

Version of 22.08.2022

# Rules to be followed by Swiss clubs when hiring players through agents

This memorandum is a summary of the rules of Swiss law and of the associated rules of FIBA as revised in April 2021 and effective from 1 January 2022.

## 1. Is it necessary to go through an agent?

**No.** There is no obligation to go through an agent to hire a player in Switzerland, regardless of whether the player comes from abroad or is already in Switzerland.

The involvement of an agent can nevertheless be useful and beneficial to a club, as it can put clubs in contact with players with whom they do not already have any contact, in particular, foreign players.

## 2. Which agents are clubs allowed to deal with?

### 2.1 Only agents or agent companies whose registered office is in Switzerland are entitled to participate in transfers aimed at concluding an employment contract with a player in Switzerland.

Agents who carry out this activity on a **regular basis** are subject to the LSE<sup>1</sup> and its subsequent orders, the LSE<sup>2</sup> and the OEmol-LSE<sup>3</sup>, among other things, and are subject to authorisation from the cantonal employment office where they carry out their professional activity. If they secure deals for players from abroad, they must also have a permit from the Secretariat for Economic Affairs (SECO).

<sup>1</sup> Federal Law on Employment Services and Service Leasing (*Loi fédérale sur le service de l'emploi et la location de services*) (SR 823.11; LSE)

<sup>2</sup> Employment Service Ordinance (*Ordonnance sur le service de l'emploi*) (OSE; SR 823.111)

<sup>3</sup> LSE Fee Ordinance (*Ordonnance sur les émoluments LSE*) (OEmol-LSE ; SR 823.113)

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Agents who regularly engage in this type of activity (Art. 2 LSE) are those who advertise as such be it through a website, by distributing business cards or using letterheads to promote their activity as agents, or those who (even without advertising) are involved in at least 10 contracts per year in Switzerland (Art. 2 OSE; LSE Guidelines, 19).

**Attention:**

The involvement of agents not based in Switzerland, including those based in the European Union, is illegal. Clubs are not allowed to contact or respond to agents not authorised in Switzerland for the purpose of securing a deal for a particular player; if in doubt, clubs should ask the agents for their Swiss authorizations. Contact by e-mail is already covered by the LSE and is prohibited<sup>4</sup>.

Swiss clubs that use foreign agents who they know do not have a Swiss employment permit are punishable under criminal law (Art. 39 para. 2 let. a LSE).

2.1 In addition, international transfers, i.e. the hiring of a player (Swiss or foreign) licensed with a foreign federation, are **only permissible for agents authorised by FIBA** (FIBA Rules, Book 3, ch. 295). When applying for a release letter, the club must communicate the name(s) of the agent(s) who were involved in the transfer of the player, in one capacity or another, together with a copy of the contract(s) of all agents involved (FIBA Rules, Book 3, ch. 297).

2.3 In summary:

- **for transfers of players from abroad:** clubs must go through an **FIBA agent** who must also be authorised by **SECO** if the agent so presents itself on its website or to the Company Register (ask for their authorisation); and
- **for domestic transfers:** clubs do not have to go through FIBA agents and so third parties may play this role, e.g. lawyers. If a third party claims to be an agent on the internet or through advertising, or if they are involved in more than 10 contracts per year, they must be authorised by the cantonal office of their place of residence or headquarters.

### 3. Who represents the agent and who has to pay the agent?

The club should clarify **at the outset of its contact** with an agent, in writing (and after ensuring that the agent is an authorised agent), whether the agent is acting as a representative of the club or a player.

The agent cannot advise both parties, otherwise its remuneration will be null and void due to a conflict of interests (art. 20 CO<sup>5</sup>; e.g. FIBA Rules, Book 3, ch. 298).

<sup>4</sup> See the Guidelines and Commentary on the ESA, available online: [www.seco.admin.ch/seco/fr/home/Publikationen\\_Dienstleistungen/Publikationen\\_und\\_Formulare/Arbeit/Personenfreizueugigkeit\\_und\\_Arbeitsbeziehungen/merkmale/Weisungen\\_Erlaeuterungen\\_Arbeitsvermittlungsgesetz.html](http://www.seco.admin.ch/seco/fr/home/Publikationen_Dienstleistungen/Publikationen_und_Formulare/Arbeit/Personenfreizueugigkeit_und_Arbeitsbeziehungen/merkmale/Weisungen_Erlaeuterungen_Arbeitsvermittlungsgesetz.html) (last consultation 19 August 2022)

<sup>5</sup> Code of Obligations (*Code des obligations*) (CO; SR 210); see ATF 141 III 64, recital 4.3 on double brokering

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FIBA agents may not represent a club and at the same time be the agent of other players of that club (FIBA Rules, Book 3, ch. 298 let. c).

Finally, only the party who has commissioned the agent must pay him (FIBA Rules, Book 3, ch. 298 let. d), otherwise the agent is in a "conflict of interest" situation. However, it is possible for the player and their agent to agree that the club will pay the agent **on behalf of the player**, provided that the invoice is issued in the player's name, including VAT, and that the player declares this amount as remuneration subject to income tax.

