

# THIRD PARTY OWNERSHIP ARRANGEMENTS: IS A BAN IN FOOTBALL REALLY APPROPRIATE?

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## Abstract

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Football companies (equivalent to professional sport teams) are increasingly challenged with raising capital. However, future athletic success is highly uncertain and associated cash flows are difficult to predict which makes it difficult to attract investors. An alternative financing instrument that has become more popular in recent years is Third Party Ownership arrangements (TPOs). TPO is a way for financiers to invest in the player squad of a football company and therefore reducing investment risks. Due to the wide usage in football and legal concerns about TPOs, FIFA has forbidden the implementation of TPOs since 2015. But, the question arises, whether a ban of TPOs is really appropriate avoiding a potential conflict of interests as well as problems in ethics and compliance. To address these aspects and finally to judge the appropriateness of TPOs for football companies and the ban itself, a financing-theory-oriented view on the design and functional possibilities of TPOs is needed, but still missing in the literature. Our paper tries to fill this gap and sets the economic basics for a profound legal and economic discussion on the use of TPOs in football as well as sports in general.

**Keywords:** Sport Management, Third Party Ownership, Governance, Transfer Fee, Transfer Rights

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## 1. INTRODUCTION

Professional divisions of football clubs are similar in many aspects to professionally managed business enterprises (for example, separation of ownership and control), and are focused on achieving both sportive and economic goals (Herberger, Oehler, & Wedlich, 2017; Fox & Weimar, 2014; Bühler, Gros, & Wallek, 2013; Küting & Strauß, 2010; Kupfer, 2006; Schewe, Gaede, & Küchlin, 2005). However, the degree of similarity between both type of organizations depends on the degree of professionalization in the sports industry itself.

Thus, the structures of more professional sports divisions are more similar to professionally managed enterprises than in less popular sports like for example field hockey. While the concept of a football company has established itself in the context of professional football it can be transferred to other sports or it can be generalized (independently of a specific sport) called sports companies.<sup>1</sup> This view supports the understanding in football companies that they are, similar to other

<sup>1</sup> That definition should be not confused with companies which produce sports goods or services (Herberger et al., 2017; Keller, 2005).

companies and business enterprises, mainly affected by the same issues (e.g., fulfilling its capital needs; profit orientation) and all corporate actions aim to maximize the companies' shareholder value.

Usually, football companies are confronted with the task of financing their investment needs, e.g., the transfer of new players, the expansion of the stadium or the construction of a youth training center (Bühler et al., 2013). In this context, however, they are faced with the challenge that cash flows depend directly to a considerable extent on the sportive success (e.g., TV donations or sponsorship agreements depend on the league ranking at the end of a season) and are difficult to predict. The increasing on-field competition between football companies can generate considerable financial deficits for a company. Despite high investments in the alleged quality of the player, the sportive aims can be missed (e.g., qualification for international competition) and the planned cash flows from TV and advertising contracts could be far less than expected. This uncertainty in forecasting cash flows makes planning for larger infrastructure investments more challenging (e.g., investments in a youth training center). The enormous increase in transfer fees<sup>2</sup>, as well as football players' salaries (including variable payments when reaching previously agreed athletic and performance-related levels), are evidence for intense competition in football. Therefore, the top managements' task of football companies needs to satisfy the capital requirements through external financing instruments. In this context, however, managers and investors must consider possible sports regulations as well as the respective capital market legal framework (Haas, 2012; Schmech, 2005).<sup>3</sup>

A financial instrument for football companies, which has become popular in recent years is Third Party Ownership arrangements (TPOs). In the case of TPOs, an investor financially participates in the transfer payments during a player's transfer and therefore receives an amount of the compensation rights. In the case of a future player's resale, before his contract expires, the investor will receive a certain part of the transfer cash flows in accordance with his share in the compensation rights. In this case, on the one hand, it is possible for football companies to finance capital intensive investments in their players' squad while transferring at least a part of the investment risk to the investor. On the other hand, investors are offered the opportunity to invest in specialized human capital contracts, whereby an additional investment diversification potential can be obtained (Markowitz, 1952). This type of diversification is not yet possible with standardized financial instruments (e.g., exchange-traded funds) and can help investors to diversify their financial portfolios.

<sup>2</sup> The terms "compensation fee" or "compensation payment" are frequently used to the term "transfer fee" in the corresponding literature synonymously. In this paper we only use the term "transfer fee".

<sup>3</sup> For example in Germany, the so-called "50 plus 1" rule constrains the capital funding of investors in football companies. The rule forbids investors to hold more than 49.9 percent in football companies and generally prevents private majority investors taking over control of a football company. The non-profit oriented football club as the origin of the respective football company has to hold the majority of ownership and control rights (Rohde & Breuer, 2016; Dietl & Weingartner, 2011; Dietl, Lang, & Werner, 2009).

