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Football in Focus

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World Cup Transfer Scramble – A Guide to Success

The 2006 FIFA World Cup is nearly upon us. All eyes will turn to Germany on 9 June for 4 weeks of football which will see 32 teams and over 700 players from five continents competing in one of the world's largest sporting events – an event which has historically triggered an increase in transfer market activity.

Clubs will undoubtedly identify players who can complement their squads and they must move quickly to secure their targets before other offers arrive. Clubs therefore need to do their homework on players at an early stage to pre-empt problems arising which can delay a deal and allow competitors to make a move.

As there is no level playing field across the major European leagues in immigration law, a good starting point is to establish whether the target player is in fact capable of legal employment in the UK. If he is an EU/EEA or Swiss national, employment in the UK should not be a problem, although clubs should be aware that nationals of certain countries which joined the EU in May 2004, such as the Czech Republic, are still required to register with the Government under the Worker Registration Scheme. Problems can arise, however, if the player is from outside the EU/EEA.

Work Permits

The primary solution is of course a work permit and whilst the Government's review of existing legislation continues, clubs remain stuck with the rather prescriptive criteria of the player having played in 75% of competitive 'A' games for his country in the two years preceding the application and his country being ranked between 1 and 70 in the FIFA world rankings when averaged over this two year period.

It would be expected that players playing in a World Cup would easily satisfy the work permit criteria, but this is not always the case. For example, several players from the 2002 Brazilian World Cup winning team did not

satisfy the 75% appearance condition. Also, Togo's average ranking is currently 78 and Angola's is 69 (which is just above the threshold but subject to change before the beginning of next season), so there will be at least one country competing in Germany which does not currently satisfy the ranking requirement. Whilst players in these circumstances would not be eligible for a work permit, their cases can be appealed, and if careful consideration is given to evidence collation and preparation for the review hearing, a club can still secure the services of that player.

There are a number of alternatives to applying for a work permit based upon a player's ancestry and these should be investigated including, but not limited to, whether the player holds an EU/EEA passport even if born outside that zone – such passports should however be checked out with the Home Office.

Clubs should also be conscious of the overall composition of their squads when targeting players as the UEFA Homegrown Player rules take effect for Season 2006/07 and require clubs competing in UEFA competitions to have a minimum of 4 homegrown players in their squads (2 club trained and 2 trained within the same association). This quota increases to 6 for Season 2007/08 and 8 for Season 2008/09.

Protection of Minors

The target player's age is also an important factor to take into account. The restriction on the movement of minors under the FIFA Regulations means that talents from outside the EU/EEA of a similar age to Theo Walcott, would be unable to transfer internationally until they are 18 years old. There are certain exceptions to this rule but they are very narrowly construed.

Training Compensation

Furthermore, the FIFA Regulations contain numerous provisions which are triggered

depending upon the age of a player, in particular the payment of Training Compensation. If the player is below 23, then Training Compensation will be payable under the FIFA Regulations (the exact amount will depend upon factors such as his status, the number and category of training clubs and also whether the transfer is inside the EU/EEA). Clubs must also be particularly careful signing out of contract players internationally below 23 where their agent has described them as being "free", as this may not be the case.

Clubs are therefore advised to undertake a due diligence of the player's training history. In particular, clubs should request the 'Player Passport' as soon as possible rather than waiting for the registering Association to provide it – it is not normally provided until after the player has signed which is too late to assist clubs in determining if and how much Training Compensation may be payable in respect of a player.

Contractual Status

It is of course vital to confirm a player's contractual status as this will govern if and how the current club must be 'approached' and whether a mutually agreed transfer or a transfer after expiry of contract will occur. This will also determine whether Solidarity is payable under the FIFA Regulations and again, the Player Passport should assist in making appropriate calculations. Any negotiations and resulting transfer documentation should expressly deal with the liability for both Solidarity and Training Compensation.

Further, if the Player is within the so called 'Protected Period', then clubs need to tread very carefully as any attempt to induce a breach of contract will lead to an automatic transfer ban for two transfer windows as well as a compensation award. Even if the player

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is outside the Protected Period, there are still restrictions on unilateral termination which must be respected otherwise disciplinary sanctions will follow.

Careful consideration may also need to be given to clauses in the current playing contract such as 'buy-out clauses' which can often be misleading. Clubs need to determine whether a buy-out clause merely specifies the damages payable in the event of a unilateral breach of contract by the player or, the level at which a mutually agreed transfer can take place – there is a major difference in outcome here as the former can still result in sanctions for both club and player.

Agents

Clubs also need to be prepared for dealing with the agents involved in the transfer negotiations, some legitimately and others perhaps not so. Clubs should question the involvement of agents which do not have the necessary mandate and refuse to deal with any agent who is not licensed and listed on www.fifa.com. The correct regulatory

framework must be identified namely, whether the FIFA Players' Agents Regulations or The FA's Agents Regulations apply. It is noted that the Guidance Notes to The FA's Agents Regulations provide that those regulations "govern transactions...in the domestic football market..." and that they "sit alongside" the FIFA Players' Agents Regulations which continue to apply where there is an "international dimension". It should also be noted that The FA's Agents Regulations are again being reviewed and clubs should be aware of any developments.

Our experience has shown that the better prepared a club is, the greater the prospects of success and the less chance of unforeseen, and potentially expensive, problems arising. We have extensive experience in advising on international and domestic transfers including preparing and negotiating transfer documentation, handling difficult work permit applications and appeals, and ensuring compliance with regulatory requirements. If you require assistance on any such matters, please do not hesitate to contact us.

Case Update:

Charleroi v FIFA

In November 2005, 'Football in Focus' reported on the landmark case brought by Belgian Club Charleroi against FIFA for compensation for loss incurred following the injury of its star midfielder whilst on international duty.

The case, backed by the G14, challenges the legality of the FIFA Regulations and could have a massive impact on international football.

On 15th May 2006, a Belgian Court referred the case to the European Court of Justice. It is understood that a final decision could take about a year.

Clubs face difficulties over injury insurance claims

Blackburn Rovers have lost their hard-fought battle against their insurers to recover £4 million in damages for the former Swedish international Martin Dahlin, who suffered a career-ending injury to his back during training in 1997.

Blackburn claimed under their insurance policy which covered "accidental bodily injury which is sustained...solely and independently of any other cause...". Their insurers refused to pay, arguing instead that the disablement had not been caused by the injury alone and relied on a clause which excluded liability for disablement attributable 'directly or indirectly' to degenerative conditions.

The insurers argued that Dahlin was suffering from a pre-existing problem of the lower lumbar spine. Blackburn's argument was that any degenerative condition that Dahlin did have was normal and should not be taken into account when considering whether the exclusion clause applied.

When we last reported on this case, in the January 2005 edition of 'Football in Focus', Blackburn had just won a preliminary ruling on this issue, which promised to have some relevance for other clubs who might have similar injury insurance claims.

However, since then, the insurers have taken the upper hand. In July 2005, the preliminary ruling was successfully appealed (the Court of Appeal accepting that if degeneration, normal or otherwise, was a cause of Dahlin's disablement as opposed to the injury alone, then the exclusion clause applied) and following this decision, last month the High Court determined the whole case in the insurers' favour.

It had been thought after Blackburn's initial success, that the door had opened for clubs to consider bringing similar claims that might have been rejected in the past. This now no longer seems to be the case and insurers look set to continue to successfully rely on wide exclusion

clauses to avoid paying out. That said, clubs should remain aware of what their personal accident policies cover and read carefully the terms of any exclusions.

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