

2.6 Origins, practice and regulation of third-party ownership in South America

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Starting in the mid-1990s, two events – completely isolated and independent from each other – combined to give birth to what is now called third-party ownership (TPO). In South America, enormous flows of direct foreign investment, hungry for unexploited natural resources, led to substantial and sustained economic growth in the region, and consequently for new and more sophisticated business opportunities.² Football stood apart from this economic success story, however: several clubs were facing bankruptcy, and most were struggling to survive. Banks, sponsors and television were turning their back on the activity. Meanwhile, in Europe, the freedom of movement of individuals and workers was having a major impact on the footballer transfer market, since European players were no longer considered as foreigners by clubs within the European Union. This catapulted the demand for and ‘prices’ of players worldwide,³ and the trend was quickly read by entrepreneurial South American businessmen as a good business opportunity: on the one hand, South American clubs were begging for new funds, and their players remained as their sole ‘assets’; on the other hand, European clubs, with plenty of cash in their pockets, were thirsty for the well-known talented South American players.⁴

Third-party ownership is understood as ‘the Agreement between a Club and a Third Party, such as investment funds, companies, sports agencies, agents and/or private investors, in accordance to which, a Third Party, whether or not in relation with an actual payment in favour of a club, acquires an economic participation or a future credit related to the eventual transfer of a certain football player’.⁵ TPO has become a powerful and easy way for South American clubs to obtain new funds, which in turn allow them to finance their youth teams, to reinforce their squads with new players

and even to cover their basic economic obligations that often cannot be afforded with the standard forms of income (broadcasting rights, sponsorship, merchandising and ticketing, among others).⁶

In practice, two types of investors partake in TPO. The first are legal persons, such as companies or investment funds, which use TPO as a way to invest alongside other investors, to benefit from the inherent advantages of working as part of a group. This takes place mainly in Argentina and Brazil, where the TPO ‘culture’ is more widespread.⁷ The second are natural persons, such as players’ agents, though an important role is also played by the so-called ‘clubes puente’ (‘bridge clubs’), which are used to ‘regularise’ the ownership of an investor over the economic rights of a footballer, in order to circumvent bans on TPO, as well as to avoid taxes.⁸

The regulation of TPO in South America varies from country to country. Some football associations, such as those of Chile,⁹ Colombia¹⁰ and Uruguay,¹¹ have a strict ban, according to national law (Colombia and Uruguay) and federation’s internal regulations (Chile). Brazil bans the influence but not the practice – that is, a third party cannot be punished for acquiring the economic rights of a player, as long as the investor is not granted the right to decide on the player’s transfer – in line with article 18 bis of the *Regulations on the Status and Transfers of Players* of the Fédération Internationale de Football Association (FIFA).¹² In Paraguay and Peru, there is no regulation of TPO.

Impact and implications of TPO on clubs and players in South America

Although the direct impact of third-party ownership on players in South America is a foremost concern, the impact on the clubs affects the players as well, and as such, both are considered below.

TPO in South America is carried out mainly through players’ agents. The phenomenon can be described as follows: “The Clubs, because of the need to survive, resort to agents and offer them the

rights on the players who are still in formative divisions (juveniles). The Agents, taking advantage of the extreme necessity of the teams, acquire the rights on the players at very low prices in comparison to the final price in the international market.”¹³ The other form of TPO is when clubs want to acquire players who they cannot afford, and rely on TPO to pay for their transfer fee.

From this financial perspective, the flourishing of TPO has provided clubs in need with a certain cash flow, which might seem positive, given the clubs’ debts and financial obligations. In the long term, however, it has proved to be financially unhealthy,¹⁴ since clubs enter into a never-ending cycle of debt: they borrow money to acquire a player and then receive a much lower proportion of the ultimate transfer fee, which is insufficient to replace the player; and, additionally, they owe ‘favours’ to the investors. Therefore, after all the years of training and educating a player, when the moment of the transfer arrives, the amount they receive is minimal. Solidarity contributions¹⁵ – an important source of income for South American clubs – are also reduced as a result of TPO, as they are calculated after the transfer amount owned by the third party involved has been deducted.¹⁶

Moreover, South American clubs often acquire players they could normally not afford, using mechanisms of TPO. This ends up with clubs being unable to pay the promised salaries to the players, creating contract instability, and frustrating players, which can ultimately affect their performance. Contract stability for players is also affected since investors continuously incentivise trade, regardless of the contract terms,¹⁷ because it is when the player is transferred that the investors receive their percentage. As an example, this is what Sporting Lisbon claims happened during Marcos Rojo’s transfer to Manchester United in the summer transfer window of 2014.¹⁸