Despite the discussion on the legality of such financial contracts (e.g., with the human capital of professional sportsmen football players as underlying) and the following FIFA ban in football since 2015, the interest of investors in such human capital contracts has grown in recent years not least due to the continuing low-interest period on capital markets. But almost exclusively, the literature deals with a theoretical sports-law assessment addressing whether such constructions are in accordance with labor laws as well as national and international league and federation statutes aspects of sports integrity itself. For judging the appropriateness of TPOs for football companies and the ban in football, a financing-theory-oriented view of TPOs based on a perspective oriented economic analysis is needed and would contribute to a deeper understanding of TPOs. However, it is still missing in the literature. We contribute to the current literature by discussing TPOs from a finance-oriented perspective in a practical manner and try to fill this gap in the literature. We also try to visualize the different TPO arrangements to provide a better understanding of stakeholders' interests in such arrangements. Therefore, we are able to show the economic benefit of TPOs for involved stakeholders.

Our paper is structured as follows: Section 2 addresses the related literature and the theoretical framework. In Section 3, we present the characteristics of TPOs as well as explain potential advantages for the involved parties. In Section 4, we discuss potential problems related to the use of TPOs and the current use of TPOs with their legal framework. The paper concludes in Section 5.

## 2. RELATED LITERATURE

In general, external financing instruments can be differentiated between equity, debt and mezzanine capital. Table 1 contains the main financing instruments for football companies. This categorization is important for an assignment and a discussion of the differences and similarities of TPOs in comparison to traditional instruments.

**Table 1.** External financing instruments of football companies

<i>Equity Financing</i>	<i>Mezzanine Financing</i>	<i>Debt Financing</i>
Private Equity, Initial Public Offering	Silent Partnership, Participation Certificate	Loan, Fan Bond, Asset-Backed Securities (ABS), Leasing

*Note: Column 1 represents the equity financing whereas mezzanine financing instruments are listed in Column 2. In Column 3 debt financing instruments are displayed.*

Private equity participation and equity in the form of public traded stocks (e.g., Borussia Dortmund) are popular equity financing instruments in football sports. In the case of a private equity investment, a strategic investor (e.g., Audi, Adidas and Allianz in the German football company FC Bayern München), a private equity fund (e.g., Tennor Holding in German football company Hertha BSC Berlin) or a (financial) patron, e.g., Dietmar Hopp, co-founder of SAP, in the German football company

TSG Hoffenheim (Bühler et al., 2013; von Appen, 2012) can invest equity in football companies.

The relevant external financing instruments for football companies include loans, asset-backed securities as well as the issuing of bonds, i.e., “fan bonds”, where the fans of the respective football company are the primary investor group (Huth, Gros, & Kühr, 2014; Weimar & Fox, 2012). In case of external financing via asset-backed securities (ABS), investors’ claims arising from future cash flows (e.g., receipts from the stadium or hall operations, merchandising revenues or transfer fees connected with players’ sale) and are transferred to special purpose vehicle (SPV), which subsequently sells secured claims against the SPV mostly to institutional investors (Bühler et al., 2013; Dworak, 2010; Leki, 2004).

Leasing plays an important role for football companies in financing of infrastructure (e.g., stadium/hall) in the context of the sale and leaseback constructions as well as in the case of so-called player leasing. Additionally, the leasing of cars, office furniture and infrastructure is common (Herberger et al., 2017; Bühler et al., 2013).

Mezzanine financing instruments take a hybrid rank between equity financing and debt financing. Depending on the specific design, these financing instruments can be seen as either equity or debt. If an investor provides equity to a football company without nominally accounting it to equity and becoming visible to the external stakeholders, a silent partnership is established. The liability is limited to the internal relationship and to the level of the deposit. In the case of an atypical silent partnership, investors have broad ownership and control rights, whereas these rights are limited in a silent partnership (Bühler et al., 2013; Ernst & Young, 2004; Leki, 2004). Participation certificates are generally accounted as liabilities in the balance sheet, but can also be regarded as equity depending on the specific design (e.g., the possibility and extent of participation). However, participation certificates have no ownership and control rights in their original framework. Repayment is made at the nominal amount. The interest is usually composed of a fixed component and a variable component, the latter usually being dependent on the sportive and economic success of the football company (Dworak, 2010; Ernst & Young, 2004). To comply with sports regulations in football, the use of mezzanine financing instruments helps to vanish the direct influence of an investor or a patron by.

### 3. CHARACTERISTICS OF THIRD PARTY OWNERSHIP ARRANGEMENTS

On the basis of the aforementioned systematization, TPOs can be attributed at first glance to borrowing from the perspective of the relevant football company (debt). On the one hand, from the legal point of view, investors of TPOs are not given any rights to ownership and control of the football company. On the other hand, the contractual arrangement provides for a guaranteed interest rate, including (partial) repayment of the financial resources provided by the investor, in the event of a transfer at the usual end of the contract (KPMG, 2013). However, it is argued that TPO

investors can also profit from a performance-related return component when the player is resold which is a typical characteristic of an equity instrument. There are similarities to partial loan constructions which, in addition to a (low) guarantee interest rate, additionally provide a performance-related bonus and can be allocated to the mezzanine (debt) financing instruments. Moreover, TPOs have a high level of individualization (e.g., regarding the contract terms), which makes it difficult to distinguish whether TPOs are a “classic” debt financing instrument or a mezzanine financing instrument. Ideally, an investor or investor pool<sup>4</sup> finance a players’ transfer fee and profit directly or indirectly from the obtained cash flows of the resale of the transfer rights. This would be the case when the player is transferred before the contract expires (Guardian, 2014; Geey, 2014, 2013; Holzhäuser & Körner, 2009). The neo-institutional approach of property rights is the theoretical basis of transfer rights and trading. The property rights are represented by the right to use the player’s human capital, the right to earn income from the player’s human capital, the right to transfer the player and his human capital to others, and the right to enforce property rights. Especially the right to earn income from the player’s human capital as well as the right to transfer the player and his human capital are relevant in the context of TPO arrangements and reflecting a core element of property rights theory, that property rights are a bundle of rights in an asset (Marburger, 2002; Rosen & Sanderson, 2001; Furubotn & Pejovich, 1972; Demsetz, 1967).

