PLAYING FAIR IN THE BOARDROOM: AN EXAMINATION OF THE CORPORATE STRUCTURES OF EUROPEAN FOOTBALL CLUBS

Ryan Murphy†

† J.D. Candidate, Michigan State University College of Law, 2011. The author would like to thank his parents for their lifelong support. The author would also like to thank Professor Bruce Bean for his guidance on this article and the Editorial Board and associates of the Journal of International Law for their assistance in making this article possible. The author, an Arsenal fan, tried to take as unbiased an attitude as possible and apologizes if his bias comes through in this article.

"Every disadvantage has its advantages" -*Johan Cruyff*[*]

I. INTRODUCTION

Every four years, the World Cup provides a visible reminder that football[1] is the world's game. European football clubs have capitalized on this popularity to generate billions of dollars from fans, media companies, and commercial advertisers.[2] The emergence of football as a revenue generating enterprise has naturally led to an examination into who reaps the riches of football success.

Successful clubs demonstrate a few main characteristics. Before considering these characteristics, it is important to note that football clubs have a unique position in European society. Clubs exist because a community of fans has associated themselves based on a love of football. Any successful club must try to incorporate fans because fans are the reason why the club exists and continues to exist. One of the most important aspects of a successful club is on the field success. For the top clubs, this usually means winning every competition the club competes in. For less successful clubs, this may mean finishing in a particular league position. Another characteristic is less visible than winning on the field of play. A successful club is one that lives within its financial means—a club that makes neither a profit nor a loss. A club with sizable yearly losses runs the risk of bankruptcy or seriously interfering with the integrity of the competition. A club that is too profitable risks complaints from fans regarding a lack of investment in the team. The challenge of successful managers is navigating these constraints. Club finances are not merely determined by on the field results, but are impacted by the ownership

*. *Johan Cruyff Football Quotes*, EXPERTFOOTBALL.COM, http://expertfootball.com/gossip/quotes.php?search=Johan_Cruyff. Johan Cruyff is a Dutch football legend. He is considered one of the best five players to play the game. After his playing days ended, he turned to management and reestablished FC Barcelona as a force in football.

1. This paper will use the term football to describe the game that Americans know as soccer.

2. The 665 first division generated a record €11.7 billion in revenue in 2008/09. Jonathan Clegg, *Soccer Clubs Warned Over Finances*, WALL ST. J., Jan. 12, 2011, http://online.wsj.com/article/SB10001424052748703791904576075982800093382.html. However, a great deal of this revenue was spent on player salaries. 64% of the club revenues were spent on salaries and 73 clubs spent more than 100% of their revenues on salaries. *Id.* The twenty richest clubs collectively generated revenues in excess of €4.3 billion during the 2008/09 season. SPORTS BUSINESS GROUP, DELOITTE, FOOTBALL MONEY LEAGUE 2 (2011), *available at* http://www.deloitte.com/assets/Dcom-UnitedKingdom/Local%20Assets/Documents/Industries/Sports%20Business%20Group/UK_SBG_DFML2011.pdf.

structure of the club. Clubs controlled by fans may wish to spend money on tangible things like players, whereas clubs controlled by investors may wish to earn a return on their investment. The recent economic crisis has disrupted the delicate equilibrium that many clubs had previously maintained.

In an effort to establish some guidelines for the proper governance of a club, UEFA[3] has formulated a new set of regulations. Part I will examine these new regulations. Part II will look to the nature of the corporate structure of football clubs in Spain, in particular FC Barcelona and Real Madrid. Part III will analyze the various club structures allowed in Germany through the examples of Bayern Munich and BVB Borussia Dortmund. Part IV will address the nature of club ownership in England. This examination will include a look at clubs owned by a benefactor and clubs run as a normal business. Finally, Part V will attempt to decide which corporate form best promotes a sustainable and successful football club.[4]

II. UEFA FINANCIAL FAIR PLAY RULES[5]

The Financial Fair Play Rules owe their existence to Michel Platini, President of UEFA.[6] Shortly after Platini took office in 2007, reform efforts took on greater significance due to the global recession. The recession has prompted a thorough reexamination of the financial conditions of clubs. Many clubs, including some of the leading clubs in Europe, faced and continue to face serious financial difficulties as a result of changes in the European business world.[7] Platini decided that something must be done to encourage financial reform. Because of European Union regulations, UEFA is limited in the measures that it can take.[8] Any measure must comply with the provisions of the Treaty of Lisbon. For instance, the *Bosman* decision prevents UEFA from controlling costs by imposing caps upon the number

---

3. FIFA (International Federation of Association Football) is the governing body of world football. UEFA (Union of European Football Associations) is the governing body of football in Europe. Each country has a federation or football association that governs the sport in the particular country. The United Kingdom is an anomaly in that it contains individual football associations for England, Scotland, Wales, and Northern Ireland. Despite unequal market size, each national association has equal voting power in UEFA.

4. As mentioned earlier, success can be defined both on the field and financially. This paper deals entirely with the financial definition of success with only brief mentions of on the field successes.

5. UEFA, UEFA CLUB LICENSING AND FINANCIAL FAIR PLAY REGULATIONS EDITION 2010 (2010) [hereinafter UEFA FAIR PLAY REGULATIONS].

6. Paolo Bandini, *Platini Elected Uefa President*, GUARDIAN.CO.UK (Jan. 26, 2007), http://www.guardian.co.uk/football/2007/jan/26/newsstory.sport13.

7. *See* Leander Schaerlaeckens, *Rolling Out of Control*, SOCCERNET.COM (Sept. 22, 2010), http://espn.go.com/sports/soccer/news/_/id/5580467/european-football-eating-itself. The European clubs collectively lost €1.2 billion for the 2008/09 season. Clegg, *supra* note 2.

