

The AIFF Football Agent Regulations, 2023: Key highlights, challenges and drawbacks

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Abstract

The AIFF Football Agent Regulations, 2023 (Regulations) came into force on 01 October 2023. The Regulations, enacted by the All India Football Federation in compliance with the FIFA Football Agent Regulations, 2023, are intended to regulate the conduct of football agents in line with the core objective of regulating the Indian football transfer system. The Regulations govern representation agreements that have a national dimension, or any conduct connected to national transfers or national transactions. They stipulate the eligibility criteria to become a football agent, set out the principles for calculating agent service fees, and mention the rights and obligations of football agents and their clients. The present article seeks to identify key provisions of the Regulations and provide an analysis of their implications for stakeholders of football in India, specifically, the football agents. The article also examines the potential legal challenges for the regulations *vis-à-vis* judgments of foreign courts in relation to the FIFA Football Agent Regulations (FFAR).

Keywords

FIFA, AIFF, FFAR, Football Agent, Football Transfer

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1. Introduction

In September, 2019, the Fédération Internationale de Football Association's (FIFA) Football Stakeholders Committee endorsed a series of steps to protect the integrity of the football transfer system and prevent exploitation of stakeholders.² In particular, the committee recommended the introduction of a cap on football agents' commissions and a limit on player loans. Subsequently, on 16 December 2022, the FIFA Council approved the FIFA Football Agent Regulations (FFAR).³ However, since their inception, enforcement of the FFAR has been fraught with legal challenges. Agent bodies have challenged FIFA's jurisdiction over player agents and the validity of the FFAR, before domestic and international courts. Despite the challenges, FIFA remained firm in its resolve to implement the FFAR. As a result, the FFAR came into full effect on 01 October 2023. Article 3(1) of the FFAR states as follows: "Member associations shall implement and enforce national football agent regulations by 30 September 2023."

Specifically, the FFAR require national football associations to enact regulations to govern the occupation of football agents within their territory and jurisdiction, and to govern football player representation agreements that do not have an international dimension. In compliance with the above, the All India Football Federation (AIFF), the national governing body of football in India, enacted the AIFF Football Agent Regulations, 2023 (Regulations) on 01 October 2023.⁴

The present article seeks to identify key provisions of the Regulations and provide an analysis of their implications for stakeholders of football in India, specifically, the football agents. The article also examines the potential legal challenges for the Regulations *vis-à-vis* judgments of foreign courts in relation to the FFAR.

² FIFA (2019).

³ FIFA (2023b); FIFA (2023c).

⁴ AIFF (2023); AIFF (2023a).

2. The AIFF Football Agent Regulations, 2023

The Regulations, regulate the conduct of football agents in line with the core objective of regulating the Indian football transfer system. They govern the representation agreements that have a national dimension, or any conduct connected to national transfers or national transactions. They stipulate the eligibility criteria to become a football agent, set out the principles for calculating agent service fees, and mention the rights and obligations of Football Agents⁵ and clients.⁶

2.1. Who can be a Football Agent?

The Regulations define a ‘Football Agent’⁷ as a natural person licensed by FIFA to perform Football Agent Services. ‘Football Agent Services’ mean football-related services performed for or on behalf of a member association, club, player, coach or single-entity league,⁸ including any negotiation, communication relating or preparatory to the same, or other related activity, with the purpose, objective and/or intention of concluding a transaction.⁹ In this context, a ‘Transaction’ is defined as:

(i) the employment, registration or deregistration of a player with a club or a Single-Entity League; (ii) the employment of a coach with a club, Single-Entity League or a member association; (iii) the transfer of the registration of a player from one club to another; (iv) the creation, termination or variation of an Individual’s terms of employment.

To become a Football Agent in India (Agent), an individual must obtain a licence from FIFA by following the procedure mentioned in Articles 4-10 of the FFAR. This entails completing a licence application and complying with eligibility requirements prescribed by FIFA, successfully passing

⁵ Ibid, AIFF Football Agent Regulations, 2023, Article 10, p. 15.

⁶ Ibid, Article 12, p. 21.

⁷ Ibid, Definitions, p. 3.