#### 4. Is a written contract required and what should it contain?

- 4.1 A **contract between a club and an agent** must be in writing if it is concluded with an FIBA agent (FIBA Rules, Book 3, ch. 318). Otherwise, a written contract is not required under Swiss law between a club and an agent but is strongly recommended for evidentiary purposes.

The notice periods for the agent and the club must be identical. Unless otherwise provided, the notice period is one month (Art. 418q para. 1 CO).

- 4.2 A **contract between a player and an agent must be in writing** or it will be null and void (art. 8 para. 1 ISA; see also FIBA Rules, Book 3, ch. 318 for FIBA agents). In principle, under Swiss law, a contract is governed by art. 412 ff CO and by the mandatory provisions of the LSE and the OSE of which the latter takes precedence in the event of conflicting provisions.

**Termination period:** A contract between a player and an agent may be terminated at any time (LSE Guidelines, p. 43), in contrast to the 30-day period provided for in the FIBA Rules, Book 3, c. 320, which gives way to mandatory Swiss law; see also FIBA Rules, Book 3, c. 317a). Indications to the contrary in a contract are **void**.

Clauses in a contract **between an agent and a player** providing for **exclusivity** in favour of an agent are **void** and have no effect (Art. 8 para. 2 let. a LSE).

- 4.3 FIBA agents must also, "as far as possible", use the model contract between agent and player or club which is provided by FIBA in Annex 1 of Book 3 of the FIBA Rules<sup>6</sup>, which is useful to consult and know.

#### 5. What is the maximum remuneration of an agent for securing a deal for the player?

- 5.1 If the agent is commissioned by a club:

The LSE and the OSE are intended to protect job seekers (players), not clubs. Therefore, under Swiss law, there is no limit to the remuneration that **an agent representing a club can receive** for hiring a player in Switzerland.

<sup>6</sup>

[www.fiba.basketball/internal-regulations/book3/players-and-officials.pdf](http://www.fiba.basketball/internal-regulations/book3/players-and-officials.pdf) (last consultation 24 January 2022)

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However, FIBA imposes a limit on **FIBA agents only of 10% of the total value of a player's contract** (FIBA Rules, Book 3, ch. 321).

The club must also ensure that it is clear under what conditions an agent is entitled to its commission; otherwise, the matter is governed by Art. 418g CO. According to the law, an agent is entitled to the usual or otherwise agreed commission for all deals it has negotiated or concluded during the term of the contract, even if it is no longer involved but had brought the player into contact with the club. If the contract contains an exclusivity clause for one agent, that agent is still entitled to its commission even if the contract is eventually signed through another agent.

Asking a legal professional to review the contract is highly recommended due to the risks involved and the technicality of the rules related to the agent's right to remuneration.

## 5.2 If the agent is commissioned by the player:

**The maximum total commission for securing a deal charged to the player is 5% of the first total gross annual salary** (Art. 20 OSE and Art. 3 para. 2 OEmol-LSE), plus VAT.

This mandatory rule of Swiss law is more restrictive and prevails over the FIBA rule which provides that the agent's remuneration shall not exceed 10% of the value of the contract concluded with the player (FIBA Rules, Book 3, ch. 321).

If several agents are involved in the engagement of the player, the commission cannot be charged more than once. In other words, the limit of 5% of the first annual salary applies globally to all agents.

**If the employment contract lasts more than one year**, the agent may only charge a commission of up to 5% of the **first annual salary**, but not 5% of the total value of the annual salaries, nor charge **5% in subsequent years** (see SECO Guidelines, p. 50).

Additional compensation for other services provided by the agent are possible but only allowed on a restricted basis. They may not be invoiced on the basis of a flat rate or a percentage of the salary and must be invoiced on the basis of the actual costs incurred (Art. 20 para. 3 OSE). The agent may therefore not use these services to boost their commission.

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## Annex: List of FIBA Authorised Agents

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## Appendix - List of FIBA Authorised Agents in Switzerland

List updated regularly with contact details available on the FIBA website: [www.fiba.basketball/fr/find-basketball-agent](http://www.fiba.basketball/fr/find-basketball-agent)

AGENTS		
NAME	LICENCE ID	SECO AUTHORIZATION ?
BROWN, Tony (USA)	2018506348	Shorty Yes – Application in progress (August 2022)
FANTI , Sebastien (SUI)	202100285	N/A (lawyer without advertising not exceeding the LSE threshold)
FRANCALANCI, Massimo (ITA)	2015503559	NO
KEUCHEYAN, Sévag ()	2008020433	Yes
RENNZ Philippe (SUI)	202200150	YES, through its company Sport 7 Sàrl
TOMIC, Nikola (SUI)	2018506388	YES
TRAPANI, Enea (ITA)	202000101	NO
VOGT Oliver Matthias (SUI)	202200155	Shorty Yes – Application in progress (August 2022)
YANA BEKIMA, Simon (CMR)	202200027	Shorty Yes – Application in progress (August 2022)

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