ILLEGAL COMPENSATION PRACTICES BY CERTAIN AGENTS: WHAT ICE HOCKEY PLAYERS NEED TO KNOW

Introduction

In the course of 2025, it was found that illegal compensation practices by certain ice hockey player agents in Switzerland were continuing unabated, and that many players were unaware of these practices.

Some agents demand excessive or unjustified fees from their players and sometimes have them sign acknowledgments of debt to cover future claims for services that may never be rendered. What is abusive and/or contrary to the law.

The purpose of this note is to inform players of these illegal practices and the laws in force so that they can protect their financial interests from agents who violate them, while knowing how to remunerate agents legally and responsibly for the placement and management services they provide.

A brief look back...

Until 2016 in Switzerland, player agents were paid for the services they provided to their players by the professional clubs of the latter. However, this practice was illegal because it constituted a conflict of interest, as it allowed agents to pay themselves handsomely at the expense of their own players' financial interests. In fact, some of the money that agents received in excess through their illegal practices could have gone into their players' pockets in the form of additional salaries, had the agents not violated their legal obligations as mandatees towards their players.

The clubs, realizing that they could make significant savings by stopping the payment of agents' commissions, the amounts of which were often difficult to justify, decided, via a Gentlemen's Agreement, that it was now up to the players to pay their agents themselves.

The implementation of this agreement—which some Swiss professional clubs now appear to be disregarding, or only partially complying with, in multiple violations of the law—confronted agents with a new economic reality, which for them was as follows:

- The fact that they would no longer be able to receive commissions from clubs, which until then had often amounted to 10% of the player's gross annual salary for each year of the employment contract between the club and the player.

- The fact that, according to the law, the commission they would now be able to receive from their player for placing him in a club would amount to a maximum of 5% of the player's first gross annual salary.

- The fact that, according to the law, their management services — i.e., all services that do not constitute placement services - could no longer be billed to their players as a percentage of the players' gross annual salary, nor could they be billed as a lump sum. As a result, they would have to be billed on an hourly basis that takes into account the type and volume of services they actually provide to their players, as is the case with any other service provider.

Agents thus realized that the income they had earned from their activities up to that point would fall significantly. In order to limit the "damage" resulting from simply bringing their remuneration system into compliance, which had previously been illegal - and should have been dealt with under criminal law in many cases, for criminal mismanagement or profiteering - some agents rushed to the State Secretariat for Economic Affairs (SECO) in Bern to try to obtain an exemption from the law that would allow them to continue to be paid for their management services as a percentage of the player's salary. This to continue to automatically receive management commissions while avoiding having to regularly report to their players on the scope and actual value of the management services they contractually promise them and then actually provide, or not.

In the summer of 2017, SECO, after ruling out any exemption contrary to the law, finally gave in to pressure from the agents and allowed them to adopt the illegal remuneration method they had come to Bern to seek, which they continue to enjoy and abuse in 2025, to the detriment of the players' interests and despite opposition from the competent authorities in Zurich and St. Gallen, which also pointed out that this practice of remunerating management services as a percentage of the player's salary is contrary to the law which is crystal clear.

While legal steps are underway at the federal level to ensure that SECO will put an end to its illegal practice of allowing agents to remunerate their management services in a manner contrary to the law as soon as possible, players do not have to take this illegal practice into account when renegotiating, negotiating, and/or concluding contracts with their agents, since all they need to do to protect their financial interests and avoid being deceived and fleeced by their agents is to require them to comply with the applicable laws, which are summarized below.

What the law says

While all work deserves to be paid for and an agent must therefore be remunerated appropriately by his player, this must be done in strict compliance with the law, which states, in summary, that:

- **For placing his player with a Swiss club** - which includes and implies finding a club, negotiating with it, and then concluding an employment contract between his player and that club - **the agent is entitled to charge his player a commission of up to 5% of the player's first gross annual salary** (Art. 3 para. 1 OEmol-LSE; RS 823.113). In the event of a subsequent renewal of the contract with the same club, the agent may again charge the player a similar commission of up to 5% calculated on the first annual salary set out in the renewed contract.

  <u>For example</u>: if the player's employment contract with the club is concluded for a period of three years and provides for a gross annual salary of CHF 300,000, the agent may request the player to pay him a (single) commission of up to CHF 15,000.

