



REGULATIONS ON WORKING WITH INTERMEDIARIES

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PREAMBLE

These Regulations are made in accordance with the FIFA requirement that National Associations have regulations governing the engagement of services provided by Intermediaries and must be read in conjunction with the FIFA Regulations on Working with Intermediaries which came into force on 1 April 2015. In the event of a conflict between these Regulations and the FIFA Regulations on Working with Intermediaries, these Regulations shall apply.

It should be noted that new Regulations are to be considered as minimum standards in the activities between clubs, players and third parties and thus live up to the requirements of good governance and the principals of financial responsibility. It is essential to protect players and clubs from being involved in unethical and/or illegal practices and circumstances in the context of concluding employment contracts between players and clubs and of concluding transfer agreements.

The FAM Regulations on Working with Intermediaries come into force starting from 28th June 2016.

1. SCOPE

1.1

These provisions (“the Intermediary Regulations”) are aimed at affiliate associations of FAM and especially the special member, the Super League of Malawi (“the League”) where professional football in Malawi takes place and is directly regulated in relation to the engagement of the services of an intermediary by players and clubs to:-

- a) conclude an employment contract between a player and a club, or
- b) conclude a transfer agreement between two clubs.

1.2

FAM has jurisdiction over transactions involving Intermediaries, and affiliate associations and in particular the League, are required to and must implement and enforce at least these minimum standards/requirements in accordance with the duties assigned in these Intermediary Regulations, subject to the mandatory laws and any other mandatory national legislative norms applicable to the associations.

1.3

The right of FAM to go beyond these minimum standards/requirements is preserved.

1.4

These Intermediary Regulations and potential additional provisions going beyond these minimum standards/requirements implemented by FAM shall not affect the validity of the relevant employment contract and/or transfer agreement.

2. APPLICATION AND DEFINITIONS

2.1

In these Intermediary Regulations, any word defined in the FAM Statutes will have the meaning attributed to them in the FAM Statutes and, unless the context indicates otherwise,

- 2.1.1 **“Audit”** means an evaluation and verification of financial accounts, records, operations and performances (financial or otherwise);
- 2.1.2 **“Basic Gross Income”** means the total amount of money earned before taxes or other deductions are subtracted from the individual’s salary and excludes bonuses and any other perks.
- 2.1.3 **“CEO”** means the Chief Executive Officer of FAM, or his/her duly authorized delegate;
- 2.1.4 **“Club”** means any football club that plays the game of football in any country in a

competition sanctioned and recognized by the relevant National Association.

- 2.1.5 “Connected Intermediary”** means an Intermediary who is connected to another Intermediary as a result of:
- (i) them being employed or retained by, shareholder in or director or co-owner of the same Organisation or legal person registered as an Intermediary; or
 - (ii) being a representative of a legal person registered as an Intermediary; or
 - (iii) them being married to, sibling of, or parent, child or stepchild of the other Intermediary; or
 - (iv) them having made any contractual or other arrangement whether formal or informal to co-operate in the provision of any Intermediary Activity or to share the revenue or profits of any part of their Intermediary Activity.
- 2.1.6 “Due diligence”** means that players and clubs use reasonable endeavours to ensure that the Intermediaries sign the relevant Intermediary Declaration and the representation contract concluded between the parties;
- 2.1.7 “Intermediary”** means a natural or legal person who, for a fee or free of charge, represents players and/or clubs in negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer agreement.
- 2.1.8 “Intermediary Activity”** means acting in any way and at any time, either directly or indirectly, for on behalf of that Club. Similarly, a Lawyer is not acting as an Intermediary when he solely and exclusively undertakes or provides Permitted Legal Advice in relation to any matter relating to a Transaction.
- 2.1.9 “Lawyer”** means an individual who is duly authorized by the appropriate professional or regulatory body to act in the capacity of solicitor or barrister in Malawi, or the equivalent profession in a jurisdiction outside Malawi.
- 2.1.10 “Minor”** means a player who has not yet reached the age of 18;
- 2.1.11 “Obligatory Terms”** means the clauses set out in a Standard Representation Contract and marked bold (or bold and italics) therein, that parties are required under Regulation B2 to include unaltered in Representation Contracts.
- 2.1.12 “Player”** means any football player who plays the game of football in any country and is recognized as such by their National Association
- 2.1.13 “Registration”** means completion of the process defined from time to time by The Football Association of Malawi whereby a natural or legal person registers with FAM as an Intermediary.
- 2.1.14 “Representation Contract”** means any agreement between an Intermediary (on the one

hand) and a Player and/or Club (on the other), the purpose or effect of which is to cover the provision of Intermediary Activity. A Representation Contract must comply with the Obligatory Terms of the Standard Representation Contract.