TPOs offer sports companies the opportunity to invest in its players squad with financial support from an investor and thus can share their related investment risks. Additionally, it is an opportunity for smaller football companies with less financial resources (e.g., due to less sponsorship or income from TV contracts) to achieve a more well-adjusted competitive balance with wealthier football companies. In return, the investor may profit from a potential rise in the players’ human capital (e.g., an appreciation in the players’ market value which results in a higher transfer fee in the future). However, it is uncertain whether the investor will realize a gain from a future player transfer and what his return is (depending on the transfer fee). Due to investors’ uncertainty of the investment value, even after signing the contract, the investment can be characterized as a credence good in the terminology of information economy (Oehler, 2017; Oehler & Wendt, 2017; Oehler, 2006, 2005, 2004). Simultaneously, the investor financially participates for his risk-taking depending on whether a transfer occurs before the contract ends. TPOs are also common in the form of personal leasing contracts, where the investor lends a player to a football company and gets a usage fee in exchange.

If the player is “lent” to another football company during the season and a “rental fee” is due, the investor also benefits financially (at least in proportion to his share the compensation rights). Depending on the terms of the TPO contract, it is also possible that the investment must be paid

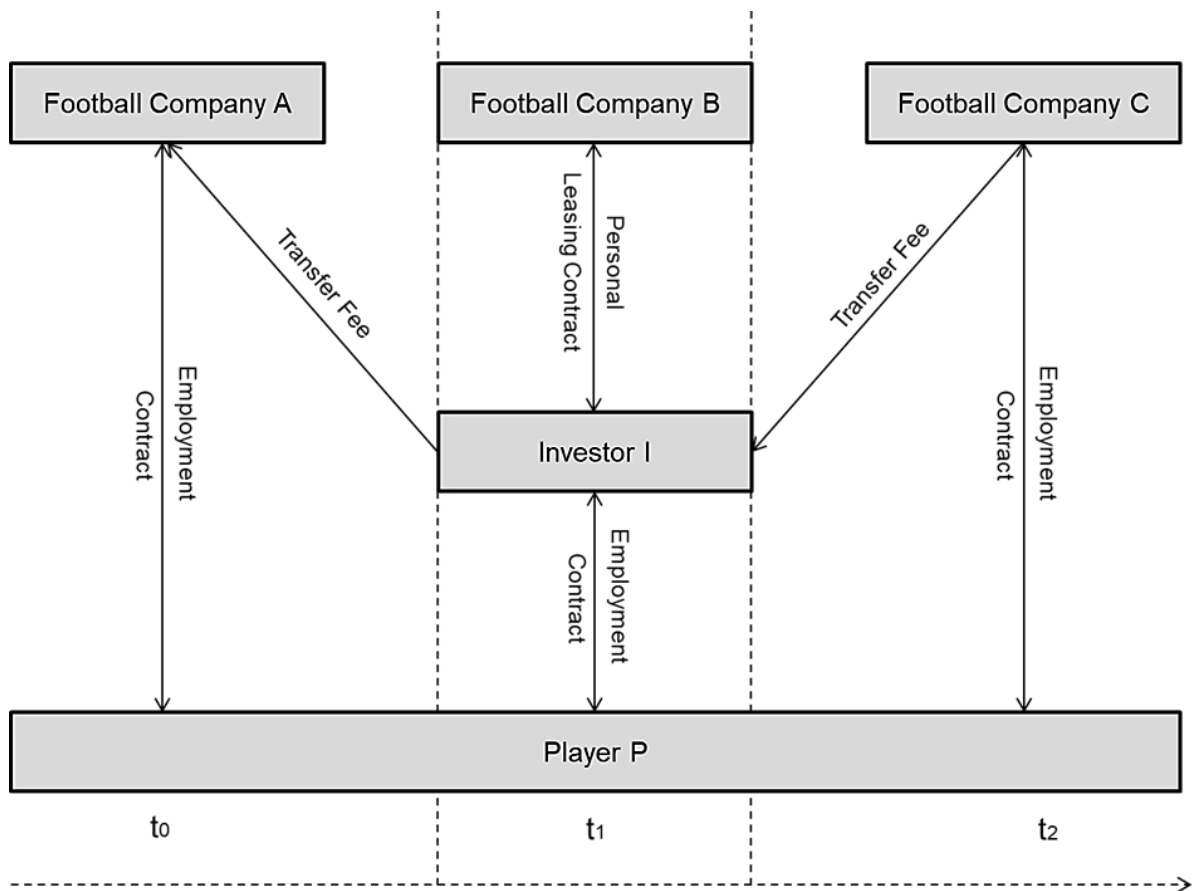
<sup>4</sup> In the further course of the work, only “one” investor is spoken of for reasons of practicality, although the statements can, of course, also be transferred to an investor pool.

partially or entirely by the football company after the end of the contract, irrespective of a potential player's transfer before the end of the contract. Additionally, it is possible that a fee (interest rate) has to be paid if the player leaves the football company after the expiration of his contract and no transfer fee exists. With such contract terms, the investor tries to minimize his investment risk.

