

# Analyzing Pre-Contracts Agreement in Professional Footballer Contracts in Saudi Arabia: Can Players Change Their Minds?

Ammar Alrefaei S.J.D<sup>1</sup>

<sup>1</sup> College of Business, King Abdulaziz University, Jeddah, Saudi Arabia

Correspondence: Ammar Alrefaei, College of Business, King Abdulaziz University, Jeddah, Saudi Arabia. E-mail: asalrefaei@kau.edu.sa

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## Abstract

FIFA's (The Fédération Internationale de Football Association) regulation and Saudi professional player's regulation allow footballers and their agents to start negotiating new deals with third parties in the last six months of the contracts. Some players and agents may use this period to initiate bidding wars between rival clubs by entering pre-contracts with an alleged possibility of terminating them at no cost. There is growing evidence of such practices in Saudi Arabia after revoking the salary cap rule in professional football contracts. This article analyses this issue through the lens of the existing legal treatment of pre-contracts by FIFA, CAS (Court of Arbitration for Sport), and applicable national laws (Swiss and English). Based on the findings, a series of propositions are made to introduce into the future regulations governing Saudi football leagues. The goal of such propositions is to avoid misapplication of pre-contracts, maintain contractual stability, encourage negotiations in good faith, and promote competitiveness without reducing contractual flexibility for players in the wake of salary cap cancellation.

**Keywords:** football professional contracts, sports law, Saudi professional players regulation, pre-contract agreements, contracts termination

## 1. Introduction

Contractual employment relationships play an important role professional football. For the clubs, they help secure presence of talented players, while for the players, they are the means to ensure appropriate compensation for their talent and effort. However, it is not uncommon for players and agents representing them to seek improvements of the contractual conditions, especially when the going contract is set to expire in an observable future. Sometimes, such conditions may be offered by another club that seeks to acquire the player in question. In the aftermath of the Bosman case (*Union Royale Belge des Sociétés de Football Ass'n ASBL v. Bosman*, 1995), players can now negotiate transfers to other clubs in the timeframe for up to six months prior to their going contract expiration. Some players take an opportunity to enter into what is known as 'pre-contract' agreements with the interested clubs.

Ideally for the new club, a pre-contract should ensure the player's commitment to join. However, what if the player wishes to change his/her mind and to remain with the current club or take an even better offer from another club? In Saudi Arabia, there are no clearly cut guidelines in this regard. The Saudi Arabia Professional Regulation on the Status and Transfer of Players (2021) addresses appropriate notification of the current club of the intended negotiations as well as the timeframe within which such negotiations could start. However, there are no provisions for the termination of pre-contracts. Arguably, this raises the level of uncertainty for all parties involved: the current and the intended clubs and the players. The situation is further exacerbated by the recent changes to Regulations, specifically Article 15 and 17 which eliminated salary caps and signing bonuses for the Saudi Pro League players. As such, there is no theoretical limit to what a club may offer in the pre-contract agreement to secure the desired player. This, in turn, raises concerns about possible skimming of talented players by richer clubs which would outbid their rivals.

The state of knowledge about pre-contractual agreements and their breaches in professional football continues expanding. Researchers have addressed such topics as contractual stability (Alzubaidi, 2021; de Dios Crespo Pérez, Monteneri, van Megen, & Limbert, 2011), finalization of contracts (Łukomski, 2020) and freedom of transfers for professional players (Pearson, 2015; Welch, 2016). However, in the context of Saudi Arabia, pre-contractual

agreements have only been considered in the context of business law (Alrdaan, 2021; Mattar, 2021). The lack of such studies in sports law leaves a major gap in knowledge. This paper addresses these issues by examining pre-contract agreements for professional football players in Saudi Arabia. It starts by describing the legal construct of pre-contract, their emergence and purpose in football. The gaps in the existing Saudi regulations with regards to pre-contracts are reviewed next. After that, pre-contract termination treatments by the FIFA and CAS are discussed. Other national football associations' approaches to pre-contracts and their termination are discussed next. The paper concludes with the propositions of changes to the Saudi regulations regarding professional football player transfers.

