

BRAZILIAN FOOTBALL CLUBS: NEW LEGISLATION MAY BRING ABOUT ENHANCED PROFESSIONALISM AND INVESTMENT OPPORTUNITIES

Inadequate governance of football clubs is often mentioned as a factor hindering the success Brazilian football deserves. Non-profit associative model, lack of transparency, poor management, internal political disputes and corruption are common features. Frequent results are high indebtedness, out-of-control expenses, and disappointing revenues. This situation could soon change as a result of legislation currently under discussion in Congress, which brings about strong incentives for football clubs to turn into corporate forms and to be managed in a more businesslike way.

Among legislation to foster the transformation of football clubs into companies under debate in Congress, Bill No. 5,082/16, in particular, has gathered strong support across the political spectrum.

While nothing prevents football clubs in Brazil from being incorporated as companies, and accordingly to be subject to sophisticated accounting and governance practices, most are incorporated as non-profit associations, governed by their by-laws and by a set of very few, overly general, default rules. One of the main reasons is cultural. Many clubs were established long ago as associations of families or communities dedicated to many sports modalities and their associates and supporters resist the idea of teams to have an “owner”. There are legal and practical reasons as well, as non-profit associations enjoy tax benefits not available to companies.

Bill No. 5,082/16 aims at changing this situation and provides for labor, tax and financial incentives, which include a simplified tax regime and the possibility of refinancing debts before public authorities and to apply for judicial recovery. Clubs would also be entitled to a new centralized regime for executions/foreclosures before Labor Courts, which allows for a rational, streamlined procedure for facing payments resulting from labor disputes – historically a nightmare in Brazil.

The draft legislation also contains rules on the segregation of football from other activities of the club, disclosure of financial data, liability of managers, eligibility criteria for management members, mandatory functioning of an Audit Committee, and independency of part of the members of the Board of Directors. Nowadays, major Brazilian football clubs typically develop other sports activities and have social infrastructure available for the use and benefit of their associates – the costs of all the different activities developed by the club are generally commingled and this discourages investors.

As corporations, clubs will have access to different structures of fundraising thus creating investment opportunities. Investors may invest directly in the capital stock of the club. Following the path of many international clubs, Brazilian football clubs might launch initial public offerings and issue debt instruments.

Corporate structures also provide more efficient tools for investors to participate in the governance of clubs, by indicating management members and overseeing managerial decisions. Investment documentation may provide the investors with proper instruments to enforce their rights, reduce political influence of other groups and sanction unlawful management.

Although the corporate model can bring advantages, financial results and success of a football club depend ultimately on adopting a mentality that favors transparency, professional business management and accountability. Passionate behavior of associates and influence of organized groups of supporters may deviate the business purpose of the club regardless of its organization form, thus leaving less room for investments and better governance practices.

In this regard, the positive signal is that while draft legislation continues to take shape, revealing a clear and general direction towards professionalization, the nature and volume of public discussion seems to indicate that Brazil is already ripe for structural change aimed at getting the most out of the extraordinary potential of local football.

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