Within the finance framework, TPOs can be compared with leasing or ABS constructions. Regarding the leasing form, TPOs are basically assigned to the area of personal leasing (see Figure 1). At  $t_0$ , an employment contract between football company A and player P exists. At the end of  $t_0$ , player P is transferred to football company B before the original contract ends. Therefore,

investor I pays the transfer fee to football company A for football company B. Subsequently, an employment contract between investor I and player P exists at  $t_1$ . A personal leasing contract will be established between investor I and football company B simultaneously. Both contracts have the same duration. Investor I receives payments based on the personal leasing contract and player P plays for football company B. In addition, investor I is the owner of the transfer rights and corresponding future cash flows from player P. If the player P is transferred to football company C at  $t_2$  (before the original contract ending), investor I will receive a transfer fee and the leasing contract, as well as the employment contract, will be dissolved.

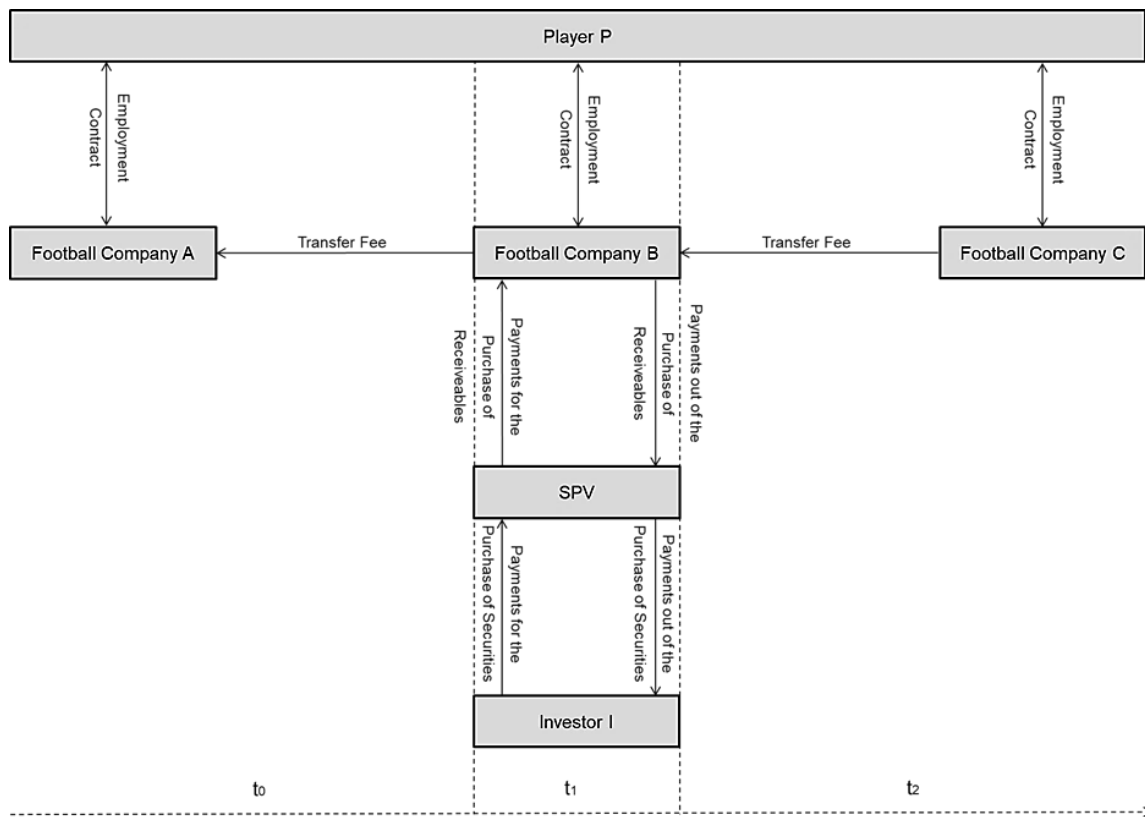
Figure 1. TPO based on a personal leasing contract



However, TPO can also take the form of an ABS. In this case, receivables from potentially future transfer income (e.g., transfer fee) are sold to a special purpose vehicle (SPV) established for this purpose. The receivables are securitized and the related securities are sold to investors. This approach is particularly useful if (in addition to the

transfer rights) further rights and related receivables (e.g., marketing rights) exist which should be monetarized and a wider circle of investors should be involved. Figure 2 outlines the relevant relationships between the stakeholders who participate in a TPO in the form of an ABS construction.