8. *See* Robert Siekmann, *Is Sport 'Special' in EU Law and Policy?*, *in* THE FUTURE OF SPORTS LAW IN THE EUROPEAN UNION 37, 44–47 (Roger Blanpain ed., 2008).

of foreign, but European Union nationals in a team or preventing them from changing clubs after the player's contract has expired.[9]

Due to UEFA's limitations, Platini formed an advisory group, the Professional Football Strategy Council, to examine what could be done to improve the financial regulation of the game.[10] An American–style salary cap was considered, but ultimately discarded because of the difficulties in designing a system that complies with European Union law.[11] Platini recognized that any regulation would have no chance of success if the most marketable clubs were opposed; therefore he also consulted with their representatives.[12] Any reforms that UEFA may propose must abide by European Union labor and competition law.[13] Although the European Union recognizes sports are a special case when considering competition law, it has not completely exempted sports leagues from European regulations.[14] As part of his efforts, Platini unsuccessfully petitioned the European Union Parliament to grant this sporting exemption from its competition law.[15] Ultimately, the Executive Committee of UEFA approved a plan called the

---

9. Case C-415/93, Union Royale Belge des Sociétés de Football Ass'n ASBL v. Bosman, 1995 E.C.R. I–4921.

10. Dominic Fifield, *Platini Vows to Fight 'Cheating' English Clubs Over Debts*, THE GUARDIAN (U.K.), June 7, 2008, http://www.guardian.co.uk/football/2008/jun/07/premierleague.chelsea.

11. Kevin McCarra, *Platini Sends Financing Warning to Europe's Top Clubs*, THE GUARDIAN (U.K.), June 26, 2008, http://www.guardian.co.uk/football/2008/jun/26/premierleague.europeanfootball; David Conn, *Michel Platini's Victory for Stability Spells End to Freewheeling Culture*, THE GUARDIAN (U.K.), May 26, 2010, http://www.guardian.co.uk/football/blog/2010/may/26/michel-platini-uefa-club-finances. *See also* Thomas M. Schiera, Note, *Balancing Act: Will the European Commission Allow European Football to Reestablish the Completive Balance That It Helped Destroy?*, 32 BROOK. J. INT'L L. 709 (2007) (examining the legality of various methods to restrict player salaries); Christine Snyder, Note, *Perfect Pitch: How U.S. Sports Financing and Recruiting Models Can Restore Harmony Between FIFA and the EU*, 42 CASE W. RES. J. INT'L. L. 499 (2009) (examining why FIFA plans relating to player employment conflict with European Union Law). The most applicable provisions are contained in the competition provisions of the Treaty of Lisbon, specifically Article 101 (Article 81 TEC). *See* Schiera, *supra* note 11, at 731-32; Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Communities art. 101, Dec. 13, 2007, 2008 O. J. (C 115) 1.

12. Matt Scott, *Platini Renews His Fight for European Salary Cap*, THE GUARDIAN (U.K.), July 8, 2008, http://www.guardian.co.uk/football/2008/jul/08/2.

13. *See* Schiera, *supra* note 11.

14. Snyder, *supra* note 11, at 516–18. However, the EU Sports Commissioner has recently stated that the EU will investigate options such as caps on transfer fees. *Commissioner Vassilieu: 'I'm Shocked by Size of Football Transfer Fees*, Euractive.com (Feb. 23, 2011), http://www.euractiv.com/en/sports/commissioner-vassiliou-im-shocked-size-football-transfer-fees-interview-502414 [hereinafter *Commissioner Vassilieu*].

15. Matt Scott & David Gow, *Platini Calls on European Parliament to Make Sport a Special Case*, GUARDIAN.CO.UK (Feb. 18, 2009), http://www.guardian.co.uk/football/2009/feb/18/michel-platini-uefa-european-parliament. *See also* Snyder, *supra* note 13, at 516–18.

Financial Fair Play Rules with the support of wealthy owners.[16] The European Union has recently stated that it approves of the rules laid out by UEFA.[17] The Financial Fair Play rules have not yet taken effect, but Platini remains firm in his assertion that clubs will be excluded from the Champions League[18] if they do not meet the requirements.[19]

The Financial Fair Play Rules provide a basis for how a club should operate in order to obtain a license to compete in a UEFA competition[20] like the Champions League. Although UEFA sets the standards for licensing, the actual licensing itself is every year done by the national association or the national league.[21] The regulations require that the applicant be either a registered member of the association or have a contractual relationship with the registered member.[22] However, any alterations within the past three years to the legal form of the club to evade the regulations and gain a license are forbidden.[23] This would seem to be targeted toward preventing the creation of subsidiaries or other related companies solely to hold debt or to cover the club's losses. The regulations take great care to inform applicants that the clubs have a continuing duty to provide any information required to make a decision concerning licensing.[24] The Fair Play Rules are not just financial regulations, but include structural requirements for proper

---

16. Patrick Barclay, *Michel Platini Finds Ally in Roman Abramovich as War on Debt Culture Intensifies*, TIMES (London), Aug. 28, 2009, http://www.timesonline.co.uk/tol/sport/football/european_football/article6813001.ece; *UEFA Approves Financial Fair Play Rules for European Clubs*, GUARDIAN.CO.UK (May 27, 2010), http://www.guardian.co.uk/football/2010/may/27/uefa-michel-platini-club-financial-regulations.

17. *Developing the European Dimension in Sport*, at 12, COM (2011) 12 final (Jan. 18, 2011) [hereinafter *2011 Commission Communication*], *available at* http://ec.europa.eu/sport/news/doc/communication/communication_en.pdf.

18. The UEFA Champions League is an UEFA–wide competition run by UEFA. The Champions League includes the best clubs in Europe, including those that have not won their league the previous year. The competition takes place from September until May. Clubs play on Tuesdays and Wednesdays throughout the year. A number of clubs are given automatic places in the group stage, while other clubs must proceed through qualifying rounds. England, Spain, and Italy each have 3 guaranteed places in the group stage and 1 place in the final qualifying round. Germany has 2 automatic places and 1 qualifying place. The 32 team group stage contains eight groups of 4 teams. Each team in the group plays the other teams home and away. The top two teams in each group advance to the knockout rounds. The teams are drawn in a playoff system with the winner after the home and away legs advancing to the next round. The final is a single game played in May on a neutral field.

19. David Conn, *Michel Platini Will Expel Debt-Laden Clubs from the Champions League*, GUARDIAN.CO.UK (Aug. 26, 2010), http://www.guardian.co.uk/football/2010/aug/26/michel-platini-champions-league.

20. UEFA competitions include the UEFA Champions League and the UEFA Europa League.

21. UEFA FAIR PLAY REGULATIONS, *supra* note 5, art. 5. The license can be withdrawn if the club becomes bankrupt or is liquidated. *Id.* art. 14.

22. *Id.* art. 12.