- 2.1.15 “Solidarity Payment”** means any payment made pursuant to the requirements of the FIFA Regulations on the Status and Transfer of Players in relation to the Solidarity Mechanism as defined within those regulations or any successor or replacement thereof;
- 2.1.16 “Standard Representation Contract”** is a Representation Contract in the form prescribed by The Football Association of Malawi from time to time.
- 2.1.17 “Test of Good Character and Reputation for Intermediaries”** means such document as The Football Association of Malawi will publish from time to time and setting out the requirements an individual applying to be registered as an Intermediary or an existing Intermediary must meet in order to be deemed to have an impeccable reputation as required by paragraph 4.1 of the FIFA Regulations on Working with Intermediaries.
- 2.1.18 “Training Compensation Payment”** means any payment made pursuant to the requirements of the FIFA Regulations on the Status and Transfer of Players in relation to Training Compensation as defined within those regulations or any successor or replacement thereof.
- 2.1.19 “Transaction”** means any negotiation or other related activity, including any communication relating or preparatory to the same, the intention or effect of which is to create, terminate or vary the terms of a player’s contract of employment with a Club, to facilitate or effect the registration of a player with a Club, or the transfer of the registration of a player from a club to a club (whether on a temporary or permanent basis). A completed Transaction is one that has so achieved the creation, termination or variation of the terms of the player’s contract of employment with a Club, the registration of the player with a Club or the transfer of the registration from a club to a club.

3. GENERAL PRINCIPLES

3.1

Players and clubs are entitled to engage the services of intermediaries when concluding an employment contract and/or a transfer agreement.

3.2

A Player or Club must not use or pay any person for Intermediary Activity unless that person is registered as an Intermediary and is entitled to act under a valid Representation Contract. An Intermediary must not carry out any Intermediary Activity in the place of, or on behalf of, or as agent or representative of, any person other than the Player and/or the Club he is engaged to act for.

3.3

A Club, Player, Intermediary or other Participant must not so arrange matters as to conceal or misrepresent the reality and/or substance of any matters in relation to a Transaction.

3.4

The engagement of officials, (Executive Member, Referee and Assistant Referee, Coach, Trainer and any other person responsible for technical, medical and administrative matters in FAM), as intermediaries by players and clubs is prohibited.

3.5

A Club shall use reasonable endeavours to ensure that its Club Officials and Manager comply with the requirements of these Regulations.

3.6

An Intermediary, Club and Player must ensure that all relevant contracts and documents contain the name, signature and registration number of each and every Intermediary carrying out any Intermediary Activity in relation to a Transaction (whether directly or indirectly), as well as any other information as may be required by FAM from time to time. If a Player or Club has not used the services of an Intermediary at any time in a Transaction, this fact must be stated in all relevant documents in respect of such Transaction.

4. REGISTRATION OF INTERMEDIARIES

4.1

For the sake of transparency, each Member Association of FIFA, is required to implement a registration system for Intermediaries that has to be published in accordance with Article 7 below (Disclosure & Publication required by Clubs, Players, Member Associations & FAM).

4.2

The registration system for Intermediaries is publicized in accordance with Article 7 below (Disclosure & Publication required by Clubs, Players, Member Associations & FAM). Intermediaries must be registered in the relevant registration system every time they are individually involved in a specific transaction (cf. Articles 4.4 and 4.9 below).

4.3

Within the scope of the above-mentioned registration system, FAM, its member associations, and in particular the League, must require clubs and players who engage the services of an Intermediary to submit the Intermediary Declaration in accordance with Annexes A and B of these Intermediary Regulations. FAM, its member associations, or the League may request further information and/or documentation.

