

THIRD PARTY OWNERSHIP IN FOOTBALL



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INTRODUCTION

Despite FIFA's outright prohibition on third party ownership in 2015, to remove unethical practices and mitigate the controversy surrounding this type of investment in football, TPO as it is more commonly known remains a regular occurrence in the football industry in places such as Nigeria.

A short precise definition of third party ownership also known as TPO for short is "A financial interest in the future transfer of a player's registration".

Unfortunately, disputes arising from these transactions that are basically Nigerian and can be termed 'DOMESTIC' are ultimately arbitrated in foreign countries. The flow of these Domestic (i.e. purely Nigerian) arbitration cases to arbitral seats/venues outside Nigeria is unhelpful to Nigeria. It also translates to loss of revenue in billions of dollars to majority of practitioners and revenue generation for Nigeria.

It is a practice, previously widespread in South America, whereby an investor i.e. an individual, a company or a fund otherwise known as the third party would 'invest' in a player, in return for a right to enjoyment of future economic rights in the said player or club or academy i.e. take a percentage of the future transfer fees or fees that the player who is the subject of the investment attracts.

This practice is peculiar to football because football is one of the only global sports with an open transfer market whereby players are traded domestically and internationally between clubs, and because of the substantial sums that can be exchanged in football transfer fees.¹

1. TPO in Football: What it is, how it is developing, and what it should be by Nick De Marco QC.

TPO is a business model whereby instead of Club A owning 100% of the player's economic rights, these rights are shared with a third party who may either own a percentage share or on rare occasion all of the economic rights. This agreement is created through a private legal contract between the third party and Club A. The controversy in the practice of TPO is that it permits the TPO to be kept secret from those not privy to the private contract, even from the player concerned.

The issue of Third Party Ownership (TPO) is one which has always attracted mixed reactions and has generated a lot of discussion and controversy. The drama surrounding Neymar's transfer to Barcelona spiked general awareness on TPO. Neymar was signed to Santos Football Club in the beginning before he reached international stardom: In a bid to retain him on their squad and simultaneously leverage on his fast rising superstar status, the club sought to increase his wages to the level of his counterparts in Europe.

However, since the club did not have the financial capacity to do so, a sports agency called DSI undertook to pay these high wages to Neymar on behalf of the Club. As a result, they owned 60% of the player's economic rights. By the time Barcelona FC paid the transfer fees for the signing of Neymar, Santos FC only received 40% of the full fee.

TPO was a common practice in many parts of the world before FIFA banned it – in particular in Latin America whilst in Europe it was practiced in Spain, Portugal and Italy. It enabled many smaller clubs to compete side by side with bigger clubs by being able to purchase players with the help of third party investors holding some of the economic rights of the player.

Typically, a young promising player could be signed on to or from a club because a third party (with a right to the future transfer value of the player) would cover some of the costs the club or investment in the player.

This would enable the player to perform on a bigger stage, provide the club engaging him with a promising player at a reduced price enabling it to compete with bigger clubs and often lead to the sale of the player to an even bigger club to the benefit of the selling club, the third party and the player.²

The fact remains that since TPO represents an investment, the investor's primary interest is recouping return on investment as fast as he can which can often conflict with the welfare of the player. Thus, it does not matter whether the player or the club wants something different, the will of the investor reigns supreme on whether the player moves on or stays.

On the flip side, TPO actually helped a lot of smaller clubs to compete favorably with bigger clubs especially as it concerns transfers. With more funding from investors, smaller clubs could dream of signing players who could improve them on the sporting front as well as commercially.



DIFFERENT WAYS TPO CAN ARISE

TPO can arise in different ways. One of these ways involves the club selling a percentage of the economic rights of a player to a third party in order to raise funds. This is known as a 'Financing TPO'. Sometimes, clubs obtain loan facilities using a percentage of economic rights of a highly valued player as collateral. In this case, the bank has acquired third party ownership interests in the player.

Secondly, where a club cannot afford the transfer fee of a player, they could enter into TPO agreements with an investor who will fund a part of the transfer in exchange for a percentage of the Economic Rights of the player. This is known as investment TPO. A popular investor in this regard is Doyen Sports Investment owned by super-agent Jorge Mendes.

Thirdly, there is a form of TPO known as Recruitment TPO. This entails where a club wants to recruit a player who is not yet a professional. A third party could come in to finance the training and development of such a player on behalf of the club so as to make recruitment affordable for the club. It goes without saying that the third party then acquires economic rights in the player.

FIFA'S BAN ON THIRD PARTY OWNERSHIP

The main problem with TPO, however, was the risk of Third Party influencers, i.e. the risk of third party investors unfairly influencing the playing or trading rules and regulations and policies of the engaging club. Third party influence leads to a number of other problems – potentially undermining the integrity of the sport of football, especially where a third party has an interest in a number of players in the same competition, and undermining team stability where third parties are incentivised to force multiple transfers for economic and not purely sporty reasons.

In 2015, FIFA extended the ban on Third Party Influence to a total worldwide prohibition on TPO. Article 18ter, the prohibition on TPO, reads as follows: “No club or player shall enter into an agreement with a third party whereby a third party is being entitled to participate, either in full or in part, in compensation payable in relation to the future transfer of a player from one club to another, or is being assigned any rights in relation to a future transfer or transfer compensation”.³

FIFA noted that the legitimate objectives for the ban are as follows:

- Preservation of contractual stability
- Preservation of the independence and autonomy of clubs' recruitment policy
- Securing the integrity of football and prevention of the loyalty and equity of competitions
- Prevention of conflicts of interests and securing transparency in the transfer market.⁴

THE NIGERIAN POSITION

The practice of TPO in parts of Africa especially in West Africa where many of the talents are exported from to the west is on the rise. This is not surprising given the economic hardship and financial challenges faced by the talented footballers who majorly still come from less privileged backgrounds.

For these reasons, it is also not uncommon to find many players including some underaged ones 'sponsored' by a wealthier relative or even a stranger purely for the sake of benefitting from future financial or economic gains in said player.

A major reason we have seen why this practice is being perpetuated is simply for lack of awareness and because there are very few specialist sports lawyers who understand the rules and regulations surrounding football law.

TPO is akin to placing a bet on a wildcard in the hope that all upfront expenses and investments will be repaid with more once the player 'makes it'. This practice though has some benefits creates too many unequal playing fields and grey areas and one can begin to understand why FIFA had to place a global ban on TPO because there was a clear danger of TPO becoming a form of 'modern day slavery' or economic slavery.

Despite the ban on TPO, it has not totally eradicated the practice perhaps due to ignorance and also desperation.

4. See FIFA media release, 26 June 2018: "Latest decisions of the FIFA Disciplinary Committee in relation to third-party rules" www.fifa.com

5. What is Third Party Ownership in football and why is it controversial - The Telegraph Online 26 September 2016d-party rules" www.fifa.com

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