Figure 2. TPO based on an asset-backed securities construction



In  $t_0$ , a player's transfer from football company A to football company B occurs, whereby a transfer fee is due since the original contract is not expired. In this transfer, an investor I participates indirectly by providing a part of the transfer fee via the SPV and thus finance football company B. Therefore, in  $t_0$  via the SPV, a payment is made from investor I to football company B. In return, investor I receives securities from the SPV, whereby future receivables result from a potential future transfer fee and act as collaterals. In  $t_1$ , player P is employed by football company B. In the  $t_2$ , player P will be transferred from football company B to football company C before the employment contract ends. In return, an investor I receives a part of the realized transfer fee depending on the basis of the purchased securities from the SPV.

Three types of TPOs can be differentiated depending on the time horizon when the investor gets involved with the TPO contract:

- Financing TPO;
- Investment TPO;
- Company-to-Company Investment TPO (C2C Investment TPO/club-club co-ownership).

These three variants of TPOs are basically designed for the duration of the (remaining) time of contract of the TPO-financed player. While the investor acquires part of the transfer rights (usually 10-40% of the transfer value) and the corresponding cash flows, when the player is already under contract by the sports company depending on the chosen construction (ABS or leasing), the investor acquires a share of the transfer rights (usually 10-50%) in TPO and Company-to-Company Investment TPO only in the case of an upcoming player transfer. As a result, in a financing TPO, the investor pays a contractually fixed sum for the

acquisition of the transfer rights to the football company. In contrast, the investor provides a part of the transfer fee, which has to be paid by the acquiring football company (KPMG, 2013) in an Investment TPO. As an investor, for example, private individuals, specialized funds in human capital investments, other financial investors (e.g., hedge funds), but also football company take part in such financing instruments. The latter, the Company-to-Company Investment TPO, is a special form of the investment TPO. A football company, that has a claim on a player, transfers the player, remains his stake in the player and gets a part of the transfer fee in case of a possible further transfer. Therefore, the football company also acts as a TPO investor. This football company becomes a TPO investor by abstaining from the transfer fee against the TPO initiating football company. Instead, the releasing football company will further hold a share of player's transfer rights and a corresponding claim on a potential transfer fee in the future. Therefore, the TPO investor speculates on a higher future transfer fee for the player.

The type of TPO depends on when investor participates. In the case of an investment TPO, a TPO investor participates during the transfer phase when the buying football company, the sold player (and his advisor) and the selling (TPO initiating) football company exercise the transfer (i.e., negotiating, signing the employment contract). The maximum duration of the new employment contract is usually five years. The duration of the contract is usually equal to the financial engagement of the TPO investor. In the case of a Financing TPO, the player is already part of the team of the TPO initiating football company and the TPO investor enters only during the contract phase of the player and

therefore basically covers the remaining duration of the contract. This remaining period corresponds to the duration of the TPO. For all TPO variants, four termination outcomes can be distinguished (KPMG, 2013):

1) The player is transferred to another football company after the regular end of his contract. The new employer does not have to pay any transfer fee and the TPO investor does not participate. Depending on the specific contractual agreement, it is possible that the TPO investor gets back his investment sum plus a minimum interest rate from the TPO initiating football company. Thereby, the TPO investor could reduce his investment risk;

2) The player extends his contract with the TPO-initiating football company. For such cases, the investor and the TPO-initiating football company usually agree that the investor holds his transfer rights and a potential claim on a transfer fee payment until a potential transfer in the future will take place. Additionally, the TPO investor gets a minimum interest rate for his previous financial engagement;

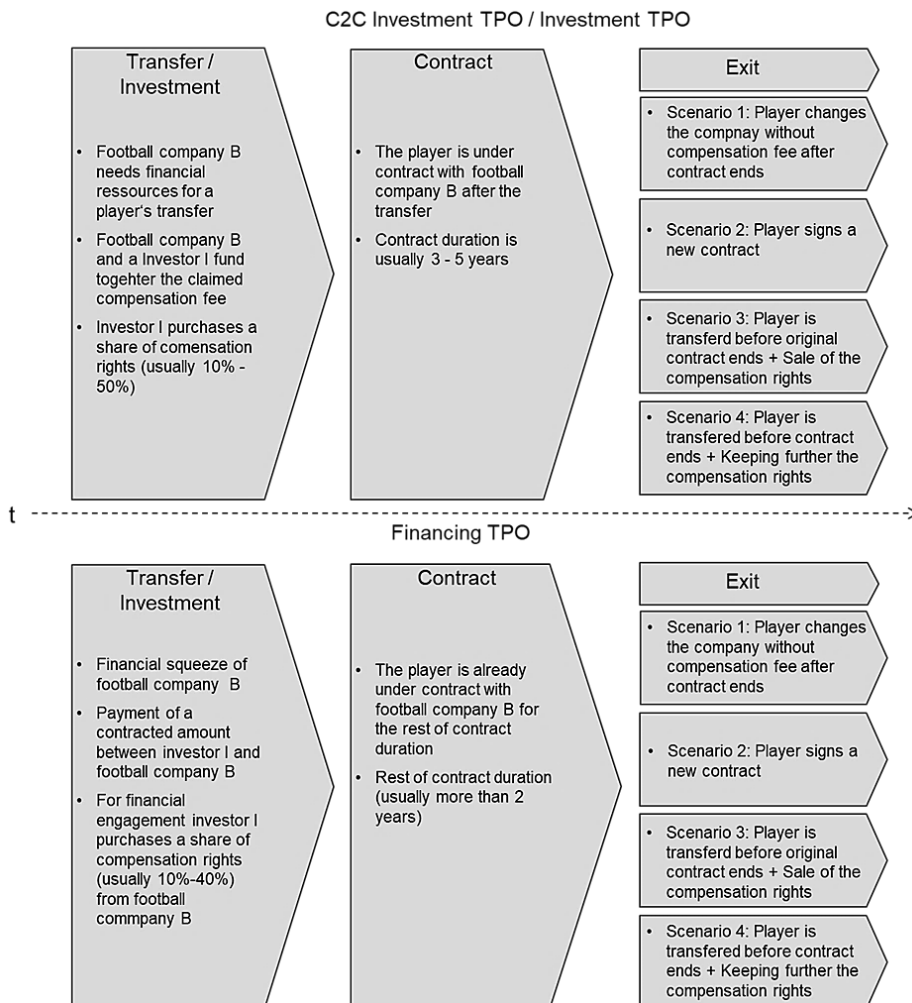
3) The player gets transferred before his regular contract ends. The TPO investor receives a part of the transfer fee depending on its share in the transfer rights. If the transfer fee payment is lower than his original investment, the releasing football