Most young players in South America are subject to TPO, with the level reaching almost 90 per cent in Brazil.¹⁹ This affects the career development of the players,²⁰ who are seen merely as assets and are transferred at the first opportunity that seems profitable, without considering their age and

experience. Inevitably, this raises social and sporting concerns. Players are often pressured by third-party owners to agree to transfer to the club that would be most profitable for the investor.²¹

Generally speaking, players from South America are not as well educated as their European counterparts and come from more vulnerable environments, which makes them easier to persuade and control.

The independence of the player, the player's freedom of movement and the integrity of the game are all at stake. There is also a risk of conflicts of interest, as third parties might own various players at different clubs, which could damage the integrity of competitions.

The cases of Uruguay and Chile

Uruguay

The situation in Uruguay, historically a large exporter of high-quality footballers,²² is quite peculiar. There are 31 clubs in the first and second professional divisions,²³ most of them located in the capital city of Montevideo, which has 1.5 million inhabitants. The disproportionate number of clubs to potential supporters makes most clubs economically vulnerable. This has opened the door to TPO, which has expanded hugely in recent decades. The occurrence of TPO is common knowledge but difficult to prove, since, as it is prohibited, it is not registered, so there are no formal figures.

In Uruguay, TPO is most commonly performed by agents who simultaneously act as intermediaries and investors, since they acquire a percentage in the future transfer of the player. As a result, there is usually a close relationship between the player and the investor, since in these cases the investor is the player's agent. This gives the agent an even stronger influence on the player's decision.

Uruguay passed a law prohibiting TPO in 1980,²⁴ though it has never been properly enforced. The president of the Asociación Uruguaya de Fútbol (AUF) has stated that the organisation enforces the law by prohibiting the registry of any contracts involving TPO. On the other hand, he acknowledges that it would appear that it does exist in practice.²⁵

Chile

Unlike their counterparts in Uruguay, Chilean clubs enjoy a relative healthy economic situation. Broadcasting rights²⁶ and clubs' revised legal structures²⁷ have substantially increased their income, allowing them to support much of their costs. Even so, rising operating costs, in particular transfer fees and salaries,²⁸ impact most clubs' budgets, forcing many of them to seek 'non-conventional' funding. This is how, in spite of the prohibition set by the Football Federation of Chile, agents finance the formation of young footballers, in exchange for a percentage of the price paid in their future transfer. To a lesser extent, clubes puente have been used, albeit as a way to reduce tax obligations.²⁹

Impact of the new FIFA prohibition of TPO

In South America there is a popular saying, 'Hecha la ley, hecha la trampa', which means that, when a law is created, a way to circumvent it is created as well. There is much truth in the saying so, in practice, and regrettably, clubs will probably find ways to circumvent the new rule.

If this turns out not to be the case, however, and the rule is effectively enforced by the football associations, it will have a major impact on South American football. Third-party ownership is so widespread, and clubs' financial and competitive dependence on TPO is so deep-rooted, that it becomes difficult to see how it can disappear in the short term. It is an issue not just of finance and competition but of culture as well. If the prohibition is put into effect, in the short term it could

actually bankrupt some clubs, taking into account that there are clubs that really have very little in the way of fans and economic support, and carry on only as a result of TPO. They are always late paying their players' salaries, and do not so much 'thrive' as 'survive'.

In any event the termination of TPO will be positive for South American football, allowing clubs finally to be able to receive the whole amount of the transfer fees, and to decide, together with players, when and to which club a transfer is appropriate. The great talent of South American players will not disappear with the prohibition and, in fact, the ban will probably lead to stronger clubs that can keep their players longer by enhancing their contractual stability and giving them better development prospects. As the best-performing clubs are those with stable teams,³⁰ an effective TPO ban could improve quality of the national and regional championships in South America, as well as the labour conditions of the players.

Notes

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² United Nations Economic Commission for Latin America and the Caribbean, 'Síntesis y Conclusiones', www.cepal.org/publicaciones/xml/2/4262/sintesis.htm.

³ Stephan Zivec, 'Freedom of Movement for Workers: Impact on Transfers of EU Football Players: The Bosman Case', 2013, www.academia.edu/4221444/Freedom_of_Movement_for_Workers_-_Bosman_Case.