## 2. Method

This study applies the legal analysis methodology to address the research question. Legal analysis is the process of examining legal texts, such as statutes, regulations, case law, and other legal documents, in order to understand their meaning and implications (Cahillane & Schweppe, 2016). Legal analysis involves identifying and interpreting legal rules, principles, and concepts, as well as assessing how they apply to specific cases or situations. The research framework for contractual agreements in football encompasses: 1) the existing regulations of The Fédération Internationale de Football Association (FIFA); 2) the existing regulations of the regional and national football associations; 3) the decisions by the Court of Arbitration of Sport (CAS); 4) the decisions by the FIFA Dispute Resolution Chamber (DRC); and 5) the relevant national laws and regulations. By analyzing these documents in-depth, this study seeks to uncover the best practices that could be implemented by the SAFF to improve pre-contract management in Saudi professional football.

## 3. Pre-Contracts in Football

In professional football, a pre-contract can be referred to an agreement between a player and a club for the player's transfer to the club upon expiration of the player's contract with the current club. As such, they are a part of laws governing transfers. FIFA opened the door for pre-contracts with the Regulations governing the Status and Transfer of Football Players, issued in 1991 and amended in 1993. Prior to this, transfers to new clubs were allowed only upon expiration or termination of the going contract with the current club (Kranz, 1998). The new Regulations provided that a player could "enter into a contract with a new club where the contract between him and his club has expired, has been rescinded or is to expire within six months" (Union Royale Belge des Sociétés de Football Ass'n ASBL v. Bosman, 1995, pp. I-5048) With this, a six-month window was established to negotiate possible transfers and make agreements with new clubs. This provision became especially important in the aftermath of the Bosman case decided by the European Court of Justice (ECJ) in 1995. Hundreds of players, including some world class names, have used pre-contracts to change clubs, often substantially increasing own compensation in the process. For example, in one of the major post-Bosman transfers, Steve McManaman's move from Liverpool to Real Madrid in 1999 made him instantly the highest paid British footballer at a time (Townsend, 2020). Likewise, Sol Campbell's transfer "on Bosman" from Tottenham to Arsenal in 2001 made him one of the best paid defenders in the world. In the absence of the transfer fee, Arsenal also offered him an additional annual sign-on fee worth about £2m for the contract duration (Brand, 2015). Other notable players signing pre-contracts to move to other clubs include Michael Ballack, Andrea Pirlo and Robert Lewandowski among others.

In *Bosman*, the Court struck down the transfer fee requirement for players out of contract and the 3+2 rule which required that first division teams in national competitions had to limit the number of foreign and "assimilated" players (foreigners who played for 5 consecutive years in a national league) to three and two respectively per match (Lembo, 2011). The case had some important consequences. On the one hand, it allowed players to move freely to a new club after the contract expiration; on the other hand, it lifted any restrictions on clubs in terms of foreign players. As such, the power has effectively moved from clubs to players. Being able to move without restrictions after their contracts' ending, footballers could initiate bidding wars among the interested clubs within the final months of their contractual obligations with current clubs. Pre-contracts in this situation may be seen as a means to bring certainty for the clubs bidding for talent (Barmpi, 2018). Specifically, a club may enter into a pre-contract with the desired player in an attempt to secure the transfer.

Surprisingly so, even the latest update of FIFA Regulations on the Status and Transfers of Players (RSTP) does not include or discuss the term "pre-contract." RSTP updated in March 2022 includes Article 18.3 which reiterates the original 1991 provision allowing players to enter into contracts with new clubs if the contract has expired or is due to expire within six months (Regulations on The Status and Transfer of Players, 2022). However, pre-contracts are not in any way distinguished as a separate legal construct. Arguably then, Section IV of the RSTP describing contractual relationships and contract termination on pages 19-23, applies to contracts rather than pre-contracts. Understanding the distinction between the two terms then becomes critical. The guidelines have been provided by

