

## COVID-19: FIFA Football Regulatory Issues

On 7 April 2020, FIFA published a set of Guidelines on player contracts and transfer-related matters in light of the disruption to football caused by COVID-19 (the “Guidelines”). This note highlights specific key topics addressed in the Guidelines and provides certain indications which may assist clubs in understanding the scope/impact of their application. This Note must be read in light of, and in accordance with, the content of the Guidelines. The titles of the sections below follow the same titles set out in the Guidelines.

### 1. Expiring agreements and new agreements

- At present, it is expected that the majority of European leagues will be able to complete their current competitions, in which case the seasons will most likely extend beyond their original end date of 30 June 2020. In that scenario, questions have arisen as to what would happen to the contracts with players that are set to expire on or prior to 30 June 2020, in circumstances where the club and/or the player would like to continue their existing engagement until the actual end of the season.
- Likewise, doubts have also been expressed as to what would happen to contracts that players may have signed with new clubs and which are set to start before the season of the current club is completed (e.g. contract with new club starting on 1 July 2020 and the season of the current club extending until 31 July 2020).
- The Guidelines clarify that, when it comes to employment contracts and transfer agreements, the contractual autonomy of the parties must prevail and that, consequently, the decision as to whether the terms of a contract should be amended (e.g. amend/extend the expiry date/start date of an employment contract) is subject to the will of the parties to that contract.<sup>1</sup>
- Notwithstanding the above, in order mainly to preserve the integrity of competitions and the stability of squads, FIFA recommends that, in those leagues which will be completed after their original end date, players extend their existing contracts so as to complete the season with their current clubs. For example, if the current expiry date of the contract is 30 June 2020 and the current season actual end date is 31 July 2020, that the contract be extended by the parties until 31 July 2020.
- A decision of club and player to extend their current employment contract may of course imply a re-arrangement of other existing contractual commitments. For example, if the player is already committed to a new club under an employment contract due to start on 1 July 2020, then a decision of the player to continue with his current club until 31 July 2020, would necessarily imply a renegotiation between the player and his new club to possibly postpone the start date of the new contract.
- Likewise, it is possible that a decision to extend the player’s contract with his existing club or delay the entry in force of the contract between the player and a potential new club, may have an impact on a transfer/loan agreement that may have been signed between two clubs in relation to that player. In this case, the two clubs may also need/want to re-arrange the terms of a transfer agreement/loan agreement that has already been signed.

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<sup>1</sup> Or the parties’ representatives in case, for example, of a CBA between League and Players’ Union governing the matter.

## 2. Agreements that cannot be performed as the parties originally anticipated

- As stated in the Guidelines, the principles set out in the document are meant to be “*general (non-binding) interpretative guidelines to the RSTP*”<sup>2</sup>. This means that the principles set out in the Guidelines are essentially only relevant in relation to those employment contracts to which the FIFA RSTP applies or may apply in the future in case of a potential dispute. If the FIFA RSTP cannot apply to the employment contract in question, then the Guidelines should in principle not be relevant.
- The FIFA RSTP primarily applies to all employment contracts between clubs and players which are submitted to the jurisdiction of FIFA. These are mainly the contracts between clubs and their foreign players<sup>3</sup> where the jurisdiction of FIFA is not validly excluded in the contract.<sup>4</sup> It is, therefore, in relation to the employment contracts with their foreign players that it is expected that the Guidelines will be mostly relevant.
- Notwithstanding the above, clubs should also examine their employment contracts which are not submitted to the jurisdiction of the FIFA judicial bodies (i.e. contracts with their national players and contracts with their foreign players where the FIFA jurisdiction was excluded) in order to assess whether it is possible that the FIFA RSTP could nonetheless be potentially applicable, either because it is expressly provided for as the applicable law of the contract or because it may apply indirectly via, for example, an express reference in the domestic regulations.
- This section of the Guidelines essentially sets out the principles/alternatives according to which the FIFA judicial bodies (and possibly other national judicial bodies in case FIFA rules are applicable) should, in principle, accept an amendment of the terms and conditions of employment contracts, including deferrals and reductions of salary:
  - i. **Bilateral/Collective Agreements** - Clubs and players are encouraged to negotiate agreements on a club or league basis regarding amendments to employment terms and conditions for the period of the suspension of leagues. If concluded, any such agreements shall be recognised.
  - ii. **Unilateral decisions according to national law/CBA** - Unilateral decisions to vary the terms and conditions of contracts which are made on the basis of national law or collective bargaining agreements or other collective agreements shall be recognised.
  - iii. **Unilateral decisions where (a) clubs and players cannot reach an agreement, and (b) national law does not address the situation or collective agreements with a players’ union are not an option or not applicable** - In this circumstance, unilateral decisions to vary the terms and conditions of contracts shall be recognised if they are *reasonable*. When assessing whether a unilateral decision to amend the terms of a contract is *reasonable*, the following circumstances could be taken into account (amongst others): (a) whether the club had attempted to reach a mutual agreement with its players; (b) the economic situation of the club; (c) the proportionality of any contract amendment; (d) the net income of the employee after contract amendment; (e) whether the decision applied to the entire squad or only specific employees.
  - iv. **Suspension of contracts** - Alternatively, agreements between clubs and players may be

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<sup>2</sup> See page 3 of the Guidelines.

<sup>3</sup> FIFA can also be competent for disputes between a club and a player of the same nationality in case the player subsequently joins a club in a different country.

<sup>4</sup> If the employment contract provides for the jurisdiction of a valid NDRC or local civil courts, FIFA will not be competent.

“suspended” during any suspension of competitions, provided proper insurance coverage is maintained, and adequate alternative income support arrangements can be found for employees during the period in question.

### **3. Transfer Windows**

- As mentioned, at present the calendar of the various competitions around the globe is uncertain. In addition, it is already clear that the COVID-19 crisis will have a detrimental impact on club football and will place many clubs in significant financial difficulties. The business model of many European clubs relies significantly on their transfer market activity and therefore depends, to an important extent, on transfer windows.
- It is for these reasons that ECA’s position is that there must be flexibility regarding the dates and the duration of the upcoming transfer window. Leagues must be able to have a window which is adapted to the calendar of their competitions and clubs must have a reasonable opportunity to resort to the transfer market not only to adjust their squads, but perhaps more importantly, to have access to funds from transfer activities.
- FIFA has agreed that a flexible approach is required and has decided that NAs may amend and postpone transfer windows. However, at present, FIFA’s view is that, although transfer windows can be adjusted and amended, their duration should stay within the maximum limit of 16 weeks (for summer and winter windows combined) as currently established in the FIFA RSTP.
- Stakeholders have agreed that this is a matter that must be monitored and assessed on an on-going basis and will ultimately depend on when competitions are able to resume and sporting calendars are defined. It is therefore expected that further discussions and possible adjustments will have to be made within the coming weeks.

### **4. Limitation on Loans**

Due to the uncertainty around clubs’ transfer activities and the impact of COVID-19 on their business and the planning of their squads, the new FIFA rules on international loans (including the limitation on the maximum number of loans) which were supposed to become effective on 1 July 2020, will not come into force until further notice.

*Please feel free to reach out to the ECA Administration should you have any questions or require further clarification*  
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