FOOTBALL AGENT COMMISSION AUDIT CONCEPT

‘ACA10’ Concept Document

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Abstract

This document outlines the concept of the Agent Commission Audit (ACA10) for the provision of greater transparency and a means of monitoring Licensed Agent commissions (and activity) by FIFA (or an associated body).

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1. Introduction of the ACA10 Concept

This document outlines the concept of the Agent Commission Audit (**ACA10**) for the provision of greater transparency and a means of monitoring Licensed Agent commissions by FIFA (or an associated body) which meet certain criteria.

2. Aim of ACA10

The aim of proposing the concept is not only to avoid the contentious issue of the proposed 'cap' on agent fees (**commissions**) but also addressing the need to curb some of the excesses that exist in regards to the payment of agent commissions in football.

As such, ACA10 is designed to provide greater transparency in cases of the more excessive agent commissions, to help identify 'conflicts of interest' and potential cases of TPO and money laundering in football. Also allowing for a fluid, efficient and fair system to be maintained, THUS ALSO AVOIDING COSTLY LEGAL DISPUTES and a delay in the introduction by FIFA of much need new regulations and licensing for football agents, primarily caused by the problematic issue of a 'cap' and the subsequent disputes and legal challenges that will accompany such imposition of a 'cap' on legitimate agent fees and commissions.

3. Audit Criteria

The basic approach of ACA10 is that a compliance and financial audit or assessment is performed by FIFA's (and/or an assigned independent auditor or auditing body) clearing house team of a transaction of an international dimension whereby one or more of the following criteria are evident:

3.1. The agent commissions in the representation of the individual (player) exceeds 10% of the gross basic salary agreed to be paid to the individual during the term of the associated agreement.

3.2. The agent commissions in the representation of an engaging entity (club) exceeds 10% of the gross basic salary agreed to be paid to the individual during the term of the associated agreement.

3.3. The agent commissions in the representation of a releasing entity (club) exceeds either:

3.3.1. 10% of the gross basic transfer compensation, or

3.3.2. 10% of the individuals gross basic salary paid to the individual under their most recent contract with the releasing entity.

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3.4. The agent commissions in the representation of multiple parties (individual/player and engaging-club) to a transaction (under permitted 'duality'/dual-representation regulations) exceeds

3.4.1. *15% of the gross basic transfer compensation, or

3.4.2. 10% of the gross basic salary agreed to be paid to the individual agent during the term of the associated agreement.

**** NOTE :*** *The increased allowance under ACA10 audit criteria in the case of permitted dual-representation (duality) is made for any additional work that may be undertaken by the agent(s) for the multiple parties represented. It is also recommended that FIFA incorporate a table into the regulations (under the remuneration definition) which strictly categorises what items (salary, sign on fee etc) are part of gross basic salary and gross basic transfer compensation and what are not (legal fees, scouting etc).*

HOWEVER, it is recognised that in most cases of dual-representation (club and individual/player), 'duality' is used as a means of sharing the agent costs between the 2 parties in a successful transaction/transfer/agreement.

3.5. The cumulative agent commissions for the representation of all parties (by ALL agents) documented in a transaction either:

3.5.1. exceeds the equivalent of 30% of the gross basic salary agreed to be paid to the player/individual), or

3.5.2. exceeds the equivalent of 20% of the gross basic salary agreed to be paid to the player/individual, PLUS 10% of the gross basic transfer compensation

** For the avoidance of doubt, the agent commissions above are a cumulative amount of the criteria, and whether one agent represents one party or several, their commissions are accounted for as a cumulative/combined percentage*

e.g.

*(i) 2 agents representing one party and receiving commissions equivalent to 6% each (from the same client) shall be accounted for as a cumulative 12% and thus **SHALL** be audited under the scope of ACA10.*

*(ii) 2 agents representing one party and receiving commissions equivalent to 5% each (from the same client) shall be accounted for as a cumulative 10% and thus **NOT** be audited under the scope of ACA10.*

Subsequently this goes someway to negate the complication of 'connected agents' being involved in the same transactions as the measures for an audit under ACA10 will be triggered by cumulative agent commissions, whether agents are 'connected or not.'