4.4

Following the conclusion of the relevant transaction, a player engaging the services of an Intermediary within the scope of Article 1.1 (a) above in the conclusion of **an employment contract**, must submit to the member association of the club (the League if a professional club):-

- i. the relevant Intermediary Declaration;
- ii. Any other documentation required by the member association (the League if applicable) or FAM such as certified proof of residence; certified copy of identification document;
- iii. Representation contract between the Player and Intermediary.

4.5

In case of renegotiation of an employment contract, a player engaging the services of an Intermediary must also provide the member association of his current club with the same documentation.

4.6

Following the conclusion of the relevant transaction, a club engaging the services of an Intermediary within the scope of Article 1.1 (b) above in conclusion of a **transfer agreement between two** clubs must submit to the member association of the club (the League if a professional club is involved):-

- i. the Intermediary Declaration;
- ii. Any other documentation required by the member association (the League if applicable or FAM such as certified proof of residence; certified copy of identification document;
- iv. Written agreement between Club and Intermediary for services rendered.

4.7

if the releasing club engaged the services of an Intermediary, that club shall also submit a copy of the Intermediary Declaration to its association.

4.8

The aforementioned notification by players and clubs must be made each time any activity within the scope of these Intermediary Regulations takes place.

4.9

The member association (the League if the transaction concerns professional football) must provide FAM with the copies of the documentation submitted to it including the relevant Intermediary Declaration.

5. REGISTRATION REQUIREMENTS

5.1

In addition to the information provided by the player or the club; FAM, the member association, or the League will be entitled to conduct investigations to establish if an Intermediary has an impeccable reputation.

5.2

If the Intermediary concerned is a legal person, the member association responsible for registering the transaction will be entitled to satisfy itself that the individuals representing the legal entity within the scope of the transaction in question have an impeccable reputation.

5.3

Member association (the League if the transaction concerns professional football) must also be satisfied that in carrying out their activities, the Intermediary contracted by a club and/or a player has no contractual relationship with leagues, associations, confederations, the League, FAM, or FIFA that could lead to a potential conflict of interest. Intermediaries are precluded from implying, directly or indirectly, that such a contractual relationship exists.

5.4

FAM and/or the League and/or member associations are considered to have complied with their obligations under sub-articles 5.1 to 5.3 above if they obtained a duly signed Intermediary Declaration as per annexes A or B of these Intermediary Regulations from the Intermediary concerned.

5.5

The representation contract that the Intermediary concludes with a player and/or a club (cf. Article 6 below) must be deposited with the member association concerned (the League if the transaction concerns professional football) when the registration of the Intermediary takes place.

5.6

The member association (including the League) must provide FAM with a copy of the representation contract submitted to it.

6. REPRESENTATION CONTRACT

6.1

Club and players shall specify in the relevant representation contract the nature of the legal relationship they have with their Intermediaries. For example, whether the Intermediary's activities constitute:-

- i. a service;
- ii. a consultancy within the scope of Article 1 (1);
- iii. a job placement; or
- iv. any other legal relationship.

6.2

The main points of the legal relationship entered into between a player and/or club and an Intermediary shall be recorded in writing prior to the Intermediary commencing his activities.

6.3

The representation contract must contain the following minimum details:-

- i. names of the parties;
- ii. scope of services;
- iii. 2 year duration of the legal relationship;
- iv. remuneration due to the Intermediary;
- v. general terms of payment;
- vi. date of conclusion.

7. DISCLOSURE AND PUBLICATION REQUIRED BY CLUBS, PLAYERS AND FAM

7.1

Players and/or clubs are required to disclose to FAM and the relevant member association (including the League) (cf. 4.2 – 4.4) the full details of any and all agreed remunerations or payments of whatsoever

nature that they have made or that are to be made to an Intermediary.

7.2

In addition, players and/or clubs shall, upon request, with the exception of the representation contract (disclosure of which is mandatory), disclose to the competent bodies of the member associations (including the League) FAM, CAF and FIFA, all contracts, agreements and records with Intermediaries in connection with activities in relation to these provisions, for the purpose of their investigations.

