

## The Asian Football Confederation Entry Control Body – a new way to manage club eligibility decisions in football?

### Introduction

The concept of 'eligibility rules' is not new in international sports law. Famously, the IAAF recently declared all Russian athletes ineligible to compete after suspending the All Russian Athletics Federation in 2016 - a decision upheld at the CAS.<sup>1</sup>

In football, eligibility rules take on a number of guises – sporting, financial, ethical, medical, age – for a number of different purposes.

The Asian Football Confederation (**AFC**) recently introduced a judicial body, the Entry Control Body (**ECB**), specifically to decide upon the eligibility of clubs to enter AFC club competitions. It serves as an example for football associations that do not have any regulatory basis to exclude clubs from competitions for failing to meet certain eligibility requirements.

### The 'AC Milan' issue

Prior to the commencement of the 2006/7 European football season, UEFA faced a major integrity crisis. AC Milan, which originally finished the 2005/6 domestic season in 2<sup>nd</sup> place, was ultimately demoted to 3<sup>rd</sup> after having thirty (30) points deducted for its involvement in *Calciopoli*. This meant, however, that AC Milan still qualified via sporting merit to enter the 2006/2007 UEFA Champions League. After deliberating the matter, a UEFA Emergency Panel decided to admit AC Milan to the competition, citing an insufficient legal basis to exclude it. AC Milan famously went on to win that competition.

On 27 April 2007, UEFA introduced the famous 'integrity admission' article 50(3) in the UEFA Statutes. It subsequently introduced similar provisions into its competition and disciplinary regulations.

### UEFA eligibility decisions

Since that date, UEFA has successfully implemented its 'integrity admission process' and refused the entry of several clubs into its competitions on the basis that such clubs were '*directly or indirectly*



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<sup>1</sup> CAS 2016/O/4684 *The Russian Olympic Committee et al v. IAAF*



*involved...in any activity aimed at arranging or influencing the outcome of a match at national or international level*'. This 'eligibility decision' is made at first-instance by the UEFA Control, Ethics and Disciplinary Body.

Although it failed under its first challenge at the Court of Arbitration for Sport (**CAS**) in 2008 (the 'FC Porto case')<sup>2</sup>, the 'integrity admission process' has since been consistently upheld, and is recognised as a vital tool in both the fight against match manipulation and the protection of the reputation of UEFA competitions.<sup>3</sup>

Through the decisions of the UEFA Club Financial Control Body, UEFA also makes 'eligibility decisions' on the entry of clubs to its competitions vis-à-vis the application of the *UEFA Club Licensing and Financial Fair Play Regulations*. The CAS has also confirmed the decision to refuse entry to UEFA competitions by this body on several occasions.<sup>4</sup>

As such, when simplified - two (2) different UEFA judicial bodies, albeit with two (2) very different sets of expertise - are required to ultimately answer the same question of whether a club should be admitted or refused entry to UEFA competitions in a particular season.

### **'Déjà vu' – the case of Phnom Penh Crown**

In 2016, the AFC faced its own 'FC Porto' moment. Four (4) individuals affiliated to the the Cambodian champion, Phnom Penh Crown FC (**PPCFC**), were banned by the Football Federation of Cambodia Disciplinary Committee for various periods for involvement in match manipulation activities.

Relying on its own equivalent of article 50(3), the AFC excluded PPCFC from the upcoming AFC Cup 2017 (Playoff Qualifiers) on the basis of it being *'indirectly involved in activities aimed at arranging or influencing the results of matches at national level'*. PPCFC appealed the decision.

While the CAS agreed that indirect manipulation had occurred, it exercised its discretion to allow PPCFC to compete in AFC competitions. The CAS decision was essentially made two (2) pillars:

- (i) the AFC General Secretariat was not the appropriate body to make such a decision; and
- (ii) there was no regulatory framework underpinning the 'integrity admission' article, unlike the case of UEFA, and thus there was no concept of strict (or vicarious) liability that could be read into article 73.6 of the AFC Statutes.<sup>5</sup>

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<sup>2</sup> see CAS 2008/A/1583 & 1484 *Sporting Lisboa, Benfica and Vitoria v. UEFA & Porto*

<sup>3</sup> see CAS 2009/A/1920 *FK Pobeda v. UEFA*; CAS 2011/A/2528 *Olympiakos Volou FC v. UEFA*; CAS 2013/A/3256 *Fenerbahce v. UEFA*; CAS 2013/A/3258 *Besiktas JK v. UEFA*; CAS 2013/A/3297 *FC Metalist v. UEFA*; CAS 2013/A/3301 *FC Metalist v. UEFA*; CAS 2014/A/3628 *Eskespor v. UEFA*; CAS 2014/A/3625 *Sivasspor v. UEFA*; CAS 2016/A/4650 *KS Skenderbeu v. UEFA*.