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4. Transfers/Transactions of a National Dimension (Domestic)

The main responsibility for undertaking ACA10 in regards to transactions (transfers and agreements) of an international dimension shall be undertaken by FIFA (i.e. within TMS and 'Clearing House' mechanisms).

In the case of transactions of a domestic nature, the FIFA regulations should allow similar audits shall be undertaken by the National Association in the territory where the domestic transaction has taken place.

If for any reason a National Association is unable to undertake the relevant ACA10 related audit of the domestic transaction and the nature of the agent commissions involved, the National Association may approach their associated confederation or FIFA to undertake the associated audit on their behalf or appoint a FIFA recognised independent auditor.

5. Transaction Commission

The commissions from any transaction/transfer that is deemed to require a compliance audit or assessment under ACA10 shall be:

5.1. Released to the relevant agent(s) as defined in any relevant agreement/transactions forming part of the audit; for those amounts NOT defined under section 3 (i.e. not exceeding the defined criteria). AND/OR

5.2. Where possible are retained in the appropriate 'clearing system' for any amounts that exceed the characteristics, (defined under section 3) until such time that the audit is completed and accepted by all parties (8.1 & 8.2).

Any commissions retained in the applicable 'clearing system' for the period of the audit, shall be passed to the relevant agent(s) as per the original agreements, once all parties accept the audit findings (8.1, 8.2 & 8.3), this shall include;

5.3. the addition of any interest accrued during the time taken to conclude the audit (at a predefined rate)

5.4. the deduction for the cost of the audit, at a predefined fixed cost or agreed cost

…… but shall be subject to action in the event of regulatory breaches (section 7).

5.5. FIFA may at its sole discretion release commissions that are subject to an audit whereby the associated agent(s) conduct and commissions are deemed acceptable as party to the related transaction/transfer/agreement, EVEN THOUGH other parties conduct and/or commissions are subject to further auditing, regulatory breaches (7, 9.3.1, 9.3.2) or at the request or investigation by relevant authorities (9.3.3).

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6. Audit Costs

6.1. The costs of the audit shall be deducted (5.4) from any amounts that exceed those criteria identified (under Section 3).

6.2. The basic cost of any audit will be fixed at an appropriate amount annually by FIFA and with the agreement of relevant stakeholder representative bodies.

6.3. Those audits deemed to be of a more complex nature, shall be costed in advance of the audit being undertaken and costed on a 'sliding scale' appropriate to the agent(s) involvement and the commissions involvement (both as %, and financial sums) and appropriate fees for the audit agreed.

6.4. Any audit fees charged shall be used to undertake satisfactory auditing of the ACA10 transactions, and should any surplus funds remain these shall be passed to the appropriate solidarity mechanisms and/or football development funds.

6.5. FIFA's audit should be conducted pursuant to the International Auditing and Assurance Standards Board (IAASB) international standards for auditing. An audit lite standard (utilising just a few of the key IAASB standards) can also be employed by FIFA to expedite compliance audits or assessments.

7. Regulatory Breaches

In the case of any regulatory breaches that are either ongoing or discovered in the ACA10 audit process, the relevant football authorities are permitted to retain any sums held in an appropriate 'clearing' mechanism until such breach/dispute is resolved (but shall still be subject to the interest accrued and costs designated under 5.3 & 5.4).

8. Audit Result Publication

The results of the audit or assessment shall be issued in three stages:

8.1. Private Review by the applicable Licensed Agent(s) and Governing Bodies/Associations, to ensure findings of the audit are accurate to the understanding of the agents' undertakings and commissions.

8.2. Private Review by all parties to the transaction/transfer.
To ensure the findings of the audit are accurate for all parties involved in the applicable transaction (e.g., clubs, players, relevant national associations and confederations) as to the agents' undertakings and commissions.

8.3. A summary of the audit shall be published and made publicly available once the audit has been completed and no less than 30 days after the relevant parties have been informed of the audit findings (8.1 & 8.2).

