

# Argentinean football money laundering regulations

Argentina has implemented new financial reporting regulations designed to combat money laundering and terrorist financing that will impact any client - including those based overseas - conducting business of over A\$60,000 with a football club. Rodrigo Ortega Sanchez, an Abogado with Estudio Beccar Varela, explains the impact that this will have on Argentinean football clubs and those that do business with them.

Financial Information Units (FIUs) are agencies created according to GAFI/FATF<sup>1</sup> recommendations that receive reports of suspicious transactions from financial institutions and other persons and entities. FIUs analyse them and disseminate the ensuing intelligence to local law-enforcement agencies and foreign FIUs in order to fight against money laundering and terrorism. The Argentine FIU is controlled by the Ministry of Justice and Human Rights.

On 15 February 2012, the FIU issued Resolution 32/2012, specifying that the Argentinean football association (AFA) and the clubs whose teams participate in first division A and first division B are 'Compelled Subjects' required to provide information on operations related to transfers and lending of over A\$60,000 (€10,450) a year, which could constitute money laundering and/or finance terrorism crimes.

Regarding 'Clients' - which 'Compelled Subjects' must identify and know - these are defined as all individuals or legal entities:

- with whom the 'Compelled Subjects' carry out transfers or assignment of registration rights;
- which hold economic rights arising out of said registration



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rights; and/or

- which grant loans or make donations to the 'Compelled Subjects'.

The concept of 'Client' also includes simple associations comprehended in section 46 of the Civil Code<sup>2</sup>, and other entities which special laws treat as subjects of law.

Chapter II of the resolution establishes the policies that must be adopted by 'Compelled Subjects' in order to comply with the purposes of the above-mentioned resolution. Amongst other requirements, 'Compelled Subjects' must implement technological tools which allow the Compelled Subject to effectively establish Money Laundering and Terrorism Financing control and prevention systems, as well as to establish periodic audits. Furthermore, a Procedure Manual must be implemented and complied with, and 'Compelled Subjects' must appoint a 'Compliance Officer' - a figure which will be responsible for ensuring the observation and implementation of the procedures and obligations established on account of this resolution and of formalising presentations before the FIU.

Chapter III regulates the 'Compelled Subjects' duty of creating a policy on Client identification and Client knowledge, called 'Know your Client'. The implementation of this 'policy' will be a necessary condition for the continuation of the commercial or contractual relationship with the Client and must be based on knowledge regarding the same, paying special attention to its operations or evolution - as corresponding - with the purpose of avoiding money laundering and financing of terrorism.

In the same context, the resolution orders 'Compelled

Subjects' to follow up on the operations carried out by a Client, not specifying whether said operations will be those carried out between the Client and the Compelled Subject itself, or if it must also follow up on all operations carried out by the Client.

In order to verify the actual identity of the person (title holder/real or final Client) on behalf of whom the Client acts, 'Compelled Subjects' should pay special attention to avoid having natural persons use legal entities as a method to carry out their operations, as this could raise suspicion of money laundering or terrorist financing. They should also pay special attention to the risk implicated in commercial operations and operations related with countries or territories where the recommendations issued by the Financial Action Task Force are not applied, or are applied insufficiently. Additionally, it is important to bear in mind that executed contracts must include a clause stating - for the record - that all intervening parties who fall under the category of 'Clients' know of the existence of this resolution.

In cases where 'Clients' carry out operations for an annual amount equal to or over A\$60,000, a 'Client profile' must be defined. The profile must be based on the information and documentation relating to the Client's economic, patrimonial, financial and tax situation that the Compelled Subject should have obtained. The amount, type, nature and frequency of the operations that the Client usually carries out must be taken into account, as must the origin and destination of the resources involved in its operations.

'Compelled Subjects' must also create a 'Client File' including all

information exchanged between the Client and the Compelled Subject by physical or electronic means, as well as any other information or element that contributes to reflect the Client's profile, or that the Compelled Subject considers useful to duly know the Client. The abovementioned file must be stored for ten years from the date that the relationship between the Compelled Subject and the Client ends.

Pursuant to the resolution, 'Compelled Subjects' must report suspicious operations that, following analysis of the activity that they carry out, may be considered under suspicion as being money laundering or financing of terrorism operations.

Operations that may be considered suspicious involve:

- those carried out for unusually high amounts;
- those regarding which 'Clients' refuse to submit information in the event that suspicion arises regarding the origin, handling or possible illegal destination of the funds used; and
- in the event that the transfer of economic rights be instrumented solely by means of a private contract and that there are no manifestations from the parties indicating that they will comply with the corresponding registration and/or listing before the AFA, among others.

The suspicious operations reports must be established and must contain a description of the circumstances which lead the Compelled Subject to consider the operation of a suspicious nature.

#### Conclusions

We consider that the implementation of this resolution will not be an easy task for 'Compelled Subjects' and, therefore, will not be immediately

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applied. 'Compelled Subjects' are currently in no condition to develop the necessary tasks to comply with this resolution. This is because, among other things, clubs lack the economic means to carry out the obligations imposed by this resolution. Therefore it will be an extensive process - progress on the regulation of this matter will depend on the will of the 40 institutions that participate in the two most important domestic football divisions and the AFA. Finally, it is highly advisable to keep an eye on the development of the practical application of this resolution and the effects that it may have on both national and international 'Clients' intervening in operations with 'Compelled Subjects'.

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1. Financial Action Task Force: an inter-governmental body developing and promoting policies to combat money laundering and terrorist financing.
2. Código Civil Argentino, available at [www.codigocivilonline.com.ar](http://www.codigocivilonline.com.ar). The reference to Article 46 means that even organisations not considered to constitute legal entities will be considered 'Clients' under Resolution 32/2012.