⁸ Ibid, Definitions, p. 3 defines client as “Client: a member association, club, player, coach, or Single-Entity League that may engage a Football Agent to provide Football Agent Services.”

⁹ Ibid.

the FIFA agent exam, and paying an annual licence fee to FIFA. Subsequently, they must register with the AIFF.¹⁰

An Agent may conduct their business affairs through an agency. However, other employees or contractors of agency who are not licenced Agents cannot perform Football Agent Services. Further, no client, person ineligible to become an Agent, or a person or entity owning or holding rights relating to the registration of a player in violation of article 18bis or article 18ter of the FIFA Regulations on the Status and Transfer of Players (FIFA RSTP),¹¹ can hold any interest in the affairs of the Agent or their agency.¹² It may be noted here that if the agency or any of its representatives breach any provision of the Regulations, the Agent will be held fully responsible for such violation of the Regulations by their agency or its representatives.¹³

2.2. How does the Agent-Client relationship work?

An Agent can only provide Football Agent Services after entering into a Representation Agreement with the client.¹⁴ A Representation Agreement is a written agreement to establish a legal relationship between the Agent and the Client.¹⁵ It must necessarily contain the names of the parties, duration of the contract, the nature of services to be provided by the Agent, the fee payable for the services, and signatures of the parties.¹⁶ The maximum duration of an Individual¹⁷ Representation Agreement is two years, post which, the parties may renew the agreement. However, automatic renewal clauses are barred by the Regulations.¹⁸

¹⁰ Ibid, Article 3.2., p. 7.

¹¹ FIFA (2024), Article 1(3)(a), p.13 states “a) The following provisions are binding at national level and must be included without modification in the association’s regulations: articles 2-8, 10 (subject to article 1 paragraph 3 b) below), 11, 12bis, 18, 18 paragraph 7 (unless more favourable conditions are available pursuant to national law), 18bis, 18ter, 18quater (unless more favourable conditions are available pursuant to national law), 19 and 19bis.”

¹² AIFF (2023a), Article 5.4., p. 8.

¹³ Ibid, Article 5.3., p. 8.

¹⁴ Ibid, Article 6.1., p. 8.

¹⁵ Ibid, Definitions, p. 4.

¹⁶ Ibid, Article 6.7., p. 9.

¹⁷ Ibid, Definitions, p. 4 defines: “Individual: player or coach.”

¹⁸ Ibid, Article 6.3., p. 8.

An important development under the Regulations is that an Agent can only perform services for one party in a transaction. However, they may provide services to both, the player and the Engaging Entity¹⁹ in a transaction, by obtaining written consent of the parties prior to providing the services.²⁰ In case of tripartite transactions, the Agent is restricted from performing simultaneous services for the Releasing Entity²¹ and player, the Releasing Entity and the Engaging Entity, or all parties within the same transaction.²² An Agent and a connected Football Agent²³ cannot represent different clients in the same transaction.²⁴

2.3. What fees can the Agent charge?

The Regulations set out principles to govern the service fee charged by an Agent from a client. In particular, the Regulations provide the following maximum service fee payable for the provision of football agent services in a transaction irrespective of the number of Agents providing services to a single client in the transaction:²⁵

¹⁹ Ibid, Definitions, p. 3 defines: “Engaging Entity: a club, member association or Single-Entity League that may engage a player or coach.”

²⁰ Ibid, Article 6.8., p. 9.

²¹ Ibid, Definitions, p. 4 defines: “Releasing Entity: a club, member association or Single-Entity League that a player or coach is leaving to be employed and/or registered by an Engaging Entity.”

²² Ibid, Article 6.9., p. 9.

²³ Ibid, Definitions, p. 3 defines: “Connected Football Agent: a Football Agent is connected to another Football Agent as a result of their: (i) being employed or contractually retained by the same Agency through which Football Agent Services are conducted; (ii) both being directors, shareholders in, or co-owners of the same Agency through which Football Agent Services are conducted; (iii) being married to one another, domestic partners, siblings of one another, or parent and child or stepchild; or (iv) them having made any contractual or other arrangements, whether formal or informal, to cooperate, on more than one occasion, in the provision of any services or to share the revenue or profits of any part of their Football Agent Services.”

