

FIFA Issues Guidelines On Dealing With Covid-19 Related Regulatory Issues

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On Tuesday, FIFA published a set of [guidelines](#) to address some of the practical issues that have arisen as a consequence of the COVID-19 crisis. The key areas of focus were: (1) expiring agreements; (2) frustrated agreements; and (3) registration periods. A number of other issues were also considered in brief.

It is important to note that the guidelines in respect of (1) and (2) are “*non-binding*” and simply assist interpretation of the FIFA Regulations on the Status and Transfer of Players (“**RSTP**”). As such, stakeholders should not take any precipitous action based on these guidelines, but should keep them in mind when taking essential decisions related to the COVID-19 crisis. In particular clubs unable to satisfy contractual obligations should pay close attention to what is suggested will be considered as ‘reasonable’ by FIFA tribunals where contractual amendments are made without the agreement of employees, including players and coaching staff.

1. Expiring agreements

FIFA have acknowledged that both employment agreements and transfer agreements are generally tied to registration periods and that registration periods are also often tied to Member Associations’ seasons (i.e. the fixture calendar).

The postponement of leagues across the world has the potential to disrupt existing agreements entered into on the basis of fixed registration periods and fixture calendars. For example, an English club that has agreed to transfer the registration of one its players in June 2020, after what it thought would be the end of the 2019/20 season, may now require the services of that player to finish the current season which looks like it could well be extended beyond June 2020.

Art. 18 RSTP is particularly affected by this. Art. 18 (2) RSTP currently provides that the minimum length of a contract shall be from its effective date until the end of the season and the maximum length of a contract may be five years. Further, Art. 18 (3) RSTP provides that professionals may only conclude a contract with another club where his existing agreement has ended, or where it is due to end within 6 months.

FIFA has suggested the following as potential remedies to this issue for domestic and international agreements:

(i) where an agreement is due to expire at the original end date of a season, such expiry be extended until the new end date of the season.

(ii) where an agreement is due to commence at the original start date of a new season, such commencement be delayed until the new start date of a new season.

(iii) in the event of overlapping seasons and/or registration periods, and unless all parties agree otherwise, priority be given to the former club to complete their season with their original squad, in order to safeguard the integrity of a domestic league, MA competition and continental competition.

In respect of international agreements only (and in addition to the above):

(iv) Notwithstanding the recommended amendment to agreement dates, any payment that contractually falls due prior to the new commencement date of an agreement should be delayed until the new start date of a new season or its first registration period.

This guidance is caveated with the acknowledgment that employment agreements are often governed by national laws and the 'contractual autonomy' of the parties, both of which take precedence over the guidance.

2. Frustrated agreements

FIFA has recognised that where football matches are unable to take place, players and coaching staff will be unable to work, and clubs will be unable to provide work. In this regard, many agreements may be frustrated.

The guidance offers four scenarios:

(i) Clubs and employees reach agreements on a club or league basis (for example, if there is a reduction in salary it should be for all contracts).

It is envisaged that these agreements will address issues such as remuneration and other benefits, the applicability of any government aid programmes, and conditions in respect of contract extensions.

(ii) Clubs unilaterally vary agreements in accordance with national law (or in ways that are permissible within CBA structures or other collective agreement mechanisms).

In some cases national law will resolve these issues. For example, in the UK clubs may take advantage of [the government's 'furlough' scheme](#) whereby the state pays 80% of employees' salaries that may no longer work, up to a limit of £2,500 per month.

(iii) Where no agreement can be reached and national law does not present a resolution, then unilateral variations will only be recognised by the FIFA DRC or PSC if they are *"made in good faith, are reasonable and proportionate."*

FIFA's guidance includes a non-exhaustive list of factors that will assist in determining whether a

club has acted reasonably:

1. *whether the club had attempted to reach a mutual agreement with its employee(s);*
2. *the economic situation of the club;*
3. *the proportionality of any contract amendment;*
4. *the net income of the employee after contract amendment; and*
5. *whether the decision applied to the entire squad or only specific* (iv) All agreements are suspended for the duration of the suspension of the relevant competition, but only where proper insurance coverage is accessible and adequate alternative income support arrangements can be found for employees.

3. Registration Periods

The current RSTP contains provisions which provide that players may only be registered during one of two annual registration periods fixed by the relevant Member Association (Art. 6(1) RSTP) and that registration periods must be fixed and only amended by agreement with FIFA (Art. 6(2) RSTP and Art. 5(1) paragraph 1 of Annexe 3 to the RSTP).

FIFA has confirmed that the current pandemic constitutes “*exceptional circumstances*” under Art. 5.1, paragraph 1 of Annexe 3 to the RSTP and consequently recommends:

- *all requests for an extension of the current season finishing date be approved;*
- *all requests to extend or amend registration periods that have already commenced be approved, provided that their duration complies with the maximum limit (i.e. 16 weeks) established in the RSTP;*
- *all requests to amend or postpone registration periods that have not commenced be approved, provided that their duration complies with the maximum limit (i.e. 16 weeks) established in the RSTP;*
- *Member Associationss be permitted to amend season dates and/or registration periods, either within TMS or by otherwise notifying FIFA; and*
- *as an exception to article 6 paragraph 1 of the RSTP, a professional whose contract has expired or been terminated as a result of COVID-19 has the right to be registered by an association outside a registration period, regardless of the date of expiry or termination.*

4. Other matters

A number of other matters were considered, and the following was decided:

- Clubs are not obliged to release players for international duty in the March and April international windows and equally players may decline any call-up;
- The proposed amendments to the RSTP regarding international loans (which were due to come into force on 1 July 2020 are being postponed;
- Decisions of the FIFA DRC and PSC in respect of RSTP matters will continue to be enforced and FIFA will continue to apply article 15 of the FIFA Disciplinary Code in the event of failure to respect these decisions;
- Requests for extensions of deadlines in DRC and PSC cases will be accepted in principle where an extension is required because of COVID-19. The maximum extension will be extended from 10 to 15 days;
- The provision at Art 6 paragraph 3 of Annexe 4 to the RSTP which concerns training compensation and requires clubs to offer players a contract in writing via registered post at least 60 days before the expiry of the current contract is changed to allow email offers; and
- The deadline for the provision by Member Associations of certain intermediary data set out in Article 6 paragraph 3 of the FIFA Regulations on Working with Intermediaries (end of March of every calendar year) shall be extended to 30 June 2020.

Conclusion

This guidance offers clarification for football stakeholders faced with the practical issues caused the current uncertainty . Although the guidelines set out in respect of expiring and frustrated agreements are not binding, they provide a needed framework for discussions between affected parties to take place. The remainder of the guidance is mostly common sense alterations to provisions of the RSTP which have been made redundant by the events that have unfolded over the last four weeks. It is highly likely that the football landscape will continue to change and it is important that FIFA continue to guide Member Associations and other stakeholders in these uncertain times.

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