the Court of Arbitration for Sport (CAS), which handles football cases and which is authorized by FIFA “to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players’ agents” (FIFA Statutes, 2009, p. 40). CAS has recognized pre-contracts as a well-known legal construct (MKE Ankaragücü Spor Kulübü v. J, 2009). It has been defined as a “promise to contract,” something that “obligates the contracting parties to conclude another contract under the law of obligations, which is then called the main contract” (Beijing Renhe FC v. Marcin Robak, 2017, para. 82). Therefore, the main distinction between pre-contract and contract, as provided by CAS, is the presence of the essential elements of a contract. Indeed, in CAS 2008/A/1589 MKE Ankaragücü Spor Kulübü v. J., the Panel argued that if a pre-contract contained the essential elements of a final contract, then it would be considered as such (para. 9). In another case, the essential terms included in a pre-contract that made it a valid contract were outlined and included: i) a date, ii) the name of the parties, iii) the duration of the contract, iv) the amount of remuneration, and v) the signature of the parties (Stade Brestois 29 & John Jairo Culma v. Hapoel Kiryat Shmona FC & Fédération Internationale de Football Association (FIFA), 2015, para. 1). In TAS 2006/A/1082 & 1104 Real Valladolid CF SAD c. Diego Daniel Barreto Càceres & Club Cerro Porteño, the Panel decided that a pre-contract can be considered a valid contract if the pre-contracts contains the necessary conditions of the player’s work, including description of duties, duration of employment, and compensation (p. 29).

One element that creates a pre-contract is the presence of special conditions that are put forth as necessary to formation of a future full contract. Passing medical examinations have become a popular means for clubs to ensure that the players they are interested in are in good physical conditions. Both FIFA and CAS have recognized medical examinations as a distinctive element for pre-contracts only. According to RSTP Article 18.4, medical examinations cannot be used to justify a contract validity (Commentary on the FIFA Regulations for the Status and Transfer of Players, 2021, p. 191). The burden of examining players’ physical conditions is on the signing club, and all such examinations must be performed before the contract is signed. At the same time, the FIFA Dispute Resolution Center (DRC) acknowledged that passing medical examination was a valid condition under pre-contract. In case ref. no. 10111169, the Panel concluded that by signing a pre-contract which stated explicitly that an official contract will be signed upon passing medical check, the player “also accepted the condition of its provisory nature and of its possible, but not necessary, conversion into a permanent employment relationship” (2011, para. 4). CAS has followed the same logic by acknowledging that while medical examination cannot be used as a condition for contract, there was no reason “why a ‘precontract’ cannot be made subject to such condition” (Beijing Renhe FC v. Marcin Robak, 2017, para. 91). Therefore, both FIFA and CAS distinguished pre-contracts from contracts based on conditions such as passing medical checks.

Yet another element that could distinguish pre-contract from a valid contract is the title of the document. Indeed, it should be noted that while entering into negotiations, clubs and players use a variety of terms and, as a result, exchange documents of different titles. Some examples, besides “pre-contract,” include “a contract draft,” “a proposal,” “an invitation letter,” “a participation agreement,” and others (Łukomski, 2020). The courts have, in fact, recognized that the document title reflects parties’ intent. For example, inclusion of the word “draft” in the document title was deemed by CAS as an indication of “not a definite employment contract, but only a “pre-contract” (Beijing Renhe FC v. Marcin Robak, 2017, para. 79). However, FIFA seems to assign superiority to the elements included in such documents. For example, a document titled “promissory employment contract” was deemed a valid contract by the FIFA Dispute Resolution Center (DRC) case ref. no. 1061098 in presence of the essential elements of a contract (2006). It is, therefore, established that the contents of the document are more important than its title for interpretation as a contract. For this reason, CAS recommended that the parties entering pre-contract agreements considered the risks of being bound by valid contractual obligations (MKE Ankaragücü Spor Kulübü v. J, 2009, para. 13). To avoid such risks, CAS further recommended explicitly indicating that pre-contract is not a final contract or the definitive agreement.

To sum up, while pre-contract is not defined by FIFA, it has been established as a legal construct by CAS to describe a promise to sign a contract between a club and a player. Pre-contracts can be legally entered for up to six months prior to the player’s current contract. Pre-contracts may be deemed valid contracts with the corresponding obligations in presence of *essentialia negotii* – the essential terms which create a contract. In presence of these elements, a valid contract may be established regardless the document’s title indicating pre-contract or its equivalent. However, if the document explicitly mentions that it is not a final contract or if some additional conditions (such as passing a medical) must be met for it to become a valid contract, then it would be deemed pre-contract.

### 3.1 Pre-Contracts in Saudi Football

Professional football relationships in Saudi Arabia are governed by the Saudi Arabian Football Federation (SAFF).