company usually has to compensate the loss for TPO investor with its own financial resources (including a contractually agreed minimum interest rate). If the transfer fee payment is higher than the TPO investor's investment at the beginning of the TPO contract, the difference is the investor's return on investment;

4) The player gets transferred before the regular contract between the player and releasing football company ends but the TPO investor maintains his transfer rights. In addition, however, the investor receives a contractually agreed minimum interest rate on his capital engagement depending on the investment period by the football company that releases the player. The new contract partner for the TPO investor is now the new employer of the player. In the case of another transfer, the investor would have the opportunity to sell his claim on the future transfer fee payment. Since this is a second TPO (Investment TPO) construction, the TPO investor's interest and payment claims depend on the outcome (scenarios 1 to 3) and the agreements with the new TPO-initiating football company.

Figure 3 shows the processes of the three presented TPOs variants depending on the player's contract duration and different exit scenarios from an investor's perspective.

**Figure 3.** Phases of an Investment TPO/C2C Investment TPO and a Financing TPO from the investor's perspective



Note: In TPO designs three phases can be differentiated: transfer/investment, contract, and exit.

#### 4. DISCUSSION

TPO-funded player transfers have become more popular to a broader public due to high transfer volumes. As a consequence, these TPO funded player transfers will also be discussed more critical (Guardian, 2014; Marcotti, 2012). For example, the transfers of the Argentine football players Carlos Tevez and Javier Mascherano from Brasil to West Ham United were the beginning of a TPO ban in national football leagues (here in England) in 2006. TPO investors in the involved transfers executed enormous pressure against the selling Brazilian football company as well as the players themselves in order to transfer both players to a football company in Europe resulting in high transfer fees. Furthermore, the investors saved further economic rights on the players in transfers in the future. Due to the pressure of TPO investors, both transfers violate Premier League regulations (Wilson, 2016).

The criticism of TPOs concentrates on four main directions which can be interpreted commonly as a threat for sports integrity. Sports integrity describes the enforcement of fair competition

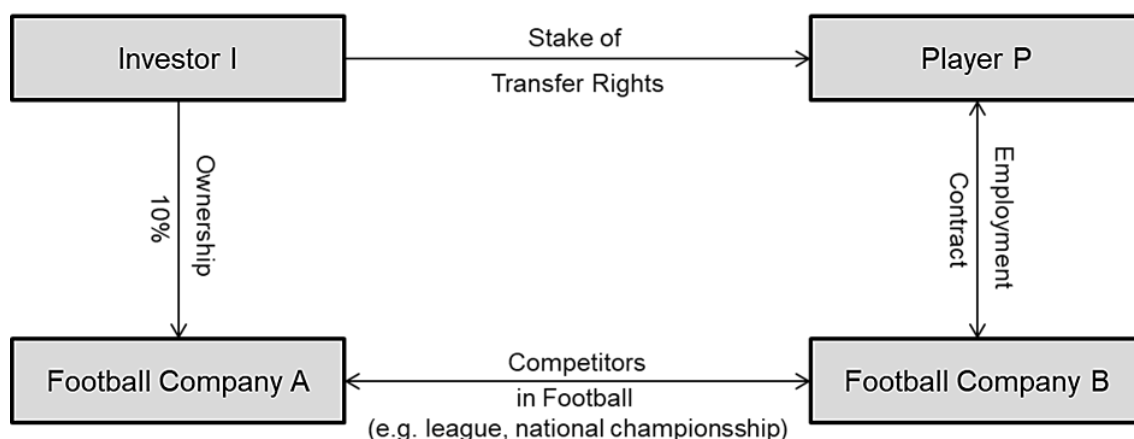
without manipulation or corruption from inside the on-field competition (e.g., sportsmen, coaches as well as team managers) as well as from external influences (e.g., investors) (Rodenberg et al., 2013).