7.3

Players and/or clubs shall in particular reach agreements with their Intermediaries to ensure that there are no obstacles to the disclosure of the above-mentioned information and documents.

7.4

All above-mentioned contracts shall be attached to the transfer agreement or the employment contract, as the case may be, for the purpose of registration of the player.

7.5

Clubs or players shall ensure that any transfer agreement or employment contract concluded with the services of an Intermediary bears the name and signature of such Intermediary. In the event that a player and/or a club have not used the services of an Intermediary in their negotiations, the pertinent documentation lodged within the scope of the respective transaction shall contain a specific disclosure of this fact.

7.6

The member association including the League will make available to FAM sufficient information as necessary to enable FAM to make publicly available at the end of March of every calendar year on the official FAM website, the names of all Intermediaries they have registered as well as the single transactions in which they were involved.

7.7 FAM shall also publish the total amount of all remunerations or payments actually made to Intermediaries by their registered players and by each of their affiliated clubs. The figures to be published are the consolidated total figure for all players and the individual clubs' consolidated total figure.

7.8

FAM may also make available to their member associations (including the League), registered players and/or affiliated clubs any information relating to transactions that have been found to be breach of these provisions that is of relevance for the pertinent irregularities.

8. PAYMENTS TO INTERMEDIARIES

8.1

The amount of remuneration due to an Intermediary who has been engaged to act on a player's behalf shall be calculated on the basis of the player's basic gross income for the entire duration of the employment contract.

8.2

Clubs that engage the services of an Intermediary shall remunerate the Intermediary by payment of a lump sum agreed prior to the conclusion of the relevant transaction. If agreed, such a payment may be made in installments.

8.3

While taking into account the relevant national regulations and provisions of the national and international laws players and clubs are guided by the following benchmarks:

- a) The total amount of remuneration per transaction due to Intermediaries who have been engaged to act on a player's behalf shall be negotiated between the Player and the Intermediary for the entire duration of the relevant employment contract.
- b) In the event that no signed contract has been entered into between the parties a minimum amount of 3% of a Player's basic gross income shall apply. (This is considered the default in the event the player or club cannot reach an agreement on the commission percentage).
- c) The total amount payable by the Player to the Intermediary shall not exceed 10% of the value of the Player's contract.
- d) The total amount of remuneration per transaction due to Intermediaries who have been engaged to act on a player's behalf in order to conclude an employment contract with a player and a club shall be negotiated by the parties, is recommended at between 3% and 10% of the total value of the Player's basic gross income for the entire duration of the relevant employment contract.
- e) The total amount of remuneration per transaction due to Intermediaries, who have engaged to act on a club's behalf in order to conclude a transfer agreement shall be negotiated by the parties, is recommended at between 3% and 10% of the eventual transfer fee paid in connection with the relevant transfer of the player.

8.4

Clubs shall ensure that payments to be made by one club to another club in connection with a transfer, such as transfer compensation, training compensation or solidarity contributions, are not apid to Intermediaries and that the payment is not made by Intermediaries. This includes, but is not limited to, owning any interest in any transfer compensation or future transfer value of a player. The assignment of claims is also prohibited.

8.5

Subject to Article 8.6 and Article 9 (Conflict of Interest) below, any payment for the services of an Intermediary shall be made exclusively by the client of the Intermediary to the Intermediary.

8.6

After the conclusion of the relevant transaction and subject to the club's agreement, the player may give his written consent for the club to pay the Intermediary on his behalf. The payment made on behalf of the player shall be in accordance with the terms of payment agreed between the player and the Intermediary.

8.7

Officials, as defined in point 11 of the Definitions section of the FIFA Statutes, or those of FAM or member

associations, including the League, are prohibited from receiving any payment from an Intermediary of all or part of the fees paid to that Intermediary in a transaction. Any official who contravenes the above shall be subject to disciplinary sanctions.

8.8

Players and/or clubs that engage the services of an Intermediary when negotiating an employment contract and/or a transfer agreement are prohibited from making any payments to such Intermediary if the player concerned is a minor, as defined in point 11 of the definitions section of the Regulations on the Status and Transfer of Players.