23. *Id.*

24. *Id.* art. 13.

operations. Among the requirements are a youth development program, player registration, training facilities, a general manager, a financial officer, a media officer, a supporter liaison officer, a head coach, and assistants.[25]

The organizational requirements are not very onerous for clubs that compete in European competitions because most clubs have required infrastructure in place. The challenge for clubs is to fulfill the break–even requirement.[26] UEFA determines that a club has broken even for the year when the relevant expenses exceed the relevant income by less than €5 million for the prior year.[27] UEFA permits small losses because on the field upsets and disappointments are expected in an unpredictable business like sports. UEFA recognized that many large clubs could not currently pass the break even requirement, thus the amount of any acceptable deviation will gradually decrease to the €5 million goal. A loss of €45 million for the 2013/14 and 2014/15 monitoring periods is acceptable, but this threshold is then lowered to €30 million for the following two periods.[28] Although the losses are permitted, UEFA requires that these losses be covered by contributions from an equity holder.[29] This ensures that creditors, especially other football clubs, will be paid. Although short term financial results may be acceptable, the applicant must demonstrate the future ability of the club to continue as a going concern.[30] Required documentation includes information about the club, the club's subsidiaries,[31] and controlling parties.[32] UEFA has stated that a club that has a wage to revenue ratio greater than 70% or a net debt greater than 100% of revenue will be closely scrutinized.[33] Because the owners of many of the clubs have sufficient resources to evade these simple requirements, UEFA has set out a list of relevant income and expenses and required that they be valued at their fair market value in an arm's length transaction.[34]

Although many of Fair Play provisions are already in place, this is the first time that UEFA has managed to impose some strict standards of corporate governance on its member clubs. With the state of the economy,

---

25. *Id.* arts. 17–18, 20, 25, 28–30, 35, 36–39.

26. UEFA FAIR PLAY REGULATIONS, *supra* note 5, art. 57.

27. *Id*. art. 61. Platini noted at a press conference in January 2011 that 11 clubs would potentially have been excluded from the 2010/11 Champions League and the 2010/11 Europa League. Clegg, *supra* note 2. Platini also noted that despite the €11.7 billion in revenue, the top division clubs collectively lost €1.2 billion. *Id.*

28. UEFA FAIR PLAY REGULATIONS, *supra* note 5, art. 61. The 2013/14 monitoring period begins with the 2011/12 season.

29. *Id.*

30. *Id.* art. 52.

31. Many clubs own their own stadium or have other commercial interests related to the professional team. Separating these from the professional team has benefits in regard to limiting liability.

32. UEFA FAIR PLAY REGULATIONS, *supra* note 5, art. 46.

33. *Id.* art. 62.

34. *Id.* art. 58.

football clubs can only benefit from moving towards a sustainable financial model. Although firm rules are in place, it remains to be seen if UEFA will actually exclude high profile clubs that fail to meet the break even requirement or bow to sponsorship and political pressure.

III. SPANISH SOCIO MODEL

The Spanish governance model adopted by FC Barcelona ("Barcelona") and Real Madrid CF ("Real Madrid") is a model that has remained relatively unchanged in the century since the foundation of both clubs. Fans who pay a modest fee are given the opportunity to exercise some measure of control over club governance. Even among Spanish clubs, this fan-controlled structure is anomaly. This model has been named the "socio" model after the Spanish word for fan.

A. FC Barcelona

Futbol Club Barcelona is one of the most famous clubs in the world. Barcelona has transformed itself into a global brand through television exposure and summer tours of North America and Asia. The result of these efforts is shown in the five million Barcelona jerseys that have been sold in the last five years. [35] Barcelona was founded by Swiss, British, and Spanish players in 1899.[36] From humble beginnings, Joan Gamper provided the driving force that led to a club with 12,000 members after only 25 years.[37] From the 1920s until Franco's death in 1975, the Spanish government attempted to extinguish Catalan culture.[38] Only at Barcelona games were Catalans allowed to publicly speak in Catalan.[39] As a result, Barcelona became inextricably identified as a symbol of the region of Catalunya.[40]

The organization of the club gives the fans considerable influence. In keeping with the club's original theme, the governing power resides in its

---

35. Alex Miller, *Exclusive: Manchester United Lead in Global Shirt Sales; Liverpool in Chasing Pack*, SPORTINGINTELLIGENCE.COM (Aug. 31, 2010), http://www.sportingintelligence.com/2010/08/31/revealed-the-worlds-best-selling-club-football-shirts-310802/.

36. JIMMY BURNS, BARÇA: A PEOPLE'S PASSION 76–77 (rev. ed. 2009).

37. *Id.* at 82.

38. FRANKLIN FOER, HOW SOCCER EXPLAINS THE WORLD 200–04 (rev. ed 2006).

39. *Id.* at 195, 204–05.

40. Despite Franco's disfavor, the club did manage to build Camp Nou, its 99,000 seat stadium, and win numerous trophies during the Franco era. BURNS, *supra* note 36, at 41, 172. Barcelona fans adamantly believe that Franco influenced the transfer of Alfredo DiStefano to Real Madrid instead of Barcelona. DiStefano was an Argentinean that sought to play in Spain during the 1950s. Barcelona had extensive negotiations with DiStefano before the Spanish Federation imposed a ban on the signing of foreign players. As a result of the ban, the Federation told Barcelona and Madrid that they would be forced to share the player. Eventually, Barcelona agreed to give up its claim on the player. *Id.* at 158–59.

members. [41] Barcelona currently has over 170,000 socios[42] as a result of a worldwide campaign to generate revenue and loyalty to the club. Despite the global reach of Barcelona, non-Spanish members constitute less than 20% of the socios.[43] The requirements to become a member and maintain membership are simply the payment of a relatively modest annual fee as well as good behavior by the member.[44] Every socio is subject to regulation of the five person disciplinary commission, which can remove a member for failure to pay dues or a violation of club behavioral regulations.[45] Because the typical socio is distant from the governing of the club, a member's trustee serves as an independent advisor and defender of the socio's rights.[46] Club membership entitles the fan to privileges like a bimonthly magazine and a monthly email as well as the right to vote.[47] The socio may vote to elect the President and the Board of Directors that manage the day to day operations of the club.[48] The socio may also occasionally be called upon to vote on extraordinary issues affecting the club.[49]

---

41. Sean Hamil, Geoff Walters, Lee Watson, *The Model of Governance at FC Barcelona: Balancing Member Democracy, Commercial Strategy, Corporate Social Responsibility and Sporting Performance*, 11 SOCCER & SOC. 475, 496 (2010).

