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New ownership and 'home grown' Premier League rules

Following a Department for Culture, Media and Sport consultation on sport's relationship with money, the Football Association Premier League (FAPL) passed new regulations governing club ownership and 'home grown' players. Daniel Geey and Joe Ward, both in the Sports Group at Field Fisher Waterhouse LLP, examine how the fit and proper persons test has been expanded and the new requirements on Directors and Owners, the sanctions available to FAPL, and the new 'home grown' players rule.

Background

Last October, Andy Burnham, in his role as the government minister for the Department for Culture, Media and Sport, (DCMS) had pressed sporting associations - including the Premier League (PL), Football League (FL) and the Football Association (FA) - to "reassess its relationship with money"¹. The DCMS questions included issues relating to debt and club ownership, insolvency, the fit and proper person test (FPPT), competitive balance and the strengthening of the national team². One of the consequences of Mr Burnham's review has been the strengthening of a variety of PL rules.

This article will seek to describe some of the most significant rule changes, which will be in place for the 2009/10 season. The new rules in place relate to mechanisms aimed at strengthening the PL's FPPT and injecting greater transparency into the ownership structures of each PL club. This article finishes with a small section on the recent PL announcement that it is adopting a home grown rule to be in place in time for the 2010/11 season.

Strengthening of the FPPT

The FPPT test was introduced by the PL in August 2004. It was deemed appropriate that individuals who - for example - had been found guilty of certain offences or had been involved with insolvent companies should not be able to run a PL club. The test is primarily governed by Rule D2 and D25, along with PL Form 2A that ensures that any Director or person deemed to have control³ of a PL club, has to declare that he:

- has no involvement in the day to day running of another PL or FL club (PL Rule D.2.1);
- does not have a shareholding over 9.9% in a PL club whilst owning any shares in another PL club (PL Rule D.2.2);
- is not disqualified from being a Director (PL Rule D.2.3);
- has not served more than twelve months in prison, and has not been convicted of a dishonesty offence, regardless of whether they were sent to prison (PL Rule D.2.4.1-2⁴);
- has not committed one of a list of offences⁵ which include - for example - 'dishonestly receiving a programme broadcast from within the UK with intent to avoid payment' or ticket touting (PL Rule D.2.4.3);
- has not entered into one of a number of bankruptcy arrangements⁶ (PL Rule D.2.5);
- whilst controlling⁷ or being a Director of a PL club, has not been involved in two separate events of insolvency⁸ involving the same club (PL Rule D.2.6);
- has not, whilst controlling⁹ or being a Director of two or more football clubs, suffered an event of insolvency at each club (PL Rule D.2.7); and
- is not prohibited from entering the United Kingdom (PL Rule D.25).

Bullet points four, five and nine on the above list are the new

additions to the FPPT for the 2009/10 season. PL Rule D2.4 has expanded the prohibited offences (bullet points four and five above). PL chief executive Richard Scudamore has been quoted as saying "it used to be a list of specific offences. Now it is anything where you have a sentence of more than a year"¹⁰.

Sanctions

If the PL Board becomes aware - either through information provided in a declaration or by any other means - that any of the Rule D2 provisions have been breached, then the PL Board must give written notice to the person in breach, informing them of the reasons why they are in breach and requiring their resignation. The PL Board must also give written notice to the club informing the club that the person is disqualified and that in default of that person's resignation, the club should remove that person from office. Where the person fails to resign and the club fails to procure his removal, the PL Board can suspend the club. Once the person in breach has resigned, the PL Board can withdraw the suspension. The PL Rules make provision for appeals, however until the appeal is upheld, the disqualification notice has full effect.

There is an interesting distinction between two conflicting provisions in the PL Rules. It concerns a disparity between what PL Rule D.2 states and the content of Form 2A. Form 2A is the declaration that anyone able to control, own or become a Director of a PL club has to sign to ensure compliance with PL Rule D.2. Form 2A makes anyone able to control, own or become a Director of a PL club declare, amongst other things, that 'since 19th August 2004 [I] have/have not* been convicted of an offence set out in Premier

League Rule D.2.4.’ Rule D.2.4 however makes no reference to August 2004. Form 2A only ensures anyone signing the declaration has not been convicted of an offence since 19 August 2004. In its present form, the FPPT only catches a person, who in the above example, has been convicted of an offence since 19 August 2004. A current PL club owner who has been convicted of murder in 2000 would pass the current PL FPPT. Should the PL want to be consistent in their drafting it would seem appropriate for the relevant dates to be inserted into PL Rule D.2.

