



ECA

EUROPEAN CLUB ASSOCIATION

FIFPro Legal Network Conference

LISBON | 18 -19 APRIL 2013





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Due diligence and insolvency from a club's point of view

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Introductory remarks

- Insolvency is not a straightforward matter
 - Distinction between administration / bankruptcy
- Difficult balance between ordinary justice and sports justice, where does one end and where does the other start?
- Position of the Governing Bodies not easy due to legal restraints:
 - FIFA acting through its judicial bodies
 - UEFA as competition organizer





ECA's Membership Policy

LEADING THE WAY FOR FOOTBALL CLUBS IN EUROPE

- ECA not a governing body nor a competition organizer (representative)
- ECA Statutes differentiate between Ordinary & Association Members (art. 3 Statutes)
 - Ordinary Members which are prevented from participating to an UEFA competitions as per a decision in force are not eligible for Ordinary membership (art 4.3 Statutes)
 - Associated Members shall have no financial difficulties
- ECA should in theory not have any members with insolvency issues
- ECA together with UEFA has worked hard on FFP regulations



Insolvency?

- Insolvency affects players but it also affects clubs both on:
 - financial level (e.g. transfer fees, training compensation, bonus, etc.)
 - sporting level (e.g. cancellation of match results, competitiveness)
- Interest between clubs and players are not contrary per se
 - Legal and economic framework to be adopted in which rights of the football family are protected – *opposition from outside football*
- Not a new phenomena but due to global crisis:
 - Mismanagement exposed (excessive transfer fees, salaries)
 - Decrease in revenues in certain clubs (sponsors, ticketing, etc. with ongoing contracts)



Due Diligence

- Two different actors to be distinguished when it comes to due diligence
 - Actors such as football clubs and players
 - Actors such as governing bodies or competitions organizers
- With regards to football clubs and players:
 - Due diligence prior to entering into contracts
 - Due diligence when being faced with insolvent clubs:



Due Diligence Club & Players

- Clubs & Players:
 - Be critical with regards to financial offers (e.g. transfer fees & salaries)
 - Always the same clubs which have cases at the FIFA DRC & PSC
 - Be aware of the legal framework in which you are operating (*infra*)
- Clubs:
 - Secure your financial interests when signing transfer agreements by means of:
 - Bank guarantees
 - Contractual law clauses regarding non-payments
 - “Retention of title” clauses in combination with employment contract
 - “Dissolvent” clause in combination with employment contract
 - Priority rules in case of bankruptcy



Due Diligence - Legal Framework

- Understand the legal framework:
 - Insolvency law at national level – role of Unions and local specialists
 - FIFA level
 - FIFA Administration had to adjust its policies due to CAS awards:
 - CAS 2011/A/2343 CD Universidad Catolica v. FIFA
 - CAS 2011/A/2586 Willam de Lanes Lima v. FIFA
 - CAS 2012/A/2750 Shakhtar Donetsk v. FIFA & Real Zaragoza
 - CAS 2012/A/2754 UC Sampdoria v. FIFA & Club San Lorenzo Almagro
 - FIFA can no longer hide behind its administration letters & customary law



Due Diligence – Legal Framework

- Remarks on “old approach”
 - Lack of clear communication by FIFA
 - FIFA Administration letters led to problems:
 - *French Cour de Cassation 27 Fevrier 2013 Servette Geneve FC v. RC Lens*
 - Delays at FIFA level problematic when it comes to clubs in administration
 - Willam Lanes de Lima award
 - Recognition of distinction between “recognition of debt” and “enforcement”
- Remarks on “current approach”
 - contracts signed prior to entry into administration and contract signed after entry into administration are different – *March 2013 decision*
 - Article 107 FIFA Disciplinary Code
 - Cases can be closed if (1) parties have reached an agreement (2) bankruptcy (3) claim becomes baseless



Due Diligence - Governing Bodies

- Governing Bodies
 - Objective is to protect the interest of the game and long term viability of the game
 - create a framework in which this objective is achieved
 - UEFA Club Licensing and Financial Fair Play Regulations... BUT
 - Licensing and FFP requirements to be enforced at national FA / league level
 - Premier League FFP regulations
 - Serie B FFP regulations
 - FIFA could look at transfer bans? - Case of Zaragoza
- Too heavy sanctions might have the opposite effect