It was established in 1956, and in 1972 it became a member of the Asian Football Confederation in Asia and Australia (AFC), one of the six football confederations under FIFA. As a member of the FIFA, SAFF is subject to the rules and regulations of its confederation and the FIFA. Accordingly, the disputes in Saudi professional football can be reviewed by CAS, whose decisions are obligatory. At the same time, SAFF is allowed to issue its own rules and regulations by those entities if they do not conflict with the corresponding FIFA regulations (FIFA Statutes, 2009). Theoretically, this provides an opportunity to introduce regulations governing pre-contracts. However, the Saudi Arabia Professional Regulation on the Status and Transfer of Players (2021), do not contain such provisions. Still, while not explicitly mentioned, pre-contracts are allowed within the SAFF regulatory framework. Two articles from the Saudi Regulations can be considered relevant for pre-contract agreements between players and clubs. Articles 24 and 34 repeat the language of FIFA RSTP Article 18.3 allowing players to freely change clubs upon contract expiration and to negotiate with and join other clubs within 6 months of their going contract expirations provided an interested club informs the current club in writing.

Pre-contracts in general are not covered by the Saudi Labor Law. Article 70 describes a work contract as “a contract concluded between an employer and a worker, whereby the latter undertakes to work under the management or supervision of the former for a wage” (Labor and Workmen Law, 2022). It has been common, however, for Saudi civil courts to treat pre-contracts as part of contracts. In similar manner, the courts usually consider job offers as binding for employers. Applied specifically to foreign employees, recent changes by the Saudi Arabian Ministry of Human Resources and Social Development have been directed at increasing the mobility of workers. Specifically, since 2021, foreign workers are free to switch employers upon their contract expiration (Regulatory Framework Governing Migrant Workers, 2022). As such, the existing applicable regulations of pre-contracts by SAFF do not contradict FIFA and the domestic civil law in allowing players to enter pre-contracts. Unlike the civil law, Saudi Arabia’s Sharia Laws do have a notion of pre-contracts, which in signed form are treated as regular contracts. Non-obligatory are promises exchanged before signing pre-contracts (Arabi, 1998). However, in governing football matters, FIFA Regulations take precedence in order to establish ‘equal treatment and consistency’ (Regulations on The Status and Transfer of Players, 2022, p. 146).

The role of pre-contracts in Saudi football rose sharply after the changes to Saudi Arabia Professional Regulation on the Status and Transfer of Players applied in 2021. The 2019 version included a monthly salary range between SAR10,800 and SAR150,000 (\$2,880-\$40,000) (Article 15) and limited sign up bonuses for players at SAR1,500,000 (\$400,000) divided equally in annual payments over the contract duration (Article 17). While the 2021 Regulations still include the minimal salary floor (Article 17), there is no maximum salary or sign up bonus (Saudi Arabia Professional Regulation on the Status and Transfer of Players, 2021). This meant that the richer clubs could attract or retain valuable players by offering increasingly higher compensation packages. Pre-contracts then could be used by players to initiate a bidding war between rival clubs for personal financial benefit. This scheme could work perfectly well if pre-contracts were not treated as binding agreements and allowed players to terminate them with minimal or no consequences after a better contract was offered. This is not always the case, however. A case in point is the recent ruling of the Saudi Sport Arbitration Center on Mohammed Kanno.

In 2017, Kanno, who is a professional footballer, joined Al Hilal, one of the strongest clubs in the Saudi Pro League. In January 2022, within the six months prior to his contract expiration with Al Hilal, Kanno signed a pre-contract with the Al Nassr club, an archrival of Al Hilal. Later on, however, Kanno changed his mind and extended his contract with Al Hilal upon receiving an even better offer, thereby effectively ending his agreement with Al Nassr. Al Nassr directed the case to the Saudi Dispute Resolution Center (SDRC) arguing that it had a valid, enforceable contract with Kanno which the latter breached. Kanno and Al Hilal, in turn, responded that he had a pre-contract with Al Nassr, not legally binding. SDRC sided with Al Nassr, making Al Hilal and Kanno liable. The club and the player were jointly fined an equivalent of \$7.2 million, Kanno was suspended for 4 months from all professional competitions, and Al Hilal was prohibited to register new players for two consecutive transfer periods (Garner, 2022). The decision was fully affirmed later by the Saudi Sports Arbitration Center. It is important to note that Kanno was offered a \$5.2 million signup bonus from Al Nassr, which was substantially higher than the \$400,000 sign up cap in the Regulations 2019 as discussed above.