<sup>4</sup> see for example: CAS 2013/A/3067 *Malaga CF SAD v. UEFA*; CAS 2013/A/3233 *PAS Giannina v. UEFA*; CAS 2014/A/3533 *Metallurg v. UEFA*; CAS 2014/A/3970 *Bursaspor Kulubu Dernegi v. UEFA*

<sup>5</sup> see CAS 2016/A/4642 *Phnom Penh Crown FC v. AFC*.



## The AFC response

The AFC response was swift. Within three (3) months, it established, appointed and ratified procedural rules for the ECB. After being initially established as an 'ad-hoc Committee', the subsequent 2017 AFC Congress codified it as an AFC judicial body within the AFC Statutes and elected its members.

The AFC similarly updated its regulatory framework to reflect the formation of the ECB. Furthermore, the '*Entry Manual for AFC club competitions 2017-2020*', which devises the mechanism for the number of slots each AFC Member Association receives in AFC club competitions, was amended to serve as the regulatory basis underpinning both the jurisdiction and decision-making power of the ECB.

## ECB jurisdiction and decisions

The ECB does not simply deal with 'integrity admission' decisions alone. It was deliberately granted a broad jurisdiction to capture all types of eligibility decisions relevant to AFC club competitions; to act as a 'one-stop shop' for such matters. As a result, the ECB has jurisdiction where:

- a club has been directly or indirectly involved in match manipulation ('integrity admission');
- there exists a violation of rules relating to control or influence ('cross-ownership');
- a Member Association has nominated the incorrect club to participate in a competition;
- a Member Association has incorrectly granted a licence to participate in a competition;
- a club submits an Extraordinary Application to participate in a competition.

The ECB was almost immediately called into action when the AFC had its own 'AC Milan' incident. The champions of the 2016 AFC Champions League, Jeonbuk Hyundai Motors (**Jeonbuk**), were in late 2016 sanctioned by the Korea Football Association and the K-League after the Busan District Court convicted one of its scouts for paying bribes to referees during the 2013 and 2014 K-League seasons. The referees were also found guilty by the court. The scout and the referees were subsequently sanctioned by the sporting authorities.

In January 2017, only weeks before the start of the 2017 AFC Champions League, and just one (1) month after its formation, the ECB was requested by the AFC to assess the eligibility of the Korean club to defend its title. In a landmark decision, the ECB held that Jeonbuk was ineligible to participate as it had failed to meet the sporting criteria, being found to have been indirectly involved in activities aimed at arranging or influencing the results of matches at national level.<sup>6</sup>

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<sup>6</sup> see: <http://www.the-afc.com/afc-champions-league-2017-media-releases/jeonbuk-hyundai-motors-ineligible-for-afc-champions-league>.



The CAS subsequently rejected a request for provisional measures by Jeonbuk, stating that the right of the AFC to protect the integrity and reputation of its competition outweighed any interest of Jeonbuk to participate in it.<sup>7</sup> Jeonbuk did not pursue a full appeal thereafter.

## Conclusion

The CAS has recognised that eligibility rules “*serve to facilitate the organisation of an event...and to ensure that the athlete meets the performance ability requirement for the type of competition in question*”.<sup>8</sup> This includes, *inter alia*, protecting the reputation and integrity of sporting events.

There are various types of eligibility rules applicable to the different types of sporting competitions (eg. sporting, licensing, financial, medical, age, ethical). As sport becomes increasingly commercialised and regulated, the types of eligibility rules will inevitably increase and require specialised expertise to both govern and enforce them.

The ECB, designed specifically for this purpose, provides an example to national football associations that have no regulatory basis beyond their club licensing decision-making bodies to manage such decisions. The benefits of creating a ‘one-stop shop’ – among them, the creation of specialised expertise, development of consistent jurisprudence, certainty for stakeholders – are significant. Following the lead of the AFC, a number of Asian football associations have taken formative steps to introduce a similar-type body at national level. Such governance improvements ultimately produce confidence in the fans and broadcaster that fund international sport. As Peter Ueberroth, former Commissioner of Baseball (MLB) famously stated: “*the integrity of the game is everything*”.

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<sup>7</sup> See: CAS 2017/A/4957 *Jeonbuk Hyundai Motors v. AFC, Order on Provisional Measures*.

<sup>8</sup> CAS 2011/O/2422 *United States Olympic Committee v. International Olympic Committee*