The audit report may include such information as follows:

8.3.1. Agents (and agencies) involved in the transaction/transfer/agreement.

8.3.2. Identification of connected agents involved in the transaction / transfer / agreement.

8.3.3. Role of agents involved in the transaction/transfer/agreement. (e.g. party/client represented)

8.3.4. Type of transaction and commission or fee payable.

8.3.5. The '%' commissions to agents in the transaction BOTH individually and/or cumulatively as per Section 3

**note publication of these amounts as a commission percentage (not financial figure) is suggested as it may prove to be more acceptable to some parties and thus more feasible for introduction (i.e., more limited grounding for a legal objection/challenge)*

8.3.6. Appropriate concerns, comments and observation submitted by the relevant governing bodies, auditing body and any relevant stakeholders (within 10 days of 8.1)

8.3.7. Relevant concerns, comments and observation submitted by the applicable Licensed Agent(s) to the audit (within 10 days of 8.1)

8.3.8. Notes, observations and comments submitted by other relevant parties as per 8.2 (within 10 days of 8.2)

8.3.9. Any action taken or grounds of investigations undertaken or ongoing by FIFA, Federations or National Association in regards to the associated ACA10 audit. FIFA can provide appeal rights to parties through its FIFA chambers or new Agents tribunal.

9. Time Limits

9.1. The primary time limit on any audit being completed shall be that of the closure of the next transfer window after the transaction/transfer/agreement is completed in the territory where it was completed TO the closure of the following transfer window in the same territory. Of course, FIFA can endeavour to have a faster timeframe to finalise assessments and compliance audits.

9.2. Whereby regulatory breaches are identified and/or suspected (7) the relevant football authority actioning the audit (and/or FIFA) may determine that the time limit be extended for a period of no more than 6 months.

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9.3. The time limit for an ACA10 audit to be completed (8.1 & 8.2) shall not exceed this period unless:

9.3.1. charges are made for breaches of the football regulations (International and/or Domestic),

9.3.2. the audit identifies suspected criminal activity which is subsequently reported to the relevant authorities, or

9.3.3. a request is made by the relevant authorities (e.g. law enforcement or national tax agencies) on matters relating to the audit

10. Benefits of the ACA10 audit

In addition to the aims of the ACA10 concept being able to negate the issue of the proposed 'cap' which is seen to be problematic to implement and arguably illegal, the ACA10 concept presents additional benefits.

10.1 Increased transparency for agent activity & commissions

10.2 'Under the table' transactions less likely than with an enforced 'cap' (e.g., resulting data is more accurate)

10.3 Commissions viewed as excessive are audited

10.4 Open reporting of the larger '%' agent commissions

10.5 All parties to an audited transaction are more informed as to agent role(s)

10.6 Reduced unnecessary inspection by the football authorities of more acceptable agent commissions and practices. (i.e., can more closely scrutinise areas of perceived excess - i.e. >10%)

10.7 Ensure that agents are utilising acceptable representation agreements or sub-agent / tripartite representation agreements.

10.8 Encourage agents to avoid conflicts of interest

10.9 Ensure clubs are complying with their obligations as to fees payable under the FIFA Football Agent regulations

10.10 Encourage agents to fully undertake their fiduciary duty to the client

10.11 More reasonable (and accepted) agent commissions encouraged

10.12 Doesn't unfairly restrict agents' commissions (either below or above 10% etc)

10.13 Acceptable to larger proportion of agent community (i.e., lessen legal challenges) and subsequent obstruction

10.14 More accurate perspective of domestic agent commissions (not just international) and activity; both lawful and unlawful.

10.15 Proactive involvement of National Associations (and Federations) to monitor agent commissions and activity.

10.16 Used in combination with new FIFA clearing and new TMS mechanisms etc; the ACA10 concept should be easily incorporated with the data to be collected and scrutinised through the latest FIFA reforms and systems

10.17 Potential for additional revenue to funds such as the Solidarity mechanism and other football development reserves.