The Kanno case has a number of important implications. Coming almost right after the cancellation of the salary caps it demonstrates a desire of some players (perhaps through advice of their agents) to substantially increase their contract value in view of the new, more favorable, regulations. Since players are not constrained in negotiations during the late stages of their contracts, pre-contract may be used as a way to demonstrate to potential bidders the standing rival offerings to beat. In essence, such practice is similar to creating an auction where clubs offer bids for a player. One can argue that in case of Kanno, the courts clearly demonstrated their intent to make parties in such cases negotiate in good faith (Beijing Renhe FC v. Marcin Robak, 2017, para. 8) and recognize pre-

contracts as valid contracts based on essential elements present (MKE Ankaragücü Spor Kulübü v. J, 2009). On the other hand, the case is probably a good example of a blatant abuse of pre-contract by a player since the contractual agreement was well defined, and even a sign-up bonus was paid. As it was discussed earlier, pre-contracts can still be regarded as such, and the distinction from binding contracts is rather nuanced. Therefore, whether professional footballers in Saudi Arabia could have room for changing their minds and terminate pre-contracts remains an open question. Since neither the SAFF nor FIFA offer clear guidelines for pre-contract creation and termination, it is worth looking into how CAS treated some relevant cases.

#### 4. CAS Treatment of Pre-Contract Termination by Players

CAS' authority to review and decide on cases concerning football player transfers is established within Articles 59-61 of the FIFA Statutes, which authorize CAS to review appeals to final decisions by FIFA, Confederations and National Associations and obligates all member confederations and leagues to comply with CAS decisions (FIFA Statutes, 2009). Besides applying FIFA regulations when considering cases, CAS can also rely on applicable Swiss law, which is established in Article 59(2) of the Statutes (2009). In fact, CAS has interpreted pre-contracts within the principles of latter which recognizes a preliminary contract as "a contract that obligates the contracting parties to conclude another contract under the law of obligations, which is then called the main contract" (Beijing Renhe FC v. Marcin Robak, 2017, para. 82). Importantly, within these principles, pre-contracts are treated as "legal acts" where a relationship of obligation between parties (in our case, a footballer and a club) is created. Clearly, this obligation becomes fulfilled when the main contract is signed. However, CAS showed its readiness to consider preliminary contract in football as "a contract in its own right" (Hakan Calhanoglu v. Trabzonspor FC & Fédération, 2017, para. 161). Consequently, under the law of obligations, parties entering pre-contracts are not "entirely free" to exclude themselves from further negotiations regarding the final contract, and they "should not abandon the negotiations without compelling reason for doing so" (Beijing Renhe FC v. Marcin Robak, 2017, para. 102).

Therefore, it could be implied that CAS does not take a light stance on pre-contracts and their termination without mutual agreement by parties. The main guiding principle for this seems to be that of contractual stability, which is espoused in Section IV of the FIFA RSTP 2022 to underline the importance of the contractual stability principle for all parties (Regulations on The Status and Transfer of Players, 2022). CAS, on a number of occasions, referred to this principle in its decisions on contract termination. For example, in FC Pyunik Yerevan v. E., AFC Rapid Bucuresti & FIFA (2008), the court argued that "*the ultimate rationale of this provision of the FIFA Regulations is to support and foster contractual stability*" (para. 26). Similarly, in M v. Chelsea Football Club (2005), affirmed that "*it is plain from the text of the FIFA Regulations that they are designed to further 'contractual stability'*" (para. 25). Within the principle of contractual stability, parties terminating contracts without "just cause" are subject to punishments. Curiously, "just cause" is not defined in the RSTP 2022. This is where Swiss Law will most likely be applied. Swiss Code of Obligations cites just cause for termination as when a "terminating party can in good faith not be expected to continue the employment relationship" (Federal Act on the Amendment of the Swiss Civil Code, 2023, Art. 337c) One such case is when the essential conditions are no longer existent, which was established in Beijing Renhe FC v. Marcin Robak (2017). This goes back to the earlier discussion of the importance of such elements in pre-contract agreements.