42. Alex Duff, *Barcelona Soccer Club Members Vote to Sue Laporta After Loss*, BUSINESSWEEK (Oct. 16, 2010), http://www.businessweek.com/news/2010-10-16/barcelona-soccer-club-members-vote-to-sue-laporta-after-loss.html.

43. FC BARCELONA, MEMORIA 2008–2009, at 91 (2009).

44. FC BARCELONA, FC BARCELONA STATUTES 12–13 (2009) [hereinafter BARCELONA CLUB STATUTES], http://www.fcbarcelona.com/web/downloads/sala_premsa/estatuts/ESTATUS_ANGLES_2009_COMPLETS_baixa.pdf. Barcelona has recently controversially closed membership to the general public, limiting membership to former members and members who have a family member who is a member. *Members Zone, Advantages, Information and Special Offers*, FC BARCELONA, http://www.fcbarcelona.cat/web/english/socis/fes-te_soci/nova/info_senior.html (last visited Nov. 11, 2010).The cost to join the club is currently €161.50. *Id.*

45. BARCELONA CLUB STATUTES, *supra* note 44, at 12–13, 58, 66–69.

46. *Id.* at 55–57. The member's trustee must be a member of the club and serves a 5 year term. The selection by the Board of Directors is ratified by the Assembly of Delegates. *Id.* at 56.

47. *Members Zone, Advantages, Information and Special Offers*, FC BARCELONA, http://www.fcbarcelona.cat/web/english/socis/avantatges/viu.html (last visited Nov. 13, 2010).

48. Hamil, *supra* note 41, at 496. As with US citizens, the right to vote does not necessarily mean that a member will exercise it. The record turnout for a Barcelona election is only 54.7%. *Id.* at 482.

49. *Id.* at 486. An example of an extraordinary issue is the vote on shirt sponsorship. Barcelona traditionally has never had a shirt sponsor. In 2005, the members approved a proposal to allow shirt sponsorship. Although the board favored passage in order to increase revenue for playing operations, Barcelona later decided to place UNICEF on its shirt at no cost to UNICEF. A number of the members were not pleased about this loss of potential revenue. *Id.* at 493. Barcelona has recently announced that it will be sponsored by the Qatar foundation for 5 seasons, commencing at the start of the 2011/12 season. The Qatar foundation will pay the club €30 million per year. Paolo Bandini, *Barcelona Are More Than Just a Club. They Are a Business*, GUARDIAN.CO.UK (Dec. 10, 2010),

A club with significant business interests like Barcelona cannot feasibly be directly governed by votes of its thousands of members.[50] In order to create a structure that is better suited to govern, Barcelona has an Assembly of Delegates. The Assembly of Delegates consists of three thousand members serving two year terms.[51] The vast majority of Delegates are club members chosen at random, but board members, former presidents, members of the disciplinary and economic commissions, and up to twenty five members chosen by the board are also included.[52] The Assembly is tasked with general supervisory functions like approving the club's budget and annual report.[53] The Assembly is also given the power to censure the Board and the President as well as to appoint the members of the economic commission, which advises the Board of financial matters involving the club.[54]

An effectively run business must have a small core of individuals running the day to day business. At Barcelona, this role is fulfilled by the Board of Directors and the President. The President and Board of Directors are elected on a single electoral slate for six year terms.[55] The Board is given the function of managing club operations while the President oversees the club.[56] The Board does not have a fixed membership and can vary between fourteen to twenty one members depending upon how the President and Board wish to divide responsibilities.[57] The club has wisely chosen to set up a series of checks on the power of the President and the Board. The President is not permitted to serve more than two terms as president.[58] Because the President and Directors are jointly liable for any financial damage to the club resulting from malfeasance, the President and every Director must provide a €1.5 million guarantee to the club as part of the election process.[59] The President and Board are not only subject to regular

---

http://www.guardian.co.uk/football/blog/2010/dec/10/barcelona-record-sponsor-qatar-foundation.

50. There is a club that is directly governed by its supporters. Ebbsfleet United is owned by myfootballclub, an online venture. myfootballclub allows its members to vote directly on club policies, but not to pick who plays on the field. David Conn, *AFC Wimbledon and Ebbsfleet Have Different Reasons for FA Cup Hope*, THE GUARDIAN (U.K.), Nov. 5, 2010, http://www.guardian.co.uk/football/blog/2010/nov/05/afc-wimbledon-ebbsfleet-united-fa-cup.

51. Hamil, *supra* note 41, at 480; BARCELONA CLUB STATUTES, *supra* note 44, at 18.

52. Hamil, *supra* note 41, at 480.

53. BARCELONA CLUB STATUTES, *supra* note 44, at 15–17.

54. *See* Hamil, *supra* note 41, at 480; BARCELONA CLUB STATUTES, *supra* note 44, at 57.

55. BARCELONA CLUB STATUTES, *supra* note 44, at 27, 43–44.

56. Hamil, *supra* note 41, at 483.

57. BARCELONA CLUB STATUTES, *supra* note 44, at 24.

58. Hamil, *supra* note 41, at 483. A board member is allowed to serve an unlimited number of terms. BARCELONA CLUB STATUTES, *supra* note 44, at 27.

