

IN THE MATTER OF A BREACH OF THE EFL REGULATIONS

BETWEEN:

THE FOOTBALL LEAGUE

The EFL

and

VONG PECH

The Respondent

AGREED DECISION

Introduction and relevant provisions of the EFL Regulations

1. This is an Agreed Decision pursuant to EFL Regulation 86.
2. Of particular relevance to this Agreed Decision (though the EFL Regulations should be referred to directly for their full force and effect) are the following:
 - 2.1 The intention behind the Owners' & Directors' Test (Appendix 3 to the EFL Regulations) (**OADT**) is 'to protect the image and integrity of the League and its competitions, the well-being of the Clubs, and the interests of all of the stakeholders in those Clubs, by preventing anyone who is subject to a 'Disqualifying Condition' being involved in or influencing the management or administration of a Club'.
 - 2.2 'Control' is set out in Regulation 1.1 of the EFL Regulations as follows:

"Control" means the power of a person to exercise, or to be able to exercise or acquire direct or indirect control over the policies, affairs and/or management of a Club, whether that power is constituted by rights or contracts (either separately or in combination) and having regard to the considerations of fact or law involved ...

For the purposes of the above any rights or powers of a Nominee for any person or of an Associate of any Person shall be attributed to that person'.
 - 2.3 'Relevant Person' is defined in the OADT as follows:

"Relevant Person" means in respect of any Club any individual Person (and not any Entity) operating the powers that are usually associated with the powers of a director of a company incorporated under the 2006 Act (as a Company limited by shares or by guarantee). Further, and without prejudice to the generality of the foregoing, the following individuals shall in any event be deemed to qualify as a Relevant Person:

- (a) a director as defined by Section 250 of the 2006 Act;
- (b) a shadow director as defined by Section 251 of the 2006 Act;
- (c) a person registered as a director or secretary of the Club with the Registrar of Companies;
- (d) a person for whom a Form AP01 (to be filed with the Registrar of Companies) has been completed in relation to the Club;
- (e) a person who has been elected to become a director of the Club at a meeting of the board of directors of the Club;
- (f) a person who has been elected to become a director of the Club at a meeting of the members of the Club;
- (g) a person in accordance with whose directions or instructions the persons constituting the management of the Club are accustomed to act;
- (h) any Authorised Signatory;
- (i) any duly appointed signatory (as that term is utilised in Regulation 46.1);
- (j) any 'chief executive' officer, 'general manager', 'chief operating officer' or any other person undertaking any duties which would objectively be considered to be equivalent to those roles;
- (k) any person appointed by those with Control over the Club to represent their interests in the management of the Club; and
- (l) a person who has Control over the affairs of the Club,

but the definition of 'Relevant Person' expressly excludes any external legal, financial or other professional advisers where they are acting in a capacity regulated by a professional regulatory body and do not hold any interest (in excess of a 5% shareholding) in the Club'.

2.4 OADT Rule 5.4 provides:

'Any Club, Relevant Person or other Official of a Club who (whether intentionally, negligently or recklessly) causes, allows or permits any Person to acquire Control of the Club in breach of Rule 3.3 shall be guilty of misconduct and will be liable to be dealt with in accordance with the provisions of Section 8 of the Regulations ...'.

2.5 OADT Rule 3.1 provides:

'If any Person proposes to acquire Control of a Club:

3.1.1 the Club and/or the Person shall, as far in advance of the acquisition of Control as reasonably possible and in any event no later than 10 Normal Working Days prior to the date on which it is anticipated that such acquisition of Control will take place:

- (a) submit to the League a duly completed Declaration in respect of each Person who will become a Relevant person upon the proposed acquisition of Control; and
- (b) submit to the League up to date Future Financial Information (as defined in Regulation 16) prepared to take into account the consequences of the change of Control on the Club's future financial position ...'

2.6 OADT Rule 3.3 provides:

'No Person may acquire Control of a Club and no Club may permit a Person to acquire Control of it until such time as:

- 3.3.1 The League provides confirmation that all Persons that are required to do so have complied with the process set out in Rule 3.1.1(a) and no such Persons are liable to be disqualified as a Relevant Person;
- 3.3.2 The League provides confirmation of its satisfaction with the information provided pursuant to Rule 3.1.1 (b); and
- 3.3.3 The Club and any Person proposing to acquire Control have acceded to any powers and/or accepted any conditions imposed pursuant to Rule 3.2.'