Specifically for the players, Article 17 of RSTP 2022 establishes fines and a 4 to 6 months suspension period prohibiting participation in official matches. The CAS Panel has made it clear that Article 17 is applicable to pre-contracts, although lower damages could be awarded to plaintiff clubs because "there is still a chance that no definite agreement will come about" (Beijing Renhe FC v. Marcin Robak, 2017, para. 109). If no provisions related to possible compensatory damages are included in a disputed pre-contract, CAS can use its own approach to calculate damages based on objective criteria. Such criteria could include, for example, estimates of transfer fee losses, costs of finding adequate replacement for the player or an opportunity loss (Club Adanaspor v. Mbilla Etame Serges Flavien, 2018). Once again, in absence of FIFA RSTP guidelines regarding compensation to clubs in cases of player's termination of contracts without just cause, CAS is often guided by the Swiss law, specifically article 337d par. 1, article 99, and article 42 of the Swiss Code of Obligations (2023), which awards damages based on player's salary, related losses due to contract termination, and related opportunity losses. A case in point is, for example, AJ Auxerre c. Philippe Mexès & AS Roma (2005), where the court directly stated so (para. 136). In general, this is in line with the principle of "positive interest" which aims to "setting the injured party to the original state it would have if no breach had occurred" (Beijing Renhe FC v. Marcin Robak, 2017, para. 116).

Furthermore, if CAS Panel finds a player in breach of a pre-contract without just cause, damages could also be imposed on a club which is involved in the breach. Joint liability is established in Article 17.2 of RSTP 2022. This principle, as was shown earlier, was applied in the Kanno case, since both the player and his club Al Hilal were to pay compensation to the Al Nassr which signed pre-contract with Kanno. Yet, there are some limitations to Article

17.2, according to CAS. Two recent joint cases reviewed by the Panel established that a new club cannot be held jointly liable if it had not induced the breach of pre-contract (*Darwin Zamir Andrade Marmolejo v. Club Deportivo La Equidad Seguros S.A. & Fédération Internationale de Football Association (FIFA)*, 2016; *Újpest 1885 FC v. FIFA*, 2016). Still, the court argued in these cases that the burden is on the club to demonstrate that it is not responsible for terminating the agreement if the player did that without just cause. However, even in the absence of the club's fault, it may find itself in a precarious position where it cannot use the player or does not manage to sign a fitting replacement. For example, in *Hakan Calhanoglu v. Trabzonspor FC & Fédération* (2017), the Panel did not find *Karlsruher SC* jointly liable for the breach of the pre-contract between Hakan Calhanoglu and Trabzonspor FC. Still, it was down a player when Calhanoglu was found guilty and suspended for four months. As such, breaching pre-contracts by players, if found binding, may also lead to unintended adverse consequences for the clubs.

As is seen, the CAS Panels have taken a strict approach to treatment of pre-contract termination by players. When considering such cases, CAS has established that the relevant to contract termination RSTP 2022 Articles (specifically, Article 17) apply to pre-contracts as well. While the amount of monetary damages awarded may be lower than in cases of contract termination, a lengthy suspension of the player from the official matches has been applied in full. Moreover, the principle of joint liability may also jeopardize the club that could be involved in the pre-contract termination. Those aspects are clearly traceable in the Kanno case considered above, where both the player and the club were punished. Therefore, both parties should be very careful in how pre-contracts are worded especially if the player still wants some room for further maneuvering.

For the sake of discussion, it should be noted, that a couple exceptions are present in this case. According to the FIFA DRC decision from 14 September 2018, ref. 09180832, if the player does not respond to an offer by a new club within a lengthy period, a contractual relationship should not be established. In the decision on that case, the court established that this is especially true if pre-contract contains specific time limit within which a response is expected from the player (para. 20). Another exception is player's counter-proposal, if it includes changes to the essential elements as was established by the court in the FIFA DRC decision from 25 October 2018, ref. 10180437 (para. 12). It is not clear, however, how players could use either to their benefit. A non-response may not create the desired level of visibility of an offer to initiate a bidding war, while a counter-proposal may eventually result in the club's acceptance and, as such, create a valid binding contract. This may work if the player decides to negotiate with one specific club only. In any case, it seems that CAS will keep abiding by the principle of negotiating in good faith. If it finds that there is a relationship between a player's action and the obvious harm inflicted on the club on the other side of pre-contract, the player's liability may be established.