8.9

It is recommended that the signing-on fees, loyalty fees, initiation fees, administration fee or any fee relating to image rights of a Player should form part of the Player's Basic Gross Income.

9. CONFLICT OF INTEREST

9.1

Prior to engaging the services of an Intermediary, players and/or clubs shall use reasonable endeavours to ensure that no conflict of interest exists or is likely to exist either for the players and/or clubs or for the Intermediaries.

9.2

No conflict of interest would be deemed to exist if the Intermediary discloses in writing any actual or potential conflict of interest he might have with one of the other parties involved in the matter, in relation to a transaction, representation contract or shared interests, and if he obtains the express written consent of all the other parties involved prior to the start of the relevant negotiations.

9.3

If a player and a club wish to engage the services of the same Intermediary within the scope of the same transaction under the conditions established in sub-article 9.2 above, the player and the club concerned will give their express written consent prior to the start of the relevant negotiations, and shall confirm in writing which party (player and/or club) will remunerate the Intermediary. The parties will inform FAm of any such agreement and accordingly submit all the aforementioned written documents within the registration process (cf. Articles 4 and 5 above).

10. RIGHTS AND DUTIES OF INTERMEDIARIES

10.1

Subject to 10.2 and 10.3 below, Intermediaries shall have the right to approach any player or club and to represent any player or club that requests him/her to negotiate and conclude a contract on their behalf.

10.2

An Intermediary may represent a player or club or manage their affairs only if s/he has a written contract with the player or club in question. Such contract shall have an initial period of no more than two years.

10.3

An Intermediary shall have the following duties:-

- 10.3.1** To comply with the statutes, rules and regulations of FAM, CAF and FIFA at all times.
- 10.3.2** To ensure that every transaction in which s/he represents the interests of a player or club conforms to the above mentioned statutes, rules and regulations.
- 10.3.3** Not to attempt to induce a player who is under contract with a club to breach his/her contract with the club.
- 10.3.4** Not to represent the interests of more than one party in any particular transfer
- 10.3.5** To comply with his/her common law fiduciary duties to his/her principal in every transaction in which s/he represents the interests of a player or club.

10.4

Any Intermediary who fails to comply with a duty contemplated by Article 10.3 commits misconduct and is liable to be sanctioned by means of the imposition of:-

- 10.4.1** a reprimand, censure or caution;
- 10.4.2** a fine;
- 10.4.3** an order that the Intermediary pay to an aggrieved party compensation.

10.5

The sanctions imposed in terms of Article 10.4 may be cumulative.

10.6

Any fine or compensation order imposed in terms of Article 10.4 shall have the status of a civil debt in favour of FAM or the party to be compensated as the case may be.

11. DUTIES OF PLAYERS IN RELATION TO INTERMEDIARIES

11.1

A player shall ensure that his/her Intermediaries' name and signature appears on any contract in respect of the negotiation or conclusion of which the Intermediary has represented the player.

11.2

Any player who fails to comply with a duty contemplated in these Regulations commits misconduct and is liable to be sanctioned by means of the imposition of:-

- 11.2.1** a reprimand, censure or caution;
- 11.2.2** a fine;

11.2.3 a disciplinary suspension of up to twelve (12) months;

11.2.4 any other sanction contemplated in the FAM disciplinary code.

11.3

The sanctions imposed in terms of Article 11.2 may be cumulative.

12. DUTIES OF CLUBS IN RESPECT OF INTERMEDIARIES

12.1

A club shall ensure that its Intermediaries' name and signature appears on any contract in respect of the negotiation or conclusion of which the Intermediary has represented the club.

12.2

Any club which pays another club compensation for a player's training or development shall be obliged to pay the full amount of compensation directly to the club in question and, notwithstanding any agreement or instruction to the contrary, shall not pay any part of the amount to an Intermediary.

12.3

All clubs and their staff and officials are responsible for familiarizing themselves with these Regulations and bringing these Regulations under the attention of the Players, its staff and officials.