59. Hamil, *supra* note 41, at 483; BARCELONA CLUB STATUTES, *supra* note 44, at 32–33. Spanish sports law provides that a board of directors must provide a guarantee of 15% of

elections, but also to no confidence votes if 5% of the voting members are not satisfied with the club's governance.[60]

As with transitions in national governments, presidential succession at Barcelona can be a difficult time for the club. In the summer of 2010, Sandro Rosell was elected president to replace the outgoing Joan Laporta.[61] Rosell and Laporta were once allies, but a dispute arose in 2005 that prompted Rosell's resignation from his vice presidency.[62] Predictably, this tension continued after Rosell came to power. Laporta had previously reported that Barcelona had made a €11 million profit for 2009–2010.[63] Rosell instituted a Deloitte & Touche audit that uncovered a loss of €79.60 million.[64] Rosell also stated that Barcelona had €392 million in debt at the end of the 2009–10 season.[65] This debt promoted Barcelona to take out a £130 million loan to meet short term commitments.[66] Rosell proposed personally suing Laporta for €48.7 million on the basis of financial mismanagement of the club.[67] The member assembly voted narrowly in favor of the suit.[68]

---

the club's budget for the year. Spanish Sports Act 7th Additional Protocol (B.O.E. 1990, 10), *available at* http://www.boe.es/boe/dias/1990/10/17/pdfs/A30397-30411.pdf. The guarantee is enforceable by La Liga, the Spanish professional league. *Id.* Any action for damages may be initiated by the Assembly by a majority vote of those present within four months of the end of the fiscal year. *Id.* Spanish law also provides for the 15% guarantee to be reduced by any profits accumulated by the club. Royal Decree on Sports Corporations 2d Additional Protocol (B.O.E. 1999, 1251), *available at* http://www.boe.es/boe/dias/1999/07/17/pdfs/A27070-27080.pdf..

60. BARCELONA CLUB STATUTES, *supra* note 44, at 51–52. However, removal requires a two third majority of the votes cast. *Id.* at 54.

61. *Barcelona's New President Says Club Will Not End Cesc Fabregas Pursuit*, GUARDIAN.CO.UK (June 14, 2010), http://www.guardian.co.uk/football/2010/jun/14/barcelona-cesc-fabregas-arsenal.

62. Sid Lowe, *Execs, Lies, and Videotape*, GUARDIAN.CO.UK (Oct. 25, 2005), http://www.guardian.co.uk/football/2005/oct/24/europeanfootball.sport2.

63. Sid Lowe, *End of an Expensive Era, But Barcelona's Players Prove Priceless*, GUARDIAN.CO.UK (Oct. 18, 2010), http://www.guardian.co.uk/football/blog/2010/oct/18/barcelona-end-of-expensive-era.

64. *Id.*

65. Matt Scott, *With Their Worrying Balance Sheet, Can Barcelona Afford Cesc Fabregas?*, THE GUARDIAN (U.K), July 14, 2010, http://www.guardian.co.uk/football/2010/jul/14/barcelona-debt-finance-fabregas. Rosell's rhetoric was a bit alarmist and probably overstated for political purposes. The presence of a large amount of short term debt does not necessarily mean that the club is in poor financial shape. *How Can Barcelona Afford Cesc Fabregas?*, SWISS RAMBLE, http://swissramble.blogspot.com/2010/05/how-can-barcelona-afford-cesc-fabregas.html (last visited Nov. 13, 2010).

66. *Barcelona Take Out £130m Santander and La Caixa Loan to Pay Wages*, GUARDIAN.CO.UK (July 14, 2010), http://www.guardian.co.uk/football/2010/jul/14/barcelona-loan-santander-la-caixa.

67. Lowe, *End of an Expensive Era*, *supra* note 63.

68. *Id.* Interesting enough, Rosell himself abstained from voting. *Id.* As the legal process is not yet complete, Laporta has not yet been forced to relinquish his guarantee.

Barcelona is probably the most famous example of the fan–owned club in the world. Barcelona has exploited this unique situation in positioning itself as a club of the people. In conjunction with the club's attractive style of play,[69] the club's democratic structure is very appealing to potential fans outside of Spain. The club's structure also has economic advantages. The members provide a substantial amount of financial support to the club through their member dues.[70] Additionally, the widespread membership forces the Barcelona leadership to look beyond their parochial interests.

Despite the club's significant fan involvement, there are substantial drawbacks to the Barcelona model. Because Barcelona is committed to ownership by its fans, its legal structure does not permit equity to be sold in the club. If the club confronts a future cash crisis, the club is limited in the ways that it can raise cash. This problem is tempered by the fact that Spanish banks have been extremely willing to lend money to other football clubs, as well as Barcelona itself.[71] A bank that is a creditor of Barcelona would be extremely unwilling to be seen as the bank that forced the dissolution of the club. Along with the weaknesses in the share structure, the populist leadership of the club can be seen as a negative. As with any democratic election, there is the danger of politics and nasty campaigning. Furthermore, the Catalan character of the club makes the club a tool for political gain in Catalunya, as demonstrated by Laporta's campaign for the Parliament of Catalunya.[72] These aspects can distract from the underlying purpose of the club as a sporting entity. Additionally, the elective structure allows for the leadership of the club to change rather suddenly. Barcelona appears to have had rather good luck with its leaders, but it is certainly possible that an ill–advised choice of president could create significant financial difficulties. Barcelona's club structure allows for fan input but lacks the continuity in leadership that a corporation can offer.

B. Real Madrid

Real Madrid is a probably the most famous club in the world. Through adept marketing of its superstars, Real Madrid has sold over 6 million jerseys over the past six years and has topped the Deloitte Money List as the

---

69. Barcelona utilizes a ball possession style of play that emphasizes the use of many short passes. This results in a many scoring opportunities, but also has the advantage of denying scoring chances to the opponent. The December 2010 5–0 victory over Real Madrid is a great example of Barcelona's style. *See*, *e.g.*, Brian Phillips, *All Hail Barcelona*, SLATE.COM (Dec. 23, 2010), http://www.slate.com/id/2278915/.

70. Duff, *supra* note 42.

71. BURNS, *supra* note 36, at 349.

72. Giles Tremlett, *Barcelona's Former Chairman Joan Laporta Adds Sex to Catalan Separatism*, GUARDIAN.CO.UK. (Nov. 14, 2010), http://www.guardian.co.uk/world/2010/nov/14/barcelona-joan-laporta-catalan-separatism.

richest club in the world.[73] However, Real Madrid did not become world–famous overnight. Real Madrid was founded as Madrid Futbol Club on March 6, 1902.[74] At the outset of the club, the governing structure was very important as evidenced by the fact that the club's board of directors was elected even before the formal paperwork was filed. [75] By 1912, the club had 450 members and the members were able to build a stadium.[76] In 1920, the club had received sufficient prominence to receive the "real" designation from King Alfonso XIII.[77] During Franco's dictatorship, Real Madrid became a public relations device both internationally and domestically because of its location in the capital of Spain.[78] Real Madrid's fame results not only from its marketing success but also its nine European Cups, including the first five cups staged.[79]

