

TPO/TPI Indian perspective



Mumbai (India) – On 26 September 2015, (L-R) Brazilian footballer and Chennaiyin FC player **Elano BLUMER**, Portuguese footballer and Atletico de Kolkata striker **Helder POSTIGA**, Brazilian footballer and FC Goa player **Lucio**, Norwegian footballer and Delhi Dynamos FC player **John RIISE**, French footballer and Delhi Dynamos FC player **Florent MALOUDA**, English footballer and Kerala Blasters FC player **Sanchez WATT**, Romanian footballer and FC Pune City player **Adrian MUTU**, Portuguese footballer and North East United FC player **Simao SABROSA** and French footballer and Mumbai City FC coach **Nicolas ANELKA** pose with the Indian Super League (ISL) football tournament trophy for the 2015 season during the media interaction session.

Introduction

The Indian Super League (ISL), which had its inaugural season in 2014, has undoubtedly increased the popularity of football in India, a country where the sporting landscape has been largely dominated by the game of cricket. In 2015, ISL became the fourth biggest league in the world in terms of average attendance, partly owing to the introduction of foreign marquee players like *Helder POSTIGA*, *Elano BLUMER* and *Roberto CARLOS*.⁴² ISL franchisees have signed foreign players hailing from popular footballing countries such as Brazil, Argentina, Columbia, Portugal, Spain and France. This has significantly raised viewership of the sport and attracted commercial interests in league football in India.

However, the creation of an arm of Indian football that is run as a purely commercial enterprise is a double edged sword. The commercialization of league football, combined with the signing of foreign players from European and South-American

countries (where the ownership of players' economic rights by third parties has largely remained unfettered), warrants an analysis of the applicability of the worldwide ban imposed by FIFA on Third-Party Ownership of players' economic rights⁴³ (TPO) in the context of the ISL. In Section I of this article, we have analysed the key differences between I-League, the officially recognized football league of India, and the ISL to determine if All India Football Federation's (AIFF) regulatory reach equally extends to both the I-League and the ISL. Section II of this article studies FIFA's TPO regulations and the obligation of national associations, specifically the AIFF, to abide by, implement and regulate FIFA statutes and regulations on national level leagues and competitions. Section III specifically analyses the applicability of the TPO ban on I-League and ISL in order to understand the implications of such a ban on the sport of football in India.

Third-Party Ownership of players' economic rights in the context of the Indian Super League and I-League

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ISL vs. I-League: Applicability of FIFA and AIFF Statutes and Regulations

In 2007, AIFF decided to rebrand India's first official domestic league, National Football League, as 'I-League'. The I-League operates on a system of promotion and relegation with the I-League 2nd Division as well as on a system of direct-entry. Unlike the model followed by the I-League, the ISL operates on a franchise system and has been structured along the lines of the Indian Premier League (IPL) - a professional cricket league in India contested annually by franchise teams representing different Indian cities. Similarly, the ISL comprises of 8 franchise teams which are backed by corporate giants, decorated sportspersons and highly successful members of the Indian film industry. The players for ISL clubs are selected through a process of auction.⁴⁴ In accordance with the ISL 2015 Player

⁴² How India's ISL became world football's fourth biggest league, Saptarshi Ray, 23 December 2014 www.theguardian.com/football/blog/2014/dec/23/india-super-league-fourth-biggest-league

⁴³ FIFA Circular no. 1464, 22 December 2014 www.fifa.com/mm/document/affederation/administratio/p/02/49/57/42/ttopicircular1464_en_neutral.pdf

⁴⁴ ISL 2015 Player Auction and Draft Rules, Official website of the Hero Indian Super League www.indiansuperleague.com/news/2114-isl-player-auction-and-draft-rules