As set out above, any person banned from entering the UK by the UK government will not be allowed to control, or be a Director of, a PL Club (PL Rule D25). Mr Scudamore was recently questioned on the application of the FPPT to the ex-Manchester City owner, Thaksin Shinawatra. Mr Scudamore believed that the FPPT did its job by forcing him to sell his shareholding in Manchester City to the Abu Dhabi group, because he realised that he would soon be in breach of the FPPT.

“Once his wife was convicted, our rules would define her as an associate of his and... that would have caught him...the fact he sold the club so quickly was because of the application of our rule. He knew that his wife and him were not going to comply [with the FPPT]. So in effect, the ‘Fit and Proper Persons’ test worked.¹¹⁷”

The requirement to notify any proposed takeover to the PL

Prior to the 2009/10 season, any prospective buyer was not under any obligation to seek prior approval from the PL. The previous PL Rules dictated that any Director or person deemed to have control¹² of a PL club had to sign PL Director’s Declaration Form

A current PL club owner who has been convicted of murder in 2000 would pass the current PL FPPT

2A. PL Form 2A was signed by each owner or Director before the start of each season, or when any change in a Director’s circumstances occurred. Form 2A ensures any Director or person deemed to have control¹³ of a PL club certifies that they fall in line with the FPPT rules.

As of the 2009/10 season, any prospective PL club buyer will now have to notify the PL in advance of any takeover to obtain the necessary clearance. As can be illustrated with the Portsmouth takeover, a more rigorous process of screening would-be owners and Directors now occurs prior to the takeover being completed. PL Rule D.5 sets out the timeframe for submitting PL Form 2A (ten working days before any person wishes to become a Director or have control of the PL club) and for receiving approval or rejection from the PL (within five working days of receipt of the form). Mr Scudamore has stated that “anyone looking to become an owner or Director of a club would have to let us know in advance and we would give them an answer at the time of the proposed takeover as to whether they can or can’t¹⁴⁹”.

Portsmouth case study

On 27 May 2009, Portsmouth owner Alexandre Gaydamak accepted a bid from businessman Sulaiman Al Fahim to buy the south coast club. In line with the new FPPT, the PL had to be satisfied that the Mr Al Fahim passed the FPPT stipulations as outlined in PL Rules (specifically in

sections D.2, D.25 and V.13-14).

On 21 July 2009, the PL confirmed that ‘Mr Al Fahim has submitted all the documentation required to satisfy our fit and proper persons test. Based on the information provided the League has found no reason why Mr Al Fahim would be liable to be disqualified as a Director of a Premier League club.¹⁵⁷’

On 26 August 2009, the formal takeover, worth £60 million, was completed¹⁶. Then, on 2 October, it was reported that the Portsmouth players had not been paid their September salaries¹⁷. Chief executive Peter Storrie hastily arranged a short term loan in order to bridge any salary shortfall. It was then announced on 6 October that Saudi businessman Ali Al Faraj, who had been the source of the short term loan, had bought 90% of Portsmouth with Mr Al Fahim retaining a 10% stake¹⁸. According to Mr Storrie, Mr Al Faraj had already passed the FPPT when Mr Al Faraj was originally competing with Mr Al Fahim to purchase the club over the summer. There was therefore no delay in the acquisition of Portsmouth as PL Rule D.5 had been satisfied.

It is therefore vital as part of any PL club takeover checklist to contact the PL at the earliest opportunity to ensure any would-be owner and/or Director passes the FPPT.

Transparency requirements

PL clubs, under Rule V.13 and V.14, will be required to publish

PL and UEFA Home-grown Rules

Total number of players allowed in each competition squad	25
Total number of players allowed in each match day squad	18
The minimum number of home-grown players selected in each competition squad	8
Number of players under the age of 21 permitted to be registered in the competition squad*	Unlimited

* Subject to certain UEFA home grown requirements.

the identity of all individuals and companies that own more than 9.9% in that PL club. The public register will also contain information about shareholdings, even if the company holding the shares is based abroad. Scudamore has stated that “the public should know and supporters should know who owns their football club¹⁹”.