The club is organized in a similar manner to Barcelona. Members of Real Madrid vote for the President and Board of Directors of the club.[80] As of the 2009 annual report, Real Madrid has 93,587 members that paid €143 per year for member privileges.[81] These members not only had to pay the required yearly fee, but also gain the recommendation of two current socios in order to join the club.[82] These privileges include not only the right to vote, but also priority in the purchasing of tickets.[83] Like Barcelona, Real Madrid socios are also subject to discipline if the socios fail to pay dues or conduct themselves in an appropriate manner.[84]

As decisions can be better considered by a relatively small body, the members are represented at the Member Assembly. Unlike Barcelona's decision to randomly select delegates to its member assembly, Real Madrid has chosen to elect its 1,992 ordinary members for 4 year terms.[85] Because of the interest in the election by socios, the club has required that the voting

---

73. Miller, *supra* note 35; DELOITTE, *supra* note 2, at 2.

74. PHIL BALL, WHITE STORM: 101 YEARS OF REAL MADRID 50 (rev. ed. 2003). Ironically, the meeting took place in a store owned by Catalans. *Id.* at 45–46.

75. *Id.* at 50–51. On March 9, the club's first game was played after the members' dues were collected. The monthly dues were 2 pesetas. *Id.*

76. *Id.* at 52.

77. *Id.* at 53. The real designation is a mark of royal patronage and permits the club to include a crown in its seal.

78. *Id.* at 109.

79. *Football's Premier Club Competition*, UEFA.COM (June 14, 2010), http://www.uefa.com/uefachampionsleague/history/index.html. The Champions League replaced the European Cup in 1992. *Id.*

80. REAL MADRID C.F., ESTATUTOS SOCIALES 11-12 (2009) [hereinafter REAL MADRID CLUB STATUTES], http://www.realmadrid.com/StaticFiles/RealMadrid/img/pdf/LibroEstatutosSociales.pdf.

81. REAL MADRID C.F. GENERAL REPORT 2008–2009, at 33 (2009) [hereinafter REAL MADRID 2009 REPORT].

82. REAL MADRID CLUB STATUTES, *supra* note 80, at 7.

83. REAL MADRID 2009 REPORT, *supra* note 81, at 33.

84. REAL MADRID CLUB STATUTES, *supra* note 80, at 9–10.

85. REAL MADRID 2009 REPORT, *supra* note 81, at 32.

for delegates take place in person.[86] Like Barcelona, the Member Assembly also includes a number of extraordinary members, including the 13 members of the Board of Directors, the President, and former club presidents.[87] The Member Assembly is tasked with regular annual matters like approving the budget as well as extraordinary measures like disciplining the President and authorizing the club to borrow money.[88]

The socios elect the President as the head of an electoral slate that includes the President and the Board of Directors.[89] At the time of the election, the President must be Spanish and a member of the club for ten or more consecutive years.[90] When standing for the 4 year term, the candidates for President must provide a substantial bank guarantee.[91] In 2009, the socios of Real Madrid elected Florentino Perez to serve as president.[92] This is currently Perez's second stint as president. His first stint lasted from 2000 until his resignation in 2006.[93] The latter half of his term was characterized by on the field disappointment. Perez had lured a number of stars from other clubs at great cost in order to create a team of superstars.[94] Since the Champions League victory in 2003, Real Madrid has failed to advance from the first knockout round of the Champions League every year.[95] Despite the

---

86. *Id.*

87. *Id.*

88. REAL MADRID CLUB STATUTES, *supra* note 80, at 16–17.

89. REAL MADRID C.F. ELECCIONES A PRESIDENTE Y JUNTA DIRECTIVA–12/06/2009, at 2 (2009), *available at* *http://www.realmadrid.com/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobheadername1=Content-disposition&blobheadervalue1=attachment%3B+filename%3DNORMASELECTORALES.pdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1202886663591&ssbinary=true*. The number of members of the Board may vary from five to twenty. REAL MADRID CLUB STATUTES, *supra* note 80, at 18.

90. REAL MADRID CLUB STATUTES, *supra* note 81, at 19.

91. *Id.* For the 2009 race, the guarantee amounted to €57 million. *Election Rules*, REAL MADRID C.F., http://www.realmadrid.com/cs/Satellite/en/1202772523299/noticia/Noticia/Election_rules.htm (last visited Nov. 13, 2010). At Barcelona, the guarantee does not have to be formalized until just before the Board assumes office. BARCELONA CLUB STATUTES, *supra* note 44, at 51.

92. *Organogram*, REAL MADRID C.F., http://www.realmadrid.com/cs/Satellite/en/Club/1193041516782/EstructuraOrganizativa/Organogram.htm (last visited Nov. 13, 2010).

93. Sid Lowe, *Lock Up Your Glacticos-Florentino Perez Is Poised to Return to Real Madrid*, THE GUARDIAN (U.K.), May 13, 2009, http://www.guardian.co.uk/football/blog/2009/may/13/real-madrid-florentino-perez-election.

94. Perez paid €440 million in three years for stars like Luis Figo, Zinedine Zidane, Ronaldo, and David Beckham. *Id.* The Portuguese midfielder Luis Figo was acquired from Barcelona in 2000. The French midfield Zidane arrived from the Italian club Juventus in 2001. The Brazilian striker Ronaldo came from Inter Milan in 2002. The English midfielder David Beckham arrived from Manchester United in 2003.

95. Sid Lowe, *Lyon Send Cristiano Ronaldo's Real Madrid Packing*, GUARDIAN.CO.UK (Mar. 10, 2010), http://www.guardian.co.uk/football/2010/mar/10/real-

disappointing on the field results, the Galacticos project[96] was a tremendous commercial success, propelling Real Madrid into the title of the world's richest club.[97] When Perez was elected again in 2009, he instituted a similar project. The club took out a €152 million loan to finance purchases in the summer of 2009.[98] The club surpassed the world record transfer fee[99] twice in the span of a few weeks. The Brazilian forward Kaka was signed for €68.5 million from AC Milan before the Portuguese forward Cristiano Ronaldo was signed for €93.5 million from Manchester United.[100] Despite the substantial outlay, the club still failed to advance to the second knockout round of the Champions League or win the Spanish League title. During the summer of 2010, Perez wisely decided to refrain from wild spending on players and hired the accomplished manager Jose Mourinho.[101]

The club structure of Real Madrid has a number of similar characteristics to the Barcelona structure, especially in regard to fan engagement. Additionally, because of the wealth requirements to gain elective office, the club is usually run by competent businessmen. These businessmen have managed the Real Madrid brand quite well. The commercial success has led to Real Madrid's placement at the top of the Deloitte Football Money League. However, the same businessmen who have shown such great judgment in building their fortunes often have abandoned good sense for on the field matters. Money is often spent on star offensive players that the manager does not necessarily want and that unbalance the team. The pressure that the fans and the President place on the team can be suffocating, thus resulting in a high turnover rate of its managers. The club has changed managers about every year since the last Champions League trophy. This impatience has a severely negative impact upon developing the

---

madrid-lyon-champions-league1. As of the completion of this paper, Real Madrid was tied 1-1 going into the second leg of the first knockout round of the 2010/11 Champions League.

