

**AMENDMENTS TO SPORTS LAW
REGULATING EMPLOYMENT AND CONTRACTUAL MATTERS**

CRA – Coelho Ribeiro e Associados, SCARL

Felix Majani

Portugal

September, 2017



A skeleton insight into the amendments recently made on Portugal’s sports law regime.

I. Introduction

In 14th of July 2017, the law n.º 54/2017 (the “New Law”) was published in the Official Gazette governing as well as regulating employment and contractual matters in Portuguese sports, repealing the old law n.º 28/98 of 26 June (the “Old Law”).

The New Law, which is in force since July, 19 of 2017, has not and does not intend to completely overhaul the structures and frameworks that had been put in place by the Old Law. On the contrary, it seeks to compliment the latter by regulating one or two fields which largely remained ungoverned while introducing firmer regulations on others. The amendments laid forth by the New Law were further prompted by FIFA’s decision to introduce new regulations governing the activities of players’ agents (the “FIFA Regulations on Working with Intermediaries”) in 2015, and in the process repealing the old FIFA Regulations on Players’ Agents which came into force in 2008.

For practitioners and general readers, below is a quick overview of the key features of the New Law without necessarily wading on all the amendments brought forth by it.

II. The Key Highlights

a. Agents and Intermediaries



a.1. Registration

The New Law for the first time seeks to govern and regulate the works and activities of intermediaries. It requires among other things, any body or person wishing to act as an intermediary in Portugal to register as such at the relevant national sports federation. Any contract entered into between an unregistered intermediary and an athlete is invalid to the extent of the intermediaries' non-registration.

a.2. The commission and contractual duration

Article 38.3 of the New Law caps the maximum commission chargeable by an intermediary to an athlete at 10% of the athlete's income. In addition, an intermediary's right to the commission is subject to his representation contract with the athlete remaining in force.

Article 38.4 of the New Law limits the duration of the representation contract to a maximum of 2 years, with sub section 5 allowing the parties to renew the contract by mutual consent but at the same time prohibiting any automatic renewal clauses.

Any clause or contract in violation of these requirements entitles the injured party to terminate the representation contract with just cause.

a.3. Prohibited persons

Article 39 of the New Law further prohibits the following persons or bodies from acting or exercising the activities of an intermediary:

- a) Clubs
- b) Sports societies
- c) Sports officials and administrators
- d) Referees, coaches, doctors and masseuses

a.4. Intermediaries and minors

Under Article 5.1 of the New Law, intermediaries are further barred from signing representation contracts with minors aged below 16 years. In addition, any representation contract entered into with a minor aged 16 and above must be signed by the minor's legal representatives. Any breach of these provisions is exposes the intermediary to serious sanctions.



b. The Tribunal Arbitral do Desporto

The New Law recognizes and affords the sports fraternity (i.e. athletes, clubs, associations, officials and the like) and an opportunity to file their deposits before the newly established Tribunal Arbitral do Desporto, an arbitral tribunal established in 2013 exclusively tasked with hearing and determining sports disputes at national level.

c. Probational Employment

The New Law further allows employers (e.g. football clubs) to employ players on probationary periods, during which period the coach may evaluate the players' performances and report to the club on whether or not the players concerned should be employed on a permanent basis. However, such probational arrangements are only valid if mutually signed and agreed by the parties. In addition, Article 10.2 of the New Law limits the maximum period under which a player can be placed on probation to 15 days (in the case of employment contacts with a duration of less than 2 seasons), and 30 days (in the case of employment contracts with a duration of more than 2 seasons).

d. Duties and Obligations of Clubs

Pursuant to Articles 11 (f) and 12 of the New Law, clubs now bear a legal obligation to promote and respect the professional code of conduct and ethics in sports and at the same time to respect the players' personal rights by avoiding all forms of physical, sexual, religious or other form of harassment or discrimination against players in the course of their duty.

e. Freedom of work for out of contract players

Article 19 of the New Law further seeks to protect the right and freedom of out of contract players to move and secure contracts with other clubs. To this extent, any clause that seeks to limit or restrict a player's freedom are null and void.

However, under Article 19.2 of the New Law, a collective bargaining agreement may be entered into between the old club and the new club pursuant to which the old club (the transferor) may be entitled to some compensation upon the expiry of its employment contract with the player. This compensation is to be paid by the transferee in consideration for the transferor's efforts in training, developing, and ultimately increasing the market value of an out of contract young player. Such agreements are only valid for players



moving for national transfers and the compensation to be requested by the old club must not in any way be disproportionate and/or seek to limit the player's right to practice the sport and/or secure a new club.

f. Buy out Clauses

Article 25 of the New Law also recognizes buy out (release) clauses pursuant to which an employment contract may contain a clause allowing the player to terminate the contract without just cause on condition that he pays the club an amount that has already been fixed and pre-established in the contract itself. The amount fixed in the buyout clause is not definitive. It may be challenged in court if it is deemed to be excessive.

III. Conclusion

The New Law definitely comes at an exciting and significant time for Portuguese sports. Portuguese football in particular continues to attract huge global appeal following the national teams' EURO 2016 victory, not to mention influx of young talent that continues to stream into the national football league from across South America and Africa.

The government continues to work hand in hand with the federations in all matters pertaining to legal, administrative, logistics and support. One can only say that Portuguese sports are in safe hands.