### **5. Proposed Changes to Saudi Regulations**

According to FIFA Commentary on the FIFA Regulations for the Status and Transfer of Players (2021), "Contractual relations between players and clubs must be governed by a regulatory system that is tailored to the specific needs of football, strikes the right balance between their respective interests, and preserves the regularity of sporting competition" (p. 208). It is no secret, however, that contractual relations in football are sometimes subject to conflicting interests by players and clubs. This is especially true with regards to pre-contract agreements where each side would want to have a way out in case of new circumstances uncovered and new opportunities on the line. Since there is little certainty provided by SPPR regarding pre-contract agreements, SAFF, arguably does not create an effective regulatory system to manage professional football relationships in this particular area. Granted, all disputes arising from this could be directed to the sport arbitration bodies. However, given a very nuanced nature of pre-contract agreements' decisions by CAS, creating at least some basic guidelines could substantially reduce caseload and attempts of abusing such agreements.

The changes proposed below rely on the main principles arising from the discussion of the FIFA's and CAS' stances on contractual agreements in football, transfer policies, and pre-contracts specifically. First, any regulations of such kind should follow the principle of contractual stability established in RSTP 2022, Annex 2 with according respect to Saudi national laws governing contracts and labor relations. Second, even though SAFF is entitled to create its own regulations to govern the domestic league, such regulations should not conflict with the existing FIFA regulations which is clearly established in FIFA Statutes (2009). Likewise, the changes should take into account the relevant CAS caselaw considered above. Third, the regulations should promote competitiveness in football given its specific sporting nature on the one hand and a dynamic market nature on the other. These principles are outlined in RSTP 2022 (Article 5.5) and by the CAS Panel in *FC Pyunik Yerevan v. E., AFC Rapid Bucuresti & FIFA* (2008, para. 88(vii(d))). Finally, the proposed changes are placed within the current realities of the Saudi domestic market for professional football players after the restrictions on salaries and sign up bonuses were lifted.

The first proposition is to recognize pre-contracts in Saudi Football Regulations. De facto, pre-contracts have already been a reality in global football in the post-Bosman era. In Saudi Arabia, recognition of pre-contracts as a legal construct could bring clarity in the relationships between footballers and clubs. Parallel negotiations with clubs in which players can engage should not be considered as something unacceptable. In fact, CAS has recognized such negotiations as normal despite the existing differences in cultures. In *Damián Alejandro Manso v. Al Ittihad Club* (2015), the court decided that “it is to be considered quite normal that—lacking any particular reasons or contractual limitations—in the employment market, an employee evaluates more than one possible job offer at the same time” (para. 70). This arises from the principle of freedom of employment. What needs to be ensured, however, that pre-contracts are not made into instruments of acting in bad faith by players (de Dios Crespo Pérez, Monteneri, van Meegen, & Limbert, 2011). For this purpose, a legal definition of pre-contract and the scope of its applications should be outlined. A good basis for the definition could be taken from the Swiss law and reiterated in *Beijing Renhe FC v. Marcin Robak* (2017) which defined pre-contract as a promise between a footballer (individually or through an agent) and a club to conclude another contract under the law of obligations. Importantly for the Saudi context, these definitions do not contradict the Shari’a Law view on pre-contracts.

Additionally, a separate article should be created to differentiate pre-contracts from valid contracts and define the major cases when the former becomes the latter with all binding conditions applicable. Specifically, a pre-contract can be distinguished on the basis of conditions (such as, for example, a mandatory medical check) that must be satisfied prior to turning it into a binding valid contract. One of such conditions should be the presence of *essential negotii* of a typical contract present in SAFF contract template. Establishing these distinctive elements of pre-contract will be beneficial for all parties involved as they will have strong understanding whether a pre-contract agreement in question could be regarded as a contract for the purpose of law. With this understanding, the parties will be aware of the consequences for terminating such agreements. Similarly, a point should be added that in presence of explicit wording that the offering is not a definitive or final contract, it should not be regarded as binding.