The four main directions of criticism also interfere with each other and thus cannot be considered as disjoint. Often, the four directions of criticism also occur together:

- Possible conflicts of interests;
- Influence and dependencies;
- Ethic concerns;
- Price distortions.

TPO arrangements are considered to be problematic if an investor is directly involved in a football company (e.g., private equity) and also owns a stake in a player's transfer rights whose player is under contract for another football company that is in direct competition with the football company in which the investor is invested. Figure 4 illustrates the problem of such property relations, which are particularly manifested in conflicts of interest and could lead to manipulation in the on-field competition between different football companies (Vou, 2014).

Figure 4. Network of relationships in case of investments in football companies and players



By investing in the transfer rights of player P, investor I could be attempted to influence player P, especially with regard to his future professional career (e.g., transfer to another football company for an attractive transfer fee), and thus, could also have an indirect influence on football company B. If investor I is also financially engaged in football company A at the same time and football company A is in competition with football company B (e.g., in a national league, national championship or in an international competition), there could be a serious problem regarding possible game manipulation in favor of the investor (UEFA, 2013).

From an ethic point of view, TPOs can also be criticized because players (or their human capital), who are the underlying of a TPO construction, can become a speculative object. The risk is that these players may be influenced in their sporting future. Potentially, they cannot decide independently for which football company they want to play (Bahners & Konermann, 2013). However, the player's decision-making independence in the context of employment to a football company was strengthened by the Bosman Case and the corresponding judgment in

1995. This basic decision of the European Court of Justice states that a player can freely transfer to another employer at the end of his contract without paying a transfer fee of the "buying" football company. Thus, the player has become more independent and flexible in his decision to pursue his professional activities (the Bosman Ruling can only be applied for transfers in the EU and the European Economic Area. For further information about the Bosman Case and the consequences for professional football see Huwer (2014); Binder and Findlay (2012); Ericson (2000)). For players who are financed by TPOs, there is a risk that the player's independence and flexibility will be limited. However, comparable potential conflicts in independent football players' decision-making processes can be observed in some interactions between football players, their agents/advisors as well as football companies. The respective sports-legal framework is hardly able to prevent possible conflicts of interest.

On the one hand, a minimum interest rate and securitization of repaying the invested capital are valuable components in a TPO from an investor's

perspective. On the other hand, the TPO business model is mainly designed to gain returns for the case that a TPO-financed player is transferred before his regular contract ends and a transfer fee has to be paid for him. Therefore, the aim is to realize a player's transfer before the end of a contract (UEFA, 2013). This increases the uncertainty regarding the fulfillment of the contract by a player who is financed by a TPO, as transfer fee payments are due only in case of transfers before contracts end. In addition, the increase in the turnover rate and the simultaneous inflow of financial resources from outside the circulation transfer pillar could trigger a spiral to ever-increasing transfer prices and distort prices on the players' transfer market. The development of price bubbles on transfer markets would also be raised (Bahners & Konermann, 2013).

TPO arrangements have become well known e.g., by transfers from Neymar Jr. to FC Barcelona as well as the aforementioned transfers of Carlos Tevez and Javier Mascherano to West Ham United, but are increasingly regulated at national and international level. UEFA argues that TPO structures undermine financial regulation e.g., the Financial Fair Play regulation. Financial Fair Play tries to establish the basis for fair financial competition in professional football and to ensure the financial stability of European football companies. The core of this rulebook is the controversially discussed "breakeven-rule". That standard determines that a football company is not allowed to spend more than the income of operative business (e.g., ticket sales, merchandising income etc.) over a cumulated period of three reporting periods (Peeters & Szymanski, 2014; Müller, Lammert, & Hovemann, 2012; Dehesselles, 2011; UEFA, 2010).

The FIFA, which is responsible for the legal framework for players' transfer, followed the efforts of UEFA by regulating TPOs more strictly. However, FIFA took also into account the economic interests of the Southern European and South American national federations and the interests of their football companies, which are highly dependent on TPOs (Geey, 2014). In FIFA regulations according to players' status and transfer is presented in article 18bis, that no football company is allowed to enter a contract, in which the contract partner or a third party gets the opportunity to influence employment contracts, the basic sports company business strategy or the performance of the team. FIFA has the right in the case of misconduct to punish sports companies financially or sportive (FIFA, 2015).

Bahners and Konermann (2013), as well as Holzhäuser and Körner (2009), interpret the article 18bis of FIFA that TPOs are not fundamentally forbidden by regulation, but rather restricted and are therefore permitted under certain conditions. In the case of an admissibility check of a TPO construction based on the FIFA regulation, the transfer right has to be divided into the right to approval and the right to compensation. The right to approval of a player's transfer is exclusively held by the football company, where the respective player is under an employment contract. However, the right to (financial) compensation grants the right to get compensation (transfer fee) if a player is transferred before the contract ends and can be sold to a third party. Only the transfer of the right to compensation is therefore allowed to an investor under the FIFA

regulation Article 18bis. In any case, the right to approval must remain by the respective football company. In practice, however, it is often difficult to prevent and prove an influence on the football company by a third party. The boards of national leagues are fundamentally aligned to the aforementioned FIFA regulations and implemented them in the respective national legal framework. However, some leagues (e.g., France and England) completely prohibit TPO arrangements (Geey, 2014; Bahners & Konermann, 2013; Abatan, 2012).

