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## Key points to take into consideration when transferring a player – China perspective

By Tomas Pereda | Giandonato Marino

### I. Introduction

The transfer of a professional football player may involve some complex scenarios, due to the peculiarities of the employment contracts and transfer agreements for football players, which differ significantly from similar contracts outside of the football industry.

For this reason, we intend to provide the reader with some insights to consider when dealing with these transactions in China, analysing the peculiarity of the transfers of both Chinese and international players.

### II. Legal and practical aspects

- a. Foreign quota – Limitation on the number of transfers

When dealing with transfers of players in China, clubs should firstly consider some unique policies issued by the CFA (and/or FIFA), such as the so

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called “foreign quota” and the limitation on the number of transfers, which may affect the registration of the player before the CFA<sup>1</sup>. Clubs should consider:

- i. the maximum number of transfers of both domestic and foreign players that clubs can conclude per season; <sup>2</sup>
- ii. the maximum number of foreign players that clubs can register for the CFA<sup>3</sup> and the AFC<sup>4</sup> competitions; and
- iii. the number of clubs the player has been registered - and has played for - during that season.

These elements are crucial, since signed transfer agreements and employment contracts that disregard such policies, will be nevertheless valid. Furthermore, if a club must de-register a player in order to comply with these rules, unless there are exceptional circumstances, players will be entitled to terminate their contracts with just cause.

b. Transfer windows – registration of players

As per Article 6 of the FIFA RSTP and Article 9 of the CFA RSTP, players may only be registered within one of the two annual transfer windows fixed by the national association.<sup>5</sup>

At international level, professional players can only be registered with a club if the ITC procedure is successfully completed by the respective clubs and national associations through the FIFA TMS, before the respective transfer window closes.<sup>6</sup> This is pursuant to Article 8.1.2 of Annex 3 of the FIFA RSTP, which states that “*at the very latest, the ITC must be requested by the new association in TMS on the last day of the registration period of the new association.*”

Although the new association would only be able to begin the ITC procedure for the player if both clubs have “matched” the documents required by the FIFA TMS, FIFA normally reviews on a case-by-case basis. Therefore, in the case where the new club has submitted all relevant documents within the deadline, but the former club has not completed the process on time, the ITC procedure will usually still be processed through the file of a “special request”.

At national level, although the CFA RSTP does not regulate the registration procedure, clubs and local federations follow a similar procedure through the domestic online transfer matching system. <sup>7</sup> The procedure must be finished without exception before the transfer window closes.

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Due to this, clubs are advised to complete all paperwork and procedures in advance, so as to avoid any potential risk that the registration of a player may not be completed.<sup>8</sup>

c. Medical examination

The health and physical condition of a player is a key element during the employment with a club and, for that reason, clubs are recommended to take, at least, the following measures:

- i. Make the transfer agreement conditional to the successful outcome of the medical exams of the player;
- ii. Undertake a medical examination for the player at a reliable and specialized medical institution;
- iii. Do **NOT** enter into the employment contract before the medical examination is successfully completed by the player.

Employment contracts cannot be made subject to a successful medical examination, so clubs are suggested to undertake such tests prior their signature. Otherwise, the employment contract will be valid and binding between the parties, regardless of the outcome of the medical examinations.

d. Conditional terms for a transfer to be effective

The parties must then consider further elements that might be included in the transfer of a player to protect their interest. Parties are advised to:

- Condition the transfer to, *inter alia*, the signature of an employment contract between the club and the player or the delivery of the ITC (or national TC) for the registration of the player;
- Specify in advance who bears the payment of solidarity contributions and/or training compensations, if any; or
- Provisions related to the future transfer of the player (e.g. sell-on clause<sup>9</sup>, right of first refusal, buy-back clause, etc.).

The transfer agreement shall specify the regulations governing such contracts and, for that reason, the parties shall negotiate and draft such contracts with the assistance of specialized legal consultants on the matter.

**Key points to take into consideration when transferring a player – China perspective****e. Draft of employment contract**

During the negotiations of an employment contract, parties push to obtain the best contractual conditions for the future employment relationship. However, parties must be aware that some provisions, if they not properly drafted, may create pathologic situations at a later stage.