²⁴ Ibid, Article 6.10., p. 10.

²⁵ Ibid, Article 9.2., p. 13.

Client Classification	Applicable Service Fee Cap	
	When the Individual's annual Remuneration is less than or equal to USD 200,000	When the Individual's annual Remuneration is above USD 200,000
Individual	5% of the Individual's Remuneration.	3% of the Individual's Remuneration.
Engaging Entity	5% of the Individual's Remuneration.	3% of the Individual's Remuneration.
Engaging Entity and Individual (permitted dual representation)	10% of the Individual's Remuneration.	6% of the Individual's Remuneration.
Releasing Entity (transfer compensation)	10% of the transfer compensation.	

2.4. What happens in case of a dispute?

In addition to governing the Agent-Client relationship, the Regulations provide the jurisdiction and procedure for dispute resolution in respect of disputes between Agents and clients. The Agents Chamber of the FIFA Football Tribunal has the jurisdiction to determine disputes of an international dimension,²⁶ while the AIFF Player Status Committee has the jurisdiction to determine disputes without an international dimension.²⁷ Disputes in this context mean disputes arising out of or in relation to Representation Agreements.

In respect of disciplinary matters, the FIFA Disciplinary Committee and Ethics Committee are the competent authority to determine violations of the FFAR, the FIFA Statutes or any other FIFA regulations.²⁸ The AIFF Disciplinary Committee and AIFF Ethics Committee will decide violations of the AIFF Regulations, or any other conduct connected to a domestic transfer.²⁹

²⁶ Ibid, Article 14.1., p. 21.

²⁷ Ibid, Article 14.3., p. 21.

²⁸ Ibid, Article 15.1., p. 22.

²⁹ Ibid, Article 15.3., p. 23.

3. Impact

The Regulations have been enacted amidst staunch opposition to the FFAR at a global level. The concerns raised by agent bodies internationally are equally applicable to the implementation of the Regulations in India. In particular, concerns raised with respect to the cap on the service fee that can be charged by agents are highly relevant given the limited earning potential of Agents in the Indian transfer market.

3.1. On earnings

As of 2023, the average annual salary of players registered in the Indian Super League (ISL),³⁰ the first-division football league in India, is INR 56,89,484/-, with Indian player salaries averaging at INR 31,28,782/-. However, 38 of 273 players registered in the ISL earn an annual salary of less than INR 10,00,000/-,³¹ with the lowest being merely INR 5,83,479/-. The average salary of players in the 18-23 age group in the ISL is INR 19,96,919/-. The number is further reduced in lower division leagues. In case of transactions in the range of INR 5,00,000/- to 10,00,000/-, a service fee of less than 10% might not be financially viable for the Agents.³²

The above limitations are further compounded when read with other provisions of the Regulations. For instance, according to Article 8.12. of the Regulations, an Agent is not entitled to any service fee not yet due, if the player transfers to another club before the expiry of the negotiated employment contract. The same is applicable where the employment contract is prematurely terminated by the client without just cause. Further, as per Article 9.2(c), the Agent is also not entitled to any amounts in relation to sell-on fees, or on compensation received by the client for breach of contract by the other party.

³⁰ FootyStats (2023).

³¹ Approximate conversion rate of 1 Euro = 89.53 INR as per Oanda Exchange Rate on 15 November 2023.

³² Vaidya (2017).

Moreover, Article 9.3.³³ includes the fee received for other services³⁴ provided by the Agent in the previous twenty-four months, within the salary cap. Considering that Agents provide various ancillary services to their clients in the form of legal advice, financial management, social media management and sponsorship procurement, the inclusion of these charges within the service fee cap is likely to deter Agents from working with low-earning clients.