96. In English, galacticos means star. Real Madrid gained this derisory designation because it had acquired a number of world stars based on marketing potential and apparently without regard as to how so many offensive players could play together.

97. DELOITTE, *supra* note 2, at 9.

98. *See* Sid Lowe, *Revealed: The Loans Real Madrid Took Out After Kaka and Ronaldo Deals*, GUARDIAN.CO.UK (June 16, 2010), http://www.guardian.co.uk/football/2009/jun/16/real-madrid-loans-debt.

99. Unlike in American sports, neither free agency nor trading players is very common. Players usually change clubs when a second club pays a transfer fee to the first club for the registration rights of the player. Cristiano Ronaldo's transfer was the most paid by any club for a single transfer.

100. *Manchester United's Cristiano Ronaldo Seals Six-Year Deal with Real Madrid*, GUARDIAN.CO.UK (June 26, 2009), http://www.guardian.co.uk/football/2009/jun/26/cristiano-ronaldo-manchester-united-real-madrid. As of January 1, 2010, Ronaldo has been a huge on the field success while Kaka has struggled with poor form and injury.

101. Sid Lowe, *Jose Mourinho Represents Real Madrid's Last Throw of the Dice*, THE OBSERVER (U.K), Aug. 29, 2010, http://www.guardian.co.uk/football/blog/2010/aug/29/jose-mourinho-real-madrid. Mourinho managed the most recent Champions League winner, Inter Milan. *Id.*

product on the field for the medium term. Perez has apparently resolved this problem by appointing Mourinho as manager, but it remains to be seen whether the socios will turn on Mourinho if Real Madrid do not win this year. The short term thinking brought on by officials with relatively short terms can damage the club in the long term.

C. S.A.D.s

At their founding, Real Madrid and Barcelona were not alone in having a socio club structure. Virtually every club in Spain was formed in a similar way. However, the limited success of the other clubs limited the financial performance of the clubs and the clubs lived beyond their financial means. In 1990, the Spanish government required all clubs to form themselves into a Sociedades Anonimas Deportiva (S.A.D.).[102] The clubs' debts were canceled and shares were given to the individual members.[103] Gradually, the shares were collected by wealthy supporters and the poor financial performance continued.[104] As of March 2010, the overall debt in the Spanish league is estimated at €3.5 billion.[105] The third most successful club over the past five years, Valencia C.F. owes €600 million.[106] Despite the best intentions of the Spanish government, the required reorganization has done nothing except transfer control from the club's fans to a few wealthy individuals. The lesson of Spain shows that one type of club structure is not preferable to the other if the same bad management remains in charge.

IV. GERMAN MODEL

The Bundesliga, Germany's top professional division, has the unique distinction of being the only major European football league where its teams collectively make a profit.[107] The Bundesliga also has the highest average attendance of the five major European leagues in part because of its fan-

102. Spanish Sports Act 9th Additional Protocol (B.O.E. 1990, 10), *available at* http://www.boe.es/boe/dias/1990/10/17/pdfs/A30397-30411.pdf.. *See also* Hamil, *supra* note 39, at 479. Only FC Barcelona, Real Madrid, Athletic Bilbao, and Osasuna were excepted from this requirement because they had recorded a positive account balance during the 1985/86 season. *Id.* at 480. The Societas Anonimas is the equivalent of the UK limited company and the US corporation. Javier Aroyo, *Spain*, *in* EUROPEAN COMPANY STRUCTURES 215, 216 (Michael J. Oltmanns ed., 1998).

103. Hamil, *supra* note 41, at 479.

104. *Id.*

105. Sid Lowe, *Domination of Barcelona and Real Madrid Making Spain the New Scotland*, THE OBSERVER (U.K), Mar. 20, 2010, http://www.guardian.co.uk/football/blog/2010/mar/28/barcelona-real-madrid-spain.

106. *Id.*

107. Jamie Jackson, *How the Bundesliga Puts the Premier League to Shame*, THE OBSERVER (U.K.), Apr. 11, 2010, http://www.guardian.co.uk/football/blog/2010/apr/11/bundesliga-premier-league.

friendly measures of low ticket prices and direct fan involvement in club affairs. [108] This financial strength may have come at the cost of success in the Champions League, as no Bundesliga team has won the Champions League since 2001.[109] The governing body of German Football, the Deutsher Fußball–Bund, has made certain provisions for governance that has helped lead to such great financial strength. In 1998, the Bundesliga permitted its member clubs to adopt a few different club structures as long as the club controls the new structure (known as the 50+1 Rule).[110] These provisions allow for a number of unique options in structuring a club.

A. The Traditional Structure (e.V.)

Until the late 1990s, the typical Bundesliga club was organized as an eingetrager verein (e.V.).[111] The e.V. has legal personhood and provides for restricted legal liability for its members.[112] The e.V. has a limited set of requirements that includes at least seven members, a board, and a charter.[113] The e.V. is attractive to a more informal grouping of individuals because it has no capital requirements, no accounts publication requirements, and no fixed organizational structure other than the requirement of a board.[114] Another advantageous feature of German corporate law allows for an e.V. to own profit–seeking enterprises.[115] As a football club structure, the e.V. provides a strong voice for the member–fans who ultimately control the club. However, many larger German clubs have moved away from this structure for a variety of reasons. Although the fan input is important, the club management can be distracted by petty issues like parent complaints about their children's playing time. These minor disputes can paralyze or fracture the management of the club. The minimal central control makes it difficult to make long–term decisions necessary for the large professional club and poses an obstacle when attempting to exploit important commercial revenue streams.