There are certain sensitive clauses, which are very common in employment contracts in Chinese football, which shall be drafted under the supervision of a legal consultant. Among those provisions, we remark the followings:

- The option to relegate a player to train and/or play with the reserve team/youth team;
- Unilateral termination/extension clauses;
- Sporting performance clauses (e.g. providing one of the parties the right to terminate the contract if some sporting conditions are met, mainly bad sporting performances);
- Provisions setting the consequences from the unilateral termination of the contract (e.g. buy-out, liquidated damages, release or penalty clauses);
- Provisions on sanctions to be imposed to the player in case of misbehaviours;
- Provisions setting out the jurisdiction and applicable law to the contract.

In addition to that, clubs must be aware that contracts cannot be conditional to administrative formalities (e.g. residence permit, working visa, delivery of the ITC, medical exams, etc.).<sup>10</sup>

It is also important to make a reference to the so-called pre-agreements, which if contains the basic elements of an employment contract, it may be deemed that the parties entered into a valid employment contract.

Finally, stakeholders should be cautious with the image rights agreements with players, as they may trigger negative consequences if they are not carefully structured. Moreover, the CFA has recently announced that image rights fees are deemed as part of the player's income, thus falling within the salary cap.

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## f. Other elements

Apart from the above, parties must also pay attention to certain specific rules implemented by the CFA, such as:

- The so-called “luxury tax” imposed on transfer fees surpassing certain fixed amounts<sup>11</sup>;
- The rule imposing a 24 month suspension to those Chinese players who moved abroad after terminating their contracts without just cause in China, and then return to China to be registered with a Chinese club; or
- Caps set out by the CFA on capital injections into clubs and salaries.

**III. Conclusions**

Although the present article just outlines general aspects with regards to the transfer of a player, one can easily realize that transfers involve a wide number of requirements and legal aspects that must be followed by the parties involved.

We highly recommend the parties, once again, to be assisted by specialized legal consultants when dealing with these transactions.

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<sup>1</sup> While it would not affect the validity of the transfer and/or the validity of the employment agreement.

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<sup>2</sup> As per Article 16 of the CFA RSTP, CSL and CL1 clubs can register a maximum of 5 new Chinese players per season, as well as 3 additional Chinese players under the age of 21, while as per Article 35 CFA RSTP, CSL clubs may register a total of 6 foreign players per season, while CL1 clubs may register a maximum of 4 players.

<sup>3</sup> According to the *foreign quota* in the CFA competitions, clubs participating in the China Super League (“CSL”) can only register a maximum of 4 foreign players, while they can only line-up 3 of them in a match. When it comes to the Chinese League One (“CL1”), clubs can register a maximum of 3 foreign players and field 2 in a match. Recently, the policy has been modified, as the CSL and CL1 clubs can register one player from Hong Kong, Taiwan or Macau, without occupying the foreign quota (subject to some specific requirements).

<sup>4</sup> For the 2019 AFC Champions League, each club may register 4 foreign players, with at least one of them being a national of an association member of the AFC.

<sup>5</sup> With the exception of players whose contract has expired prior to the end of a registration period (“free agents”), who may be registered outside that registration period.

<sup>6</sup> See Article 8.1.1 of Annex 3 of the FIFA RSTP.

<sup>7</sup> Implemented since the beginning of 2019. Nevertheless, some documents are still filed via courier or submitted personally.

<sup>8</sup> If a club signs an employment contract with a player, without being the club finally able to register the player, the employment contract would still be valid and binding among the parties.

<sup>9</sup> As from 1 June 2019, players are not any longer a “third party” according to the FIFA RSTP. Hence, clubs are now entitled to enter into an agreement with a player, whereby the latter is entitled to participate, either in full or in part, in the amounts that would be paid for his future transfer, or is being assigned any rights in relation to a future transfer.

<sup>10</sup> See footnote 12.

<sup>11</sup> The CFA set a cap of expenditure for single transfer: CNY 45 million for foreign players (approx. EUR 5.8 million) and CNY 20 million for Chinese players (approx. EUR 2.5 million). In the case of a transfer for a fee above the cap, the buying club must pay the same amount as the transfer fee to the CFA, which shall allocate the amount to the China Football Development Foundation.