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Auction and Draft Rules, each *ISL* clubs was given a salary cap of INR 200 million (approx. EUR 2.6 million) within which they were allowed to bid for players from the auction list. Each *ISL* club was permitted to sign on a minimum of one foreign marquee player and a maximum of five international players. *ISL* is co-promoted by *IMG-Reliance* (the joint venture between *IMG* and Reliance Industries), *Star India* and supported by the AIFF.⁴⁵

The introduction of the *ISL* did promise some much-needed changes with regard to the advancement of Indian football. There has been a clear focus on the development of local infrastructure and talent at the grass-root level.⁴⁶ However, some pertinent questions have been raised. Does the *ISL* have the same official recognition as that of the *I-League*? Would a worldwide ban by FIFA of TPO be applicable to the *ISL* clubs and their players?

Both the AIFF and FIFA have unequivocally recognized the *I-League* as the official and primary football league in India. Mr Jerome VALCKE, former Secretary General of FIFA, has stated that "*I-League is the only league in India. You cannot have two leagues in a country. We will not call ISL a league, though it's a good platform for budding talent.*"⁴⁷ Further, Article 10 of the General Provisions of the FIFA Statutes⁴⁸ stipulates that every member nation

must have one association recognised by the federation, with the league being a separate organisation subordinate to the said association. Article 18 of the General Provisions of the FIFA Statutes clearly states that each association will define the scope, authority, rights and duties of the leagues under its regulatory umbrella.

Pursuant to the AIFF Strategic Plan 2014-17 (AIFF Strategic Plan)⁴⁹, the *ISL* is governed by a joint committee from AIFF and *IMG-Reliance*, wherein AIFF handles the regulatory aspects of the league and *IMG-Reliance* and *Star India* are responsible for the promotion and implementation of the competition. In the recent past, AIFF has displayed its regulatory authority by imposing fines under the AIFF Disciplinary Code on *FC Goa*'s marquee player *Robert PIRES*, *Atletico de Kolkata*'s striker *Fikru LEMESSA* and head coach *Antonio LOPEZ HABAS* (*FC Goa* and *Atletico de Kolkata* being two of the eight franchises participating in the *ISL*) for offensive behaviour during an *ISL* encounter between the two teams.⁵⁰

Therefore, the AIFF does have the authority to exercise its powers and impose sanctions in the event that an *ISL* club or player is found in violation of the AIFF rules and regulations governing the sport. But the question remains as to whether its regulatory reach can and must extend to enforcing FIFA Statutes to the *ISL*. That is, does the AIFF need to enforce the FIFA TPO ban to regulate the signing and transfer of players by the *ISL* clubs, if and when a violation is detected? Or does it in fact have greater freedom to determine the rules and regulations governing the *ISL* owing to the fact that the *ISL* is not a FIFA recognized league? In the next section, we have analysed the

applicability of the TPO Regulations to AIFF and AIFF's obligations to implement and adhere to the same.

Are national Associations obligated to abide by FIFA's TPO ban?

Further to the circular issued by FIFA on 22 December 2014⁵¹, the complete prohibition of TPO came into force on 1 May 2015. Article 18ter of the FIFA Regulations on the Status and Transfer of Players⁵² imposed a blanket worldwide ban on TPO, specifically prohibiting any entity that is not a club from being entitled to any economic benefits arising from player transfers. FIFA also provided for a transitional period which allowed existing TPO agreements (signed before 1 January 2015) to run their natural course and those signed between 1 January 2015 and 31 April 2015 to be valid for a maximum duration of one year from the date of the agreement.

Pursuant to Article 1(c) of the FIFA Regulations⁵³, Article 18ter is binding on all national associations and the same should be included without modification in every association's regulations on status and transfer of players. The aforementioned article specifies the scope of TPO regulations which shall be applicable to all associations that are registered with FIFA, thereby including the AIFF.