12.4

Any club which fails to comply with a duty contemplated by Article 12.1 to 12.3 commits misconduct and is liable to be sanctioned by means of the imposition of:-

12.4.1 a reprimand, censure or caution;

12.4.2 suspension of all or part of its management bodies;

12.4.3 a fine of up to MK5,000, 000.00;

12.4.4 a prohibition from carrying out national and/or international transfers within a stated period;

12.4.5 a ban on participation in any national or international footballing activities within a stated period;

12.4.6 any other sanction contemplated in the FAM disciplinary code.

12.5

The sanctions imposed in terms of Article 12.4 may be cumulative.

13. SANCTIONS

13.1

Any party wishing to file a complaint against an Intermediary shall address it in writing to FAM.

13.2

FAM must investigate any complaint which is lodged:

13.2.1 not less than twelve months after the events that gave rise to the complaint, and

13.2.2 if the Intermediary concerned has terminated his activities, not less than six months after his/her licence was returned to, or cancelled by, FAM as the case may be.

13.3

FAM may, in its discretion, investigate any complaint which is lodged outside the time limits contemplated by Article 13.2

13.4

If, upon investigation of a complaint against an Intermediary, FAM concludes that there is a prima facie case that the Intermediary concerned has committed misconduct, it shall institute disciplinary proceedings in terms of these Intermediary Regulations and the FAM Disciplinary Code.

13.5

FAM is obliged to publish the results of such proceedings and to inform FIFA of any disciplinary sanctions taken against any Intermediary. The FIFA Disciplinary Committee will then decide on the extension of the sanction to have worldwide effect in accordance with the FIFA Disciplinary Code.

13.6

All sanctions or charges against clubs, intermediaries and players will be initiated by FAM.

14. ENFORCEMENT OF ASSOCIATION'S OBLIGATIONS

14.1

FAM shall monitor the proper implementation of the requirements set in these Intermediary Regulations and may take appropriate measures if the relevant principles are not complied with.

14.2

The FAM Disciplinary Committee shall be competent to deal with such matters in accordance with the FAM Disciplinary Code.

14.3

This Intermediary Regulation shall remain subject to the FIFA Regulations on Working with Intermediaries (or its successors) as amended from time to time.

15. TRANSITIONAL MEASURES

15.1

These provisions supersede the FAM Players' Agents Regulations in force prior to the promulgation of these Intermediary Regulations.

15.2

With the coming into force of these provisions, the previous licensing system shall be abandoned and all existing licences will lose validity with immediate effect.

16. OTHER SPECIFIC ACTS OF MISCONDUCT

Notwithstanding the acts of misconduct mentioned in Articles 10 to 13, the following specific acts of misconduct are also sanctionable:

16.1

Inducement to breach a contract, agreement, or arrangement, whether intentional or negligent;

16.2

Any act which evidences a conflict of interest including but not limited to:-

- a. the failure to disclose any and all payments that are made to or received from any contracting party;
- b. acting for more than one party to any transaction without express written consent recording the nature of the conflict and agreement of all parties to the otherwise conflictual arrangement.

16.3

The making of any misrepresentation of any sort by or concerning an Intermediary including holding oneself out as having authority, skills, expertise or experience one does not have;

16.4

The failure to fully and properly explain the content, meaning, and effect of all contracts, agreements, or arrangements, concluded with clubs or players to those clubs or players;

16.5

The failure to record all contracts, agreements, or arrangements in writing and ensure that these are signed by or on behalf of the other contracting parties;

16.6

The failure to provide copies of all contracts to the other contracting parties;

16.7

The levying of unreasonable or unconscionable fees or charges;

16.8

The failure to ensure that each transaction in which one is involved is fully and properly documented and reported to the appropriate football association;

16.9

The failure to comply fully with all relevant provisions of the football prescripts relating to Intermediaries;

16.10

The failure to draw to the attention of players or clubs the relevant provisions of the Consumer Protection Act and the FIFA, FAM, and League rules;

16.11

The failure to keep separate and proper books of account and to make these available upon request to any contracting party or football association;

SIGNED:

.....
WALTER NYAMILANDU-MANDA
PRESIDENT

.....
SUZGO NYIRENDA
GENERAL SECRETARY

DATE: 28TH JUNE 2016