Consequent to the above, we must consider the impact of the service fee cap on the growth and opportunities available to young Indian players, fresh recruits and players from under-exposed backgrounds. This is because, in India, the role of an Agent extends beyond negotiating the monetary aspects of an employment contract. Agents actively guide players and negotiate fair and well-rounded deals for them. For instance, consider the circumstances of a player signed by a club for a high fee, but then benched for the majority of the season. Such a player would not be able to command an increased contract value the following season.³⁵ Given that Indian players and their family members do not usually have the adequate industry knowledge to understand these aspects of the game, it is the Agent that guides them through the same. In some cases, Agents also secure other facilities such as boots and equipment, accommodation and even education opportunities for the player. Therefore, we must contemplate upon the potential of the service fee cap set forth in the Regulations not only to undercut the earnings of Agents, but to also significantly hamper the growth and opportunities available to players in India.

3.2. On financial security

An Agent can receive the service fee only after the closure of the relevant registration period and in installments of three months thereafter.³⁶ Where the duration of the employment contract is less than six months, the Agent is entitled to payment in a single installment upon expiry of the

³³ AIF (2023a), Article 9.3., p. 14 defines: “Where a Football Agent or a Connected Football Agent, in the 24 months prior to or following a Transaction, performs Other Services³³ for a Client involved in that Transaction, it shall be presumed that the Other Services formed part of the Football Agent Services performed in that Transaction, unless proven to the contrary.”

³⁴ Ibid, Definitions, p. 4 defines: “Other Services: any services performed by a Football Agent for or on behalf of a Client other than Football Agent Services, including but not limited to providing legal advice, financial planning, scouting, consultancy, management of image rights and negotiating commercial contracts.”

³⁵ Vaidya (2017).

³⁶ AIF (2023a), Article 8.6., p. 12.

employment contract. While impactful as stand-alone clauses, the implications of these provisions are truly understood when read with Article 8.5 of the Regulations.

As previously mentioned, the maximum term prescribed for Representation Agreements under the Regulations is two years. In contrast, a player can sign an employment contract with a club for a maximum term of five years.³⁷ Therefore, it is highly possible that the Agent might be entitled to certain payments post the expiry of the Representation Agreement. However, Article 8.5. allows an Agent to receive a service fee after the expiry of the Representation Agreement only if the same is expressly agreed in the Representation Agreement. Considering the stringency of this provision and those prescribing delayed payments, the Regulations may potentially prejudice the financial interests of Agents.

3.3. On conflicts of interest

Another likely consequence of the salary cap *vis-à-vis* the limited number of transactions in the Indian transfer market is that the number of transactions in which a single Agent represents multiple clients may increase, so as to make the deal financially workable for the Agent. Considering that one of the objects of the Regulations is to limit instances of conflicts of interest,³⁸ we must reflect upon the sustainability of the Regulations under current market situations.

3.4. On representation agreements

On the subject of Representation Agreements under the Regulations, we must consider that during preliminary stages of negotiations, players and Agents only enter mandates. This is because Representation Agreements are more onerous for the parties. However, given that an Agent is only entitled to receive service fee for services stipulated in advance in the Representation Agreement and that the Agent can only execute one Representation Agreement with a single player, it is possible that Agents may seek out wide representation rights going forward.

³⁷ AIF (2023b), Article 21.2, p. 19.

³⁸ AIF (2023a), Article 1.2(c), p. 6.

3.5. On player contracts

Further, an Agent cannot approach or enter into an agreement with a client bound by an exclusive Representation Agreement, except in the final two months of that exclusive Representation Agreement. This restriction is a likely cause of concern for players during negotiations, as clubs are free to negotiate with players during the final six months of their employment agreement.³⁹ Hence, a player at the end of their Representation Agreement might not be able to benefit from the six-month time frame as their new Agent of choice might not be able to represent them during such time period.

4. Legal challenges

As previously mentioned, agent bodies have challenged the FFAR across jurisdictions. The Professional Football Agents Association (PROFAA) challenged the FFAR before the Court of Arbitration for Sport (CAS).⁴⁰ CAS examined FIFA's legitimacy in regulating peripheral economic activities relating to football, in particular, the football agent services market, and found in favour of FIFA that:

*[Agents] as far as they represent the interests of clubs and players, directly engage in the organization and functioning of players' services, with respect to their employment and transfer – i.e., with respect to one of the core aspects of the entire football system. As a result, FIFA appears to be entitled, in general terms, to adopt rules governing the activity of agents, in the same way as (and to the extent in which) it is entitled to issue regulations concerning the status and transfer of players.*⁴¹

CAS also ruled in favour of FIFA with respect to alleged violations of the European Union's (EU) competition law and the General Data Protection Regulation.⁴²

³⁹ AIFB (2023b), Article 21.3, p. 19.