Based on further pressure by the boards of some national federations FIFA intensified regulation with article 18ter since May 1, 2015 and completely prohibit TPO arrangements, although a study commissioned by FIFA did not come finally to the conclusion that TPOs should be compulsorily banned, but that its frequency could be a potential risk for sports integrity (International Centre for Sports Studies, 2013). Neither football companies nor players may enter into a contract with a third party which grants the third party a full or partial claim to compensation payments (transfer fee) or any other rights connected with a player's transfer, which is due in the case of a future player's transfer (FIFA, 2015). The prohibition does not apply to TPO constructions completed before 1 May 2015 (article 18ter, paragraph 3). The EU Commission rejected a lawsuit from TPO investors from Malta by not carrying out a more in-depth inquiry, because the ban does not violate European competition laws. From the EU Commission perspective, there are some references that TPOs create potential conflicts of interest between football companies, players, and investors (ESPN, 2017).

However, circumvention strategies for TPO prohibition can be observed. The strategies virtually eliminate the ban. For example, minority participation of the investor in the TPO-initiating football company can be initiated in order to break away from the role of "third party" (Transfermarkt, 2017; Zürcher, 2016). It can also be argued that Company-to-Company Investment TPO is still allowed under the actual FIFA regulation because no third party is involved in the concrete transfer business from outside. If a football company transfers a player before the contract ends and a transfer fee would be paid to the releasing football company, it (partially) resigns the due transfer fee and secures instead a share of possible transfer fee payment in the future when the player will be transferred again. However, the aforementioned laws are undoubtedly a hurdle for a liquid TPO market and complicate to get TPO investors for professional football companies. In the future, TPOs are likely less used and also hardly sustainable financing instrument for football companies since potential investors can only participate indirectly in transfers and corresponding payments. The higher transaction costs for TPO contracts resulting from the fundamental ban and their reduced fungibility are detrimental to the profitability for TPO investors. A reasonable trade-off between risk and return seems at least questionable.

The rules in other sports (e.g., handball, volleyball, basketball) concerning the use of TPOs are far less specific and it is often harder to find specific provisions for TPOs in the relevant sportive



legal framework. In handball, for example, the Articles of the International Handball Federation (IHF) state that under the terms of Article 8 players make their own decisions independently and are not influenced by third parties. There are no specific statements on the influence of third parties in the context of players' transfer in the legal framework. Similarly, the statutes in other sports such as volleyball, basketball or ice hockey do not prohibit TPOs in general. More detailed, the statutes often do not provide any comments on TPOs. However, the discussed legal framework in football could have signaling for other sports. Our provided financing-theory-oriented view of TPOs could contribute to a more profound legal and economic assessment of TPOs. For example, it is intuitively that an investor has far less influence on a player through a TPO via an SPV than via a personal leasing contract. There are no typical TPO arrangements with the same interactions between the different stakeholder groups, therefore, an undifferentiated ban is disproportionate.

## 5. CONCLUSION

The aim of the paper was to reveal practical designs and characteristics of TPOs in professional football as well as their financial background. This issue is relevant to various stakeholders in football, such as board members in football companies, (future) investors of football companies, but also regulatory institutions in football federations (e.g., FIFA) to determine the meaningfulness and economic consequences of TPOs. Due to the legal developments in a professional football sport, it will be difficult for football companies and interested investors to initialize TPOs in the near future, but it is possible to implement a TPO arrangement e.g. if TPOs investors would commit with the football companies based on an equity engagement. The Southern European and American football companies, which have been heavily involved in TPOs in the past, are most likely to be negatively

affected by a rigorous ban financially (Geey, 2014), although there are strong advantages of TPOs from an economic perspective. A TPO arrangement is a chance for less financially situated football companies to gain additional financial resources for investments in their player squads.

Our analysis provides indications that there are some basic economic arguments for the use of TPOs, both from an investors' as well as company' perspective. Instead of attempting to block such alternative financial instruments rigorously and thereby promoting circumvention strategies offstage, legal frameworks should be consistently applied and controlled (e.g., investors should not be allowed to invest in a football company and simultaneously engage in TPO arrangements concerning the company's competitor). Moreover, players should be helped to make decisions independently apart from an investors' as well as agents'/advisors' influence. The economic dependence from a player to certain investors should be diminished for example through legal restrictions that forbid payments between an investor and a player depending on a transfer. Additionally, the asymmetric information distribution between the different stakeholders in a potential TPO arrangement should be reduced. In order to avoid conflicts of interest, all property rights (especially transfer rights) in a player's human capital could be recorded in a database at the responsible football federation and should be available for all relevant stakeholders. In addition, we recommend an empirical analysis of all known TPO deals in football for future research. Previous studies in this field have only addressed the potential of a negative impact of TPO deals, especially based on the market volume of TPOs. However, apart from the well-known negative cases from England, a broad analysis of TPO deals over time and an assessment of their possible negative effects on the basis of a sufficiently large number of cases is still missing.

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