Finally, changes to regulations should adhere to the principle of competitiveness. One key observation that follows from the Kanno case is that the clubs bidding for the player are the major competitors in the Saudi top football league. Setting aside the legal implications of the case, such situations may effectively lead to situations where rival clubs could “poach” valuable players from competition and even field them against it. From this perspective, an exemplary regulation exists in the English Premier League, where players can only enter pre-contracts with English clubs one month prior to the going contract expiration (The FA Book: Rules of the Association, 2023). In effect, this regulation means that pre-contracts can be made at the end of season thereby prohibiting players from playing against the possible future clubs. While it is expected that players exercise due professionalism while representing current clubs, such regulations offer additional safeguards to avoid possible conflicts of interest. A shorter timespan for pre-contract agreements is possible because it covers the English domestic league, and the “six months” rule established by the RSTP 2022 can be amended by National Football Associations for as long as it applies in domestic competitions only. At present, Saudi Regulations still allow a six-month negotiation window. Arguably, preventing players from playing against their potential new clubs in the going season could be a more sensible approach which promotes competitiveness in Saudi football.

## 6. Conclusions and Expected Effects

This paper sought to critically analyze the concept and applications of pre-contracts as applied to professional football contracts. The goal of the study paper was to propose changes to the regulations by Saudi Arabia Football Federation which could reduce uncertainty governing pre-contract agreements. The issue became especially important in the wake of revoking salary and sign up bonuses for professionals in the Saudi football leagues. Specifically, legal evidence, such as the case of *al Nassr FC v Mohammad Kanno and Al Hilal FC*, points out to a potential tendency of players in Saudi Arabia to use pre-contracts as an element of bidding wars between rival clubs. While there is nothing wrong with players’ attempts to improve own compensation and consider various career propositions, any negotiations should still be carried in good faith. For this reason, there have to be clear guidelines to the limits of pre-contract use and, possibly, abuse.

The change propositions presented in this paper relied upon the analysis of the existing FIFA regulations, CAS decisions, and relevant national laws and regulations (Swiss law and English Football Association specifically). The key point arising from the review is that pre-contracts should be clearly distinguished from legally binding contracts. Likewise, there has to be understanding when and how the former becomes the latter. None of this is currently present in SRPP. After careful consideration of the existing body of laws related to pre-contracts in football, the following changes are made:

- Introduce a legal construct of pre-contract as a preliminary agreement to enter a valid contract later in time;
- The pre-contract construct should be defined on the basis of contents rather than title;
  - Pre-contract can have specific conditions only upon completion of which it becomes binding;
  - Pre-contract is not binding unless it contains a set of essential elements (such as those present in the SAFF contract template);
  - Pre-contract should be regarded as such based on an explicit statement indicating its non-binding, preliminary nature;
- The timeframe for pre-contracts applied for domestic Saudi leagues should be reduced from six months to a shorter period in order to avoid player's conflict of interest and prevent poaching of players from rival clubs during the going season.

The proposed changes fall in line with the principles of contractual stability, freedom of employment, negotiations in good faith, and maintaining competitiveness in football. There seems to be no conflict of the changes to the existing FIFA regulations or CAS case law. The changes also serve to protect the interests of both players and clubs by: 1) ensuring that players maintain flexibility of employment; 2) ensuring that healthy competition for talent is maintained in the modern football transfer market; and 3) ensuring that pre-contracts are not abused by parties and acting in good faith is promoted. If the parties have clear understanding of the nature of pre-contracts and the limits of its application, there is much lower chance that the purpose of pre-contract is misunderstood, misrepresented or misapplied. This is especially true when there is no cap on player salaries and sign-up bonuses.

## 7. Study Limits

This study, while being comprehensive in terms of conducted research and analysis, still has some limitations through which the results should be considered. First, within the legal analysis framework, this study predominantly consulted the existing legal documents covering football contracts and pre-contracts. Legal documents, especially statutes and regulations, can be complex and difficult to interpret. The language used in legal documents may be ambiguous or open to different interpretations, which can make it challenging to determine their precise meaning. Second, it is important to note that certain legal matters are context-dependent. As such, the meaning of legal documents can depend heavily on the context in which they are being applied. The same legal text can have different meanings in different contexts, which can make it difficult to apply legal principles consistently. While this study did not find much contradictions of the pre-contract treatments between Saudi and other football associations (such as English), a more thorough analysis may reveal them. Legal documents may not contain all the information needed to fully understand their meaning or implications, and examination of such matters as sports legislative history or judicial precedent may be required. Perhaps, this opens a room for a good comparative analysis of pre-contract treatments and the possibility of applying the same legal principles across national borders and jurisdictions.

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