⁴⁰ Professional Football Agents Association (PROFAA) v. Fédération Internationale de Football Association (FIFA), CAS 2023/O/9370.

⁴¹ Ibid, para 179.

⁴² Ibid.

The question on FFAR's compliance with EU competition law has also been referred by the Mainz Regional Court, Germany to the European Court of Justice (ECJ). Moreover, the Central Netherlands Court (Utrecht) dismissed an injunction petition against FFAR, choosing to wait for ECJ's ruling.⁴³ Principally, the grounds raised before each of these courts are similar, with questions being raised on the jurisdiction of FIFA and its relevant member association, and on whether their conduct can be construed as monopolistic behaviour and thereby an abuse of their dominant position? Interestingly however, another regional court in the Germany, i.e., the District Court of Dortmund significantly deviated from the Mainz judgment and granted an interim injunction against the FFAR (Dortmund Injunction), thereby effectively halting their implementation in Germany.⁴⁴ Further, a commercial court in Spain, while hearing a lawsuit requesting the annulment of several articles of the FFAR, approved a temporary injunction staying implementation of the FFAR fee cap and preventing their transposition into Spain's own national Football Agent Regulations.⁴⁵ In England, where implementation of the Football Association's (FA) National Football Agent Regulations (NFAR) had been challenged via arbitration, the arbitral tribunal declared that if the FA implements the fee cap and the pro rata payment rules in the NFAR, it will be in breach of the England's Competition Act, 1998.⁴⁶ In this context, it is foreseeable that a challenge to the AIFF Regulations before Indian courts could be constructed on similar grounds. Following the above developments, FIFA recently announced a worldwide temporary suspension of the FFAR rules until the ECJ renders its final decision.⁴⁷ Further, FIFA also recommended that its member associations temporarily suspend the equivalent provisions from their respective national football agent regulations.⁴⁸ However, as of yet, the AIFF has not notified any suspension with respect to the AIFF Regulations.

⁴³ Dan (2023).

⁴⁴ FIFA (2023a).

⁴⁵ Williams (2023).

⁴⁶ The FA (2023).

⁴⁷ FIFA (2023).

⁴⁸ Ibid.

5. Analysis and conclusion

The Regulations establish basic qualifying criteria and a sound licensing regime for football agents in India. In that sense, they appear to be a step in the right direction. Even so, the Regulations leave much room for speculation.

5.1. Need to account for practical realities

The Regulations provide that Agents can receive commissions post the expiry of the Representation Agreement only if the same is provided for in the Representation Agreement. However, they are silent on commissions receivable by agents on renewal of negotiated employment contracts. The Regulations are also silent on family members and relatives representing players through powers of attorney, while also receiving payments for the same. Considering that these are rather common practices within the industry, it is expected that the Regulations address such circumstances.

It is also relevant to note that the service fee cap and other limitations highlighted in this article, are likely to prejudice the commercial interests of football agents, more so in developing economies such as India than in developed European markets. Further, other aspects of the Regulations, such as timelines, could benefit from being aligned with the regulatory framework provided in the AIFF Regulations on the Status and Transfer of Players.

5.2. Need for global reconsideration

While the concerns highlighted in this article are in the context of the AIFF Football Agent Regulations, 2023, it must be born in mind that the AIFF Regulations are primarily based on the framework established by FIFA under the FFAR, which leaves little room for member associations to deviate from the FIFA framework in formulating their respective domestic regulations. Therefore, the questions to ask are whether the FFAR need to be reconsidered from a more implementational point of view, and do the FFAR need to be reconsidered in a more inclusive manner, specifically to account for developing football markets such as South Asia?

Most importantly, it must be seen whether the practical impact of the FFAR on agent markets and the legal challenges brought against them will inspire FIFA to reconsider certain aspects of the FFAR, in turn addressing concerns of agents at the domestic level.

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