The PL already has this information, but in the past this had been privately held.

Everton Football Club Chief Executive Robert Elstone confirmed to Field Fisher Waterhouse LLP that “in order to comply with the new Premier League regulations, Everton has launched a new page on its official website that will disclose the percentage shareholdings for each Director who owns more than 9.9% of the Club.²⁰”

New rules announced for the 2010/11 season

The PL recently announced that it will be implementing a home-grown player rule in time for the start of the 2010/11 season. The PL quota rule follows a very similar format to the UEFA rule that was implemented in time for the 2006/7 season. Each club will submit a squad of 25 players to the PL in August. Those players will then be eligible to compete in that season's PL competition. Changes to the list can only be made in the January transfer window. The squad of 25 players must contain eight home-grown players. Home grown players are to be defined by the PL as anyone registered with the English or Welsh Football Associations for three seasons or 36 months before a player's 21st birthday²¹. Players like Fabregas, Gerrard, Giggs and Terry will all qualify as home-grown players but the rule may leave some clubs, should they wish to fill their competition list, registering

academy players in order to fill the eight places set aside for home grown players. The alternative is that the eight places set aside for home grown players are not entirely filled. The new PL rules also permit an unlimited number of under 21 year old players to supplement each PL 25 man squad.

There is no restriction on how many home grown players are to be selected in any starting 11. Importantly, it would be possible for no home grown players to be in the match day squad of 18. Although the regulations only allow for 17 non-home-grown players in the 25-man competition squad, the regulations allow an unlimited number of under 21 players to supplement each club's competition squad of 25. Therefore it is entirely permissible that a PL team has 17 non-home grown players and one foreign born under 21 player in their match day squad.

Conclusion

The PL continues to bring new regulations into force. It is imperative that club administrators and their advisors alike are fully aware of the continually changing regulatory environment and the consequences for non-compliance. A more stringent FPPT lines up more regulatory hoops for would-be buyers to jump through. The home-grown player rule imposes restrictions on a club's squad size and composition. The reasons behind the new regulations are to closely regulate who can own a PL club and ensure a steady supply of young academy players for the first team.

With rafts of new football rules, from the new FA third party rights regulations to UEFA's now fully implemented home grown player rule, domestic, European and international FIFA rules impose significant burdens on a football

club's resources. Compliance administration for football clubs appears to be getting more onerous with every season.

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1. See http://news.bbc.co.uk/sport1/hi/front_page/7936129.stm
2. See <http://www.guardian.co.uk/football/2009/may/13/premier-league-proposals-david-conn>
3. As defined under the PL Rules, PL Rule D1.8.
4. Also relates to equivalent foreign court jurisdictions.
5. As set out in Appendix 12.
6. I.e. an Individual Voluntary Arrangement, an Interim Bankruptcy Restriction Order, a Bankruptcy Restriction Order or a Bankruptcy Order.
7. As defined by the PL rule D.1.8
8. As defined in PL Rule C.50
9. As defined by the PL rule D.1.8
10. <http://www.newcastleunited-mad.co.uk/news/loadnews.asp?cid=TMNW&id=447249>
11. <http://www.newcastleunited-mad.co.uk/news/loadnews.asp?cid=TMNW&id=447249>
12. As defined under the PL Rules PL Rule D1.8.
13. As defined under the PL Rules PL Rule D1.8.
14. http://news.bbc.co.uk/sport1/hi/football/eng_prem/8044776.stm
15. <http://www.telegraph.co.uk/sport/football/leagues/premierleague/portsmouth/5877228/Portsmouth-takeover-moves-step-closer.html>
16. <http://news.bbc.co.uk/sport1/hi/football/teams/p/portsmouth/8222718.stm>
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19. <http://www.telegraph.co.uk/sport/football/leagues/premierleague/5310005/Premier-League-acts-to-curb-excesses.html>
20. Quote taken with the permission of Everton Football Club after discussions with the authors of this article.
21. <http://www.premierleague.com/page/Headlines/0,,12306-1797582,00.html>



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