3. On 20 February 2023, the Respondent was charged by the EFL with a breach of OADT Rule 5.4, on the basis that the Respondent caused, allowed or permitted one or more Persons to bring themselves within the definition of a Relevant Person of the Club and/or acquire Control of the Birmingham City Football Club (**Club**) without the prior approval of the EFL.

Background - the proposed takeover of the Club

4. On 16 July 2022, the Respondent (through his control of a selling party) entered into a master sale and purchase agreement (**MSPA**) with Maxco Capital Co Ltd (**Maxco**) (a company owned by Paul Richardson and Maxi Lopez) with a view to Maxco ultimately acquiring ownership of the Club. The proposed acquisition was structured in two stages.

5. Clause 5.1 (a) of the MSPA stated as follows:

'(a) The Stage 1 Completion is conditional upon:

the Purchaser having obtained the necessary approval from the English Football League in relation to the purchase by the Purchaser of the Stage 1 Sale Shares under the English Football League Regulations ...'.

6. Clause 7.5 of the MSPA stated as follows:

'If the Condition set out in Clause 5.1(a)(i) is not satisfied on or before 31 July 2022, during the period between 1 August 2022 and the Stage 1 Completion (when English Football League shall have approved the appointment of the Purchaser Nominated Directors) and conditional upon the Purchaser having fulfilled its payment obligation under Clause 4.1(b)(i) in full on the due date, the Sellers undertake to procure that:

- (a) one (1) person nominated by the Purchaser (the "Purchaser Nominated Consultant") shall be appointed as the consultant of the Club solely to observe the daily management of the Club;
- (b) any transfer of player's registration by the Club from another club for a fee shall be mutually agreed by the chairman of the board of director of the Club and the Purchaser's Nominated Consultant; and

- (c) the Club shall notify the Purchaser Nominated Consultant in writing before entering into any transaction, agreement or contract which consideration exceeds GBP100,000.'

The EFL's charge

7. The EFL alleged when charging the Respondent that through his control of a selling party to the MSPA, he allowed and/or permitted (whether intentionally, negligently or recklessly) Maxco and/or one or more of Paul Richardson, Maxi Lopez and Matthew Southall (the individual appointed as 'Purchaser Nominated Consultant' in accordance with clause 7.5 of the MSPA) (collectively, the **Maxco Individuals**) to acquire 'Control' of the Club (within the definition of that term as set out in the EFL Regulations) on and/or after 1 August 2022.
8. For completeness, (1) on 2 December 2022 Mr Richardson and Mr Lopez publicly announced that the proposed takeover of the Club would not proceed, and (2) in relation to the facts set out above the EFL also brought charges against (i) the Maxco Individuals, which were resolved by way of Agreed Decision dated 11 April 2023; and (ii) the Club, which were resolved by way of Agreed Decision dated 27 April 2023.

Admission of breach

9. The Respondent admits the charge and, in doing so, says that his breach was unintentional.
10. The EFL accepts the Respondent's admission and acknowledges the assertion that his breach was unintentional. The EFL is prepared to give the Respondent substantial credit for his early admission, thereby saving significant costs and time in not having the charge referred to a Disciplinary Commission on a contested basis.

Agreed sanction

11. It has been agreed, and I hereby order that the Respondent is sanctioned for the breach identified at paragraph 3 with a warning and reprimand.
12. This Agreed Decision shall not constitute a waiver by the EFL of its rights or remedies (however so arising) in respect of (1) any separate or future breaches of the EFL Regulations by the Respondent, including any further breaches of the OADT, and/or (2) any breaches of the EFL Regulations by any other party (in respect of the facts relating to this Agreed Decision or otherwise, and whether previously charged or otherwise).

Costs

13. The Respondent shall be liable to pay the EFL a contribution to the costs of its investigation in the amount of £20,000.
14. The Respondent shall additionally be liable to pay my reasonable costs relating to ratifying this Agreed Decision pursuant to EFL Regulation 86.6.
15. The Respondent shall bear his own costs.

Publication

16. This Agreed Decision shall be published by the EFL on its website and may be circulated to member clubs of the EFL.

Finality

17. This Agreed Decision is not subject to appeal or challenge of any sort.

A handwritten signature in black ink, appearing to read 'Neil Stone', written over a horizontal line.

Signed: _____

Dated: 11 May 2023