⁴ Ariel Reck, 'Third Party Player Ownership: Current Trends in South America and Europe', *EPFL Sports Law Bulletin*, no. 10 (2012).

⁵ KPMG Asesores, *Project TPO* (Madrid: KPMG Asesores, 2013), <http://www.ecaeurope.com/Research/External%20Studies%20and%20Reports/KPMG%20TPO%20Report.pdf>.

⁶ IUSport.com, '¿Qué tipo de operaciones realizan los fondos de inversión en el fútbol?', 3 August 2014, <http://iusport.com/not/2629/-que-tipo-de-operaciones-realizan-los-fondos-de-inversion-en-el-futbol>.

⁷ Eduardo Carlezzo, 'Investments in Economic Rights of Football Players: A Brazilian and International Overview', *EPFL Sports Law Bulletin*, no. 10 (2012); IUSport.com, 'FIFA versus fondos de inversión: ¿la estocada final?', 20 February 2015, <http://iusport.com/not/5273/fifa-versus-fondos-de-inversion-la-estocada-final>.

⁸ Fédération Internationale de Football Association, 'Clubes argentinos y uruguayo sancionados por "traspasos puente"', media release, 5 March 2014, <http://es.m.fifa.com/aboutfifa/news/newsid=2292728.html>.

⁹ Reglamento Asociación Nacional de Fútbol Profesional (Chile), article 152C

¹⁰ Ley 181 de 1995 (Colombia), article 32.

¹¹ Ley 14.996 (Uruguay), article 2.

¹² Ley 9.615 ('Ley Pelé'), article 27B:

¹³ Sala de Redacción [Newsroom] (Uruguay), 'El bajo precio de la necesidad', 28 November 2011, <http://sdr.liccom.edu.uy/2011/11/28/el-bajo-precio-de-la-necesidad>.

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- ¹⁴ Centre de droit et d'économie du sport (CDES), *Research on Third-Party Ownership of Players' Economic Rights (Part II)* (Limoges: CDES, 2014), p. 79.
- ¹⁵ Fédération Internationale de Football Association, *Regulations on the Status and Transfer of Players* (Zurich: FIFA, 2014), annex 5, article 1: 'If a professional moves during the course of a contract, 5% of any compensation...shall be deducted from the total amount of this compensation and distributed by the new club as a solidarity contribution to the clubs...between the season of his 12th and 23rd birthdays.'
- ¹⁶ CDES (2014), p. 72.
- ¹⁷ CDES (2014), p. 71.
- ¹⁸ BBC (UK), 'Manchester United: Sporting reveal Marcos Rojo sale "pressure"', 3 October 2014, www.bbc.com/sport/0/football/29474696.
- ¹⁹ KPMG Asesores (2013), p. 33.
- ²⁰ CDES (2014), p. 81.
- ²¹ Interview with professional players (names withheld) with author, 29 April 2015.
- ²² *El Observador* (Uruguay), 'Uruguay, el mayor exportador de futbolistas', 14 July 2011, <http://www.elobservador.com.uy/uruguay-el-mayor-exportador-de-futbolistas-r205478>.
- ²³ http://www.auf.org.uy/Portal/TOURNAMENT_URUGUAYAN/2.
- ²⁴ See footnote 9.
- ²⁵ Interview with Wilmar Valdez with author, 5 May 2015.
- ²⁶ Centro de Investigación Periodística (Chile), 'CDF: Cómo se reparte el "botín" máspreciado del fútbol', 12 November 2012, <http://ciperchile.cl/2012/11/12/cdf-como-se-reparte-el-botin-mas-precido-del-futbol>.
- ²⁷ Bolsa de Santiago, 'Oportunidades de Financiamiento en Bolsa', <http://www.bolsadesantiago.com/Biblioteca%20de%20Archivos/Emisores/Oportunidades%20de%20financiamiento.pdf>
- ²⁸ 24 Horas (Chile), 'Estos son los sueldos de los jugadores del fútbol chileno', 29 December 2014, www.24horas.cl/deportes/futbol-nacional/estos-son-los-sueldos-de-los-jugadores-del-futbol-chileno-1540279.
- ²⁹ Marca (Argentina), 'La AFA suspende a dos jugadores a petición del Fisco', 22 August 2012, http://www.marca.com/2012/08/22/futbol/futbol_internacional/argentina/1345657070.html.
- ³⁰ CDES (2014).