10.18 Readily identify new questionable agent/agency practices and introduce regulatory changes to address such practices

10.19 Readily identify new questionable transfer system practices and introduce regulatory changes to address such practices

11. Increased Transparency and Wider Scrutiny

The increased transparency provided for by ACA10 will also facilitate greater scrutiny from a broader group of football stakeholders, rather than the onus solely being on FIFA (primarily from a governance perspective) which neither exists under existing regulations or as a result of any proposed hard/fixed cap on agent commissions.

ACA10 will not only increase aspects of transparency in regards to agent related activity and payments, but will also result in a greater understanding of such activity, whether excessive or somewhat justified.

Yet most importantly, it will provide for information on agent activity being readily available and questions to be asked (of the relevant people and organisations) whereby perceived excesses are evident in relation to agent activity. This in turn will help to proactively deter practices that lead to excessive agent commissions and other questionable agent related activities, with potential facilitators being aware that such activities will receive increased scrutiny both at the time of auditing, and then post audit with the release of auditing reports.

This will not just be from the narrow perspective of the agent commissions paid/received, but also such aspects as patterns in suspect activity and potential ‘conflicts of interests’.

Such increased scrutiny may include (for example):

- Allowing club stakeholders and shareholders (including supporters/fans) to ask why a club may be sanctioning ‘excessive’ agent commissions.
- Allowing club owners and stakeholders to identify if club officials involved in agent activity may be sanctioning agent excesses or utilising ‘preferred’ agent relationships that may not always be in the best interests of the club.

- Allowing for FIFA and National Associations to identify patterns whereby there may be 'conflicts of interest' between agents and the likes of managers, coaches, and club officials in sanctioning potential excesses. Thus, resulting in possible breaches of the regulations in terms of 'shared interests', 'conflicts of interest' and TPO.
- Allow for increased transparency in agent related activity and payments both globally and nationally (domestic), whereby potential excesses are identified.
- Allow for clubs and club officials to justify perceived 'excesses' in regards to agent commissions, that ultimately benefit the club in the transfer market.
- Allow for external authorities to scrutinise agent activity for purposes beyond the scope of football regulations, e.g. tax regulation and law enforcement etc
- Allow for FIFA to be seen as transparent and encouraging transparency, whilst also being able to share the burden and onus in scrutinising the more excessive agent commissions and practices.

The notion of a concept such as ACA10 should bring little if any objection or resistance from those who seek to operate in a fair, transparent and reasonable manner within the transfer system. For those that look to facilitate, offer or receive excessive agent commissions then there will no doubt be objections whether agents, clubs, officials or other actors and facilitators, due to the increased scrutiny they will come under and questions they may have to answer.

12. The Future

It is the belief that the ACA10 concept for auditing those transactions that may be deemed to be excessive not only brings benefits and addresses current issues and problems in relation to the football agent industry, but it also presents opportunities that will benefit the future of football and develop the agent industry as a more acceptable member of the 'football family', rather than that of a rogue element of which some operate outside of regulation.

Whilst some may still argue that the implementation of a 'fixed' and 'hard cap' on agent commissions is the way forward, many of those with knowledge of the market/industry and the regulations should readily recognise the problems that such a cap will likely bring the implementation of a 'hard' cap as bringing less transparency, impact the business viability of small and medium agents, more 'under the table' dealings and potentially more unlicensed and unregulated agent/agency activity.

With FIFAs new, repeated and welcome message of 'solidarity & dialogue', the ACA10 concept encourages more openness and harmony in working together. Not hampering, concealing things and making life difficult, which will very likely be the result of any 'hard cap' on agents' commissions.

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But in making certain allowances (i.e., no hard cap, but audits of perceived excesses) in return for openness. ACA10 will help allow for a fluid, effective and fair transfer system to be maintained, and thus supporting FIFAs efforts with the reform and evolution of such elements as fairer Solidarity and Training Compensation mechanisms.

ACA10 will help in identifying the excessive and unfair practices that exist amongst a fraction of football agents and other 'actors', thus being able to more adequately address these practices with evolving proactive regulations, and where necessary meaningful sanctions that will benefit the broadest spectrum of legitimate stakeholders when it comes to Licensed Football Agent activity, and for the shared benefit of football and in the interests of all of the games stakeholders.

END