

## Department of Sports Law Newsletter

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### **Main aspects of resolution 32/2012 issued by the Argentine Financial Information Unit**

Financial Information Units (FIUs) are agencies created according to FATF-GAFI recommendations that receive reports of suspicious transactions from financial institutions and other persons and entities, analyze 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 10 February 2012, the FIU issued Resolution 32/2012, specifying that the AFA and the clubs belonging to both first division A and B are "*Compelled Subjects*", meaning that they are required to provide information to the FIU on their clients and operations, as well as to comply with the requirements described below.

Regarding "Clients" – which said Compelled Subjects must identify and know – these are defined as *all individuals or legal entities: i) with whom the Compelled Subjects CARRY OUT TRANSFER OR ASSIGNMENT OF REGISTRATION RIGHTS; ii) which HOLD ECONOMIC RIGHTS arising out of said registration rights; and/or iii) 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, 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 abovementioned resolution. Among others, 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 formalizing presentations before the Financial Information Unit.

Chapter III regulates the Compelled Subjects' duty of creating a policy on *client identification* and *client knowledge*, called "*Know your client*" ("*Conozca a su cliente*"). 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 obligates 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 identify 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, and 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 of clients who carry out operations for an annual amount equal to or exceeding AR\$ 60,000 (approximately US\$ 14,000), a *client profile* must be defined. Said profile must be based on the information and documentation relating to the client’s economic, patrimonial, financial and tax situation that the Compelled Subject may have obtained. In this same order of ideas, 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 the 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 of the operation termination.

Pursuant to the resolution, Compelled Subjects must report suspicious operations that, according to the suitability necessary in virtue of the activity that they carry out and the analysis of such, may be considered suspicious of 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 reports of suspicious operations must be correspondingly founded and contain a description of the circumstances on account of which the Compelled Subject considers that the operation has said nature.

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## Conclusions

We consider that the implementation of this resolution will not be an easy task for Compelled Subjects. Several of them are currently in no condition to develop the necessary tasks to comply with this resolution - among other reasons - because of the lack of economic means to stand up to the new requirements. That notwithstanding, these obligations - which are already in force - are mandatory for all Compelled Subjects and economic sanctions for noncompliance could be very serious. Therefore, football clubs should adopt the new measures stated by this resolution.

It is highly advisable to keep watch 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.

## Contacts

### Department of Sports Law

For further information, please contact us:

**Ramón I. Moyano**  
[rmoyano@ebv.com.ar](mailto:rmoyano@ebv.com.ar)  
+54 11 4379 6831

**Rodrigo Ortega Sanchez**  
[rosanchez@ebv.com.ar](mailto:rosanchez@ebv.com.ar)  
+54 11 4379 4779