- **The agent, for management services provided to his player** that do not relate to placement in a club and are considered "special services" within the meaning of the law - such as advice on sports-related matters, support in the event of difficulties with the club, advice on tax, insurance, and pension matters, financial planning, searching for accommodation, etc. – cannot be remunerated as a percentage of the player's gross annual salary or in the form of a lump sum, as these methods of remuneration are prohibited by law (Art. 20 para. 3 OSE; RS 823.111).

As a result, an agent **must base his remuneration on an hourly rate that takes into account the type and volume of his services**, as is the case for any other service provider. **In addition, the agent must be able to report at any time to his player, upon request, on the services he has provided on his behalf** (Art. 397ff CO; RS 220).

<u>For example</u>: during a season, the agent has recorded 73 hours of work that he has performed himself and/or had performed in part by a third-party service provider on behalf of his player. Calculated at an hourly rate of CHF 130.00 agreed in advance with the player, these services can be invoiced to him for CHF 9,490.

- **When the agent successfully negotiates a sponsorship contract on behalf of his player**, he is entitled to request from the latter payment of a **commission calculated as a percentage of the value of the sponsorship contract**, the rate of which, which is neither stipulated nor limited by law, has been agreed in advance between the agent and the player.

  <u>For example</u>: the agent has successfully concluded a sponsorship contract with a watch brand under which a watch worth CHF 8,000 has been offered to the player and an amount of CHF 7,000 has been paid to him in cash by the sponsor. As the agent and the player had agreed in advance that the commission resulting from the conclusion of such a contract would amount to 10% of the value of the contract, the commission due by the player to the agent amounts to CHF 1,500.

- **The contract concluded between the agent and his player is a mandate contract that the player may terminate at any time** (Art. 404 CO). If the player terminates his contract, he must pay the agent, *pro rata temporis*, the amount owed to him under the contract up to the time of termination. Under no circumstances may the agent claim compensation on the grounds that, had the contract not been terminated, it would have lasted longer and thus given rise to future services by the agent that the agent would now like to be compensated for. According to SECO, such a course of action would constitute a violation of Article 8, paragraph 1, letters a and b OSE.

  As a result, **an agent who has his player sign an acknowledgment of debt and then enforce it when his players terminates his contract with him,** in particular in order to try to collect commissions for future management services that he will not perform because the contract has been terminated, **is acting unlawfully toward his player,** as this violates his duties as mandatee toward him. Such practices may also, depending on the circumstances, fall under criminal law.

Recommendations for players

The unlawful practice of SECO, which still allows agents to remunerate their management services as a percentage of their players' salaries, results in some of them continue to take advantage of the situation by demanding that their players pay commissions that are excessive and/or contrary to the law, to the detriment of the latter's financial interests, which they would nevertheless be required by law to protect, as mandatees.

Therefore, in order to avoid being deceived and fleeced by an agent, every player should take the following recommendations into consideration:

- If his current contract with his agent is not compatible with the law, as explained above, **the player would be well advised to renegotiate it with his agent in order to bring it into line with the law, which means, in particular, setting a fee for management services that is calculated on an hourly basis**. If the agent refuses, it may be in the player's interest to terminate the contract immediately, in particular to make pressure on the agent to then conclude a new contract under the conditions set by law.

- **The same applies if the player has to negotiate a new contract with a new agent**: the terms of the contract must be compatible with the law, particularly with regard to remuneration for management services.

- **The hourly rate** to be agreed between the player and his agent for the latter's management services **should be set according to the various types of services that the agent is required to provide, taking into account market prices for these types of services**. This rate may also **be degressive** depending on the volume of services that the agent is required to provide to the player.

- **The agent's management services should be invoiced to the player on a regular basis**, either monthly or quarterly, especially if the volume of services is significant. This practice allows the agent to ensure regular payment for their services by the player, and allows the player to monitor their use of such services.

- **Under no circumstances should a player sign an acknowledgment of debt in favor of his agent** if it is intended to ensure payment of commissions related to future services provided by the agent that may never be rendered. In the event of non-payment by the player for services rendered, the agent has the means of enforcement provided for by law, which any other service provider uses to recover a debt.

- **A player under contract with an agent who has already had him sign an acknowledgment of debt** to ensure payment of commissions related to future services that may never be rendered **has every interest in immediately invoking the fact that it is invalid**, due to the legal and other defects affecting it.

- It is in the player's best interest to have a specialist analyze the contract they have entered into or are about to enter into with his agent to ensure that his interests are optimally protected. **After all, prevention is better than cure**. The law firm Renz & Partners specializes in this area and can assist the players in this regard.

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