Article 1(5) of the Constitution of AIFF (AIFF Constitution) states that AIFF is a member of FIFA. It is therefore obliged to respect the statutes, regulations, directives and decisions

⁴⁵ About the Indian Super League, Official website of the Hero Indian Super League www.indiansuperleague.com/about-indian-super-league

⁴⁶ Two Leagues One Goal: Should India's Two Leagues Merge to Improve Indian football?", Saurabh Sharma, 27 August 2015 www.lawinsport.com/features/item/two-leagues-one-goal-should-india-s-two-leagues-merge-to-improve-indian-football#references

⁴⁷ I-League is India's Real League, ISL short-term Booster: AIFF, 15 October 2014 www.ibnlive.com/footballnext/news/i-league-is-indias-real-league-isl-short-term-booster-aiff-720432.html

⁴⁸ Article 18 (Status of Leagues and other groups of Clubs) of FIFA Statutes - Regulations Governing the Application of the Statutes Standing Orders of the Congress www.fifa.com/mm/Document/AFFederation/Generic/02/58/14/48/2015FIFASTatutesEN_Neutral.pdf

⁴⁹ *Ibid* 2.

⁵⁰ AIFF Fines Arsenal Legend Pires, Atletico de Kolkata Striker Fikru and Coach Antonio Habas, Ians, 25 October 2014 www.sportskeeda.com/football/aiif-fines-pires-fikru-habas

⁵¹ *Ibid* 1.

⁵² Article 18ter, FIFA Regulations on the Status and Transfer of Players, 21 www.fifaportals.org/Documentos/Centro%20Documentacao/FIFA/regulationsonthestatusandtransferofplayersapril2015e_neutral.pdf

⁵³ See p. 7 (Art. 1(3)(a)) of the FIFA Regulations

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of FIFA and to ensure that these are likewise respected by its members.⁵⁴ Further, one of the objectives of AIFF, as outlined in Article 2 of the AIFF Constitution is to “*organize its own annual domestic and international competitions*”, “*drawing up regulations and provisions and ensure their enforcement*” and “*control every type of association football, including friendly matches by taking appropriate steps to prevent infringements of the Statutes, regulations or decisions of FIFA, AFC, AIFF or of the Laws of the Game.*” Article 8 of the AIFF Constitution requires that the conduct of members, affiliated units, committees, officials and players must be in strict observance of the Statutes, Regulations, decisions and Code of Ethics of FIFA, AFC and AIFF in their activities. The underlined phrases in this paragraph clarify that the AIFF is obligated to ‘respect’ FIFA statutes and regulations. AIFF has the authority to draw up regulations with respect to league sports, whether FIFA recognized or not, but at the same time to take adequate steps to prevent infringement of FIFA statutes and regulations. Owing to Article 1(c) of the FIFA Regulations, the AIFF is also mandated to include without modification Article 18ter which bans TPO of players’ economic rights.

>> Currently, the AIFF Regulations do not contain the provision relating to prohibition of TPO

Currently, the AIFF Regulations only include the provision relating to Article 18bis i.e. Third Party Interest in Clubs (TPI) which prohibits the clubs to enter into contracts that may jeopardise the club’s independence, its policies or the performance of its team and freedom of decision making in employment and transfer related matters, and do not contain the provision relating to prohibition of TPO, i.e. Article 18ter.

However, we argue that the mere absence of the wordings of Article 18ter in the AIFF Regulations will not hinder FIFA from imposing sanctions on AIFF or any organized football league for violation of Article 18ter and other related FIFA Statutes and Regulations, especially in relation to transfers of international players. Cross-border movement and transfer of players is controlled by FIFA through its International Transfer Certificate (ITC).⁵⁵ Without an ITC, an international player is precluded from registering to play at a club in a new country. Therefore, every international transfer, including one into an ISL club, would need to be processed through the electronic FIFA Transfer Matching System (TMS). Through the TMS, FIFA will be able to scrutinise transfers for compliance with FIFA regulations, especially Article 18ter. Therefore if any violation of FIFA regulations is detected through the TMS, FIFA will have the authority to impose sanctions under the FIFA disciplinary code.

