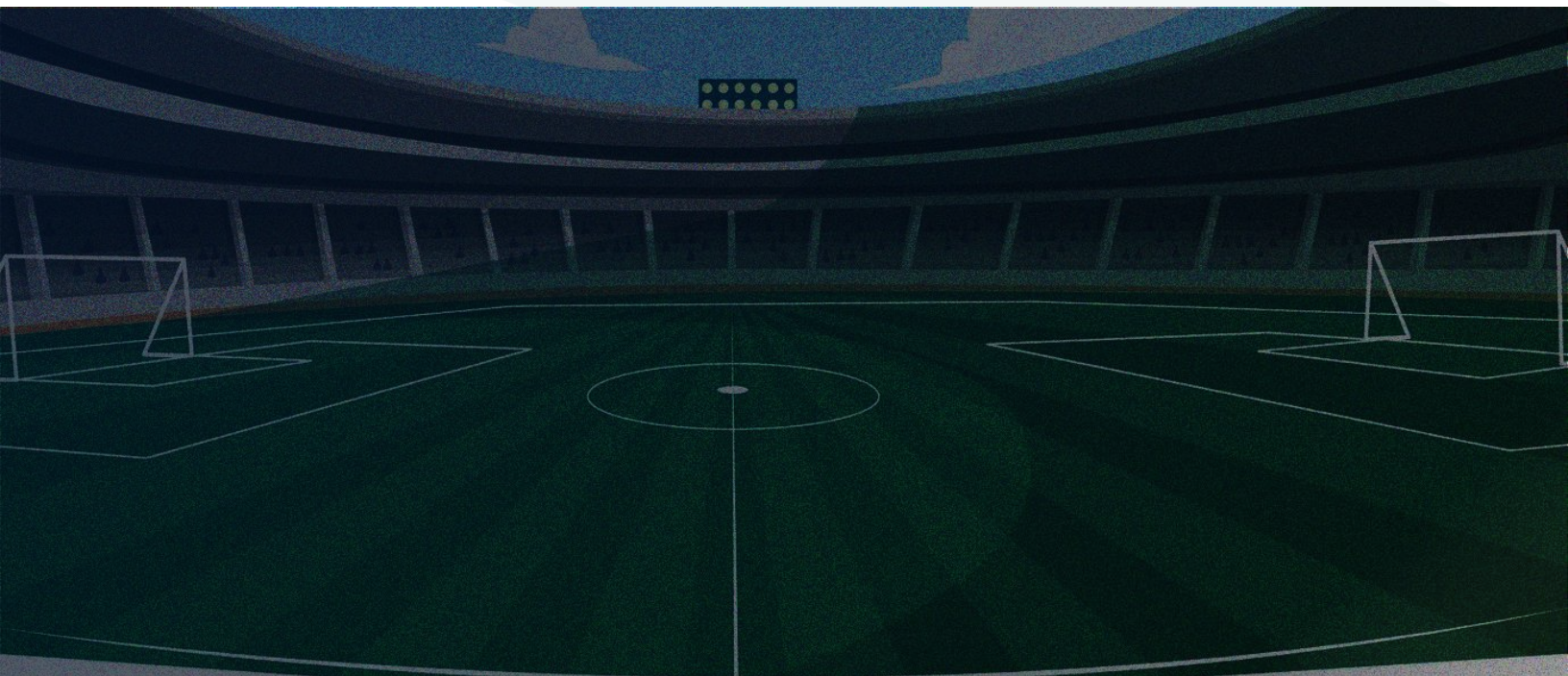
Language and cultural differences are unavoidable in cross-border transactions. For the contract to be clear and understandable to all parties, the language must be agreed upon. To ensure that all parties are aware of the conditions, the contract may be written in more than one language if needed. This keeps misunderstandings at bay

and guarantees that the contract is still enforceable in all countries. In international football transfers, a well-written, succinct, bilingual or multilingual contract is essential for compliance and seamless discussions.

Conclusion

Several legal, regulatory, and cultural considerations must be carefully considered to negotiate a successful cross-border football deal. It is crucial to adhere to national laws, FIFA regulations, tax requirements, and data protection standards. Contracts with explicit provisions about compensation, image rights, and dispute resolution can help avoid miscommunications

and legal issues. Cultural, language and financial fair play clauses further facilitate negotiations and guarantee the contract's enforcement in a variety of jurisdictions. Parties can achieve equitable, transparent, and legally sound agreements by attending to these essential components.



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