In the final section of this article, we have specifically analysed the applicability of the FIFA TPO ban on leagues under the AIFF, i.e. the I-League and the ISL.

Applicability of the TPO ban on I-League and ISL

From the previous section, it has been clearly established that any FIFA Regulation, including the FIFA ban on TPO is relevant to all organized football competitions, including the I-League and ISL in India. We have also established that while the primary regulatory responsibility falls on the AIFF to draw up regulations and enforce them, it does not take away from FIFA’s ability to sanction ISL or I-League clubs for violations in relation to the transfer of international players through TMS as any foreign player must be processed through the TMS in order to participate in or be a part of a club in India. Given that foreign marquee players are one of ISL’s primary attractions, ISL clubs must seriously consider and adhere to the FIFA TPO ban, irrespective of the fact that the AIFF Regulations are yet to adopt without modification the wordings of Article 18ter in relation to TPO.

It is also pertinent to read Article 5(1) (Registration) of the FIFA Regulations applicable to all players who wish to participate in the ISL or I-League, whether domestic or foreign, in the context of the FIFA TPO ban. Article 5(1) of the FIFA Regulations reads as follows: “*A player must be registered at an association to play for a club as either a professional or an amateur in accordance with the provisions of article 2. Only registered players are eligible to participate in organised football. By the act of registering, a player agrees to abide by the statutes and regulations of FIFA, the confederations and the associations.*”⁵⁶ Therefore, in their individual capacities, players participating in the ISL or I-League, whether domestic or international, are obligated to comply with the FIFA TPO ban.

⁵⁴ Art. 1(5) of the AIFF Constitution

⁵⁵ TPO ban is welcome, but now the hard work begins, Matt Scott, 24 December 2014 www.insideworldfootball.com/matt-scott/16092-matt-scott-tpo-ban-is-welcome-but-now-the-hard-work-begins

⁵⁶ See p. 10 of the FIFA Regulations

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Conclusion

With the *ISL* gaining great momentum in the last couple of years and the proposed merger of the *I-League* and the *ISL* looming around the corner, it can be said that the *ISL* has achieved more than what was expected from it. It has undoubtedly amplified the popularity of the sport in India by bringing in foreign players and coaches who have contributed to the development of the sport both at a professional level and at the grass-root level. While the AIFF continues to back the *I-League* as the primary club competition in India, the *ISL* has been influential in marketing the sport in India and has also been successful in bringing in increased investment into Indian football.

While the AIFF is vested with the responsibility of handling the regulatory aspects of the *ISL*, the extent of AIFF's regulatory authority in connection with violations of the FIFA TPO ban remains unclear. The AIFF Regulations only provide for TPI in clubs and do not provide for TPO of players' economic rights even though the inclusion of the same has been mandated by FIFA. But, as demonstrated in the article, FIFA can circumvent AIFF's regulatory reach in connection with the transfer of foreign players owing to the TMS system for process of such transfers and impose sanctions on clubs and players for violation of FIFA's regulation on prohibition of TPO.

ISL's primary selling point both from a viewership perspective as well as from the perspective of fostering the development of football as a sport in India are the foreign marquee players being brought in. These foreign players originate from countries where the practice of TPO of players' interest is still in existence. With the third season of the *ISL* around the corner, there have been discussions on the possibility of introducing inter-club transfers in the *ISL* and allowing clubs to sign a marquee player outside

of the existing salary cap.⁵⁷ Therefore the importance of implementing and enforcing the FIFA TPO ban in India is now more important than ever before. In light of the above, it is recommended that the AIFF and *ISL* clubs strictly adhere to the FIFA TPO ban and regulate the transfer of players as prescribed under the FIFA Regulations to avoid any FIFA sanctions in the future. •

⁵⁷ *Indian Super League: Player auction and draft could be scrapped*, Rahul Bali, 15 January 2016 www.goal.com/en-india/news/7083/isl/2016/01/15/19338542/inian-super-league-player-auction-and-draft-could-be