---

108. *Id*. La Liga attracted an average of 28,478 fans, Ligue 1 (France) 21,034, Serie A (Italy) 25,304 and the Premier League 35,592. These figures are dwarfed by the Bundesliga's average of 41,904. *Id.*

109. *Id.* In this period of time, only Spanish (3), Italian (3), English (2), and Portuguese teams have won Champions League titles. However, German teams have made two losing appearances in the final.

110. Uwe Wilkesmann & Doris Blutner, *Going Public: The Organizational Restructuring of German Football Clubs*, 3 SOCCER & SOC. 19, 27 (2002).

111. BÜRGERLICHES GESETZBUCH [BGB] [CIVIL CODE], Aug. 18, 1896, as amended, §§ 21, 65 (Ger.), *available at* http://bundesrecht.juris.de/bgb/index.html, *translated at* http://bundesrecht.juris.de/englisch_bgb/index.html.

112. *Id.* §§ 31, 31a.

113. *Id.* §§ 25, 26, 56, 57.

114. Annette Zimmer, et al., *The Legacy of Subsidiarity: The Nonprofit Sector in Germany*, *in* FUTURE OF CIVIL SOCIETY: MAKING CENTRAL EUROPEAN NONPROFIT-ORGANISATIONS WORK 681, 691 (Eckhard Priller & Annettee Zimmer eds., 2004).

115. BGB § 22.

B. AGs

A number of clubs have moved to the Aktiengesellschaft (AG) structure, including Bayern Munich, Germany's most successful club.[116] The AG is the German equivalent of the public limited company or American corporation.[117] An AG is characterized by a dual board structure.[118] The supervisory board (Aufsichtsrat) is elected at the shareholders' general meeting.[119] The Aufsichtsrat is charged with appointing, consulting and supervising the managing board (Vorstand).[120] A member of the Aufsichtsrat is forbidden from membership on the Vorstand in order to eliminate conflicts of interest.[121] German law also limits the terms of members of the Aufsichtsrat to five years to ensure that the stockholders have the opportunity to choose whether to continue with the management composition.[122] The Vorstand is charged with running the operations of the AG. German law does not provide a limit to the number of members of the Vorstand, but does provide that the term of a member may not exceed five years without reappointment.[123] In AGs with a wide range of business interests, each member of the multi–person Vorstand may be given different responsibilities.[124] The members on the Vorstand act jointly for liability purposes and thus all members of the Vorstand must agree on an action unless the articles of incorporation provide otherwise.[125] Because of its popularity in German business, German law provides a very defined corporate structure for organizations that adopt the AG model.

Bayern Munich serves as a good model for demonstrating the AG structure in football. As Bundesliga rules prevent the club from constituting itself as an AG owned entirely by individual shareholders, Bayern Munich's

---

116. ULRICH HESSE-LICHTENBERGER, TOR!: THE STORY OF GERMAN FOOTBALL 161 (rev. ed. 2003).

117. Joachim Drude & Michael Oltmanns, *Germany*, *in* EUROPEAN COMPANY STRUCTURES, *supra* note 100, at 94.

118. Susan-Jacqueline Butler, *Models of Modern Corporations: A Comparative Analysis of German and U.S. Corporate Structures*, 17 ARIZ. J. INT'L & COMP. L. 555, 561 (2000).

119. Aktiengesetz [AktG] [Stock Corporation Act], Sept. 6, 1965, BGBl I at 1089, last amended by Gesetz [G], Aug. 24, 2004, BGBl. I at 2198, § 101 (Ger.), *available at* http://www.bundesrecht.juris.de/bundesrecht/aktg/gesamt.pdf. *See also* Drude & Oltmanns, *supra* note 117, at 106.

120. AktG § 111. In certain types of corporations, there is a requirement that a certain portion of the supervisory board must be comprised of representatives of the workers. *See* Butler, *supra* note 118, at 562–63.

121. AktG § 105. *See also* Butler, *supra* note 118, at 563.

122. AktG § 102. *See also* Butler, *supra* note 118, at 564.

123. AktG §§ 102, 84. *See also* Butler, *supra* note 118, at 566. 76 AktG provides that if an AG has capital of more than 3 million Euros, the Vorstand must have at least two members. *Id.*

124. Butler, *supra* note 118, at 566.

125. AktG § 77. *See also* Butler, *supra* note 118, at 567–68.

130,000 members pay an annual fee of €50 to belong to Bayern Munich e.V. [126] The members elect their president–currently Uli Hoeneß–and two vice presidents. [127] By virtue of its 87.4% stake in Bayern Munich AG, which owns the professional part of the club, the e.V. complies with the Bundesliga's 50+1 control requirement. [128] The remaining stake in the AG is owned by Adidas and Audi. [129] As required by law, Bayern Munich AG is governed by an Aufsichtsrat and a Vorstand. Bayern Munich AG's articles of incorporation provide for a nine member Aufsichtsrat.[130] Significant members of the Aufsichtsrat include Hoeneß, the chairman of Audi, and the CEO of Adidas.[131] This ensures that the most powerful shareholders can exercise some measure of control over the company. Bayern Munich AG is ultimately run by the four member Vorstand, chaired by Karl–Heinz Rummenigge, a former Bayern Munich player. [132]

Bayern Munich is an exceptionally well–run club from a financial perspective. The club has made a profit for seventeen straight years.[133] In the latest Deloitte Football Money League, Bayern had the fourth highest turnover at €323.0 million.[134] Bayern Munich has managed to achieve this financial prosperity in a balanced manner. Bayern Munich owns its own stadium, the Allianz Arena, which generates 21% of the club's revenue while keeping ticket prices affordable for fans.[135] Bayern Munich's commercial sponsorships bring in a football record €172.9 million, which constitutes 553 of the club's revenue.[136] Most remarkable is that Bayern has managed to pay only 48% of its turnover on wages while still remaining incredibly effective on the field.[137]

---

126. *Membership*, FC BAYERN MUNICH, http://www.fcbayern.t-com.de/en/company/club/membership/index.php?fcb_sid=8d4f235c68e8a65df7272ec57d1d56ea (last visited Nov. 14, 2010).

127. *Members' Club*, FC BAYERN MUNICH http://www.fcbayern.t-com.de/en/company/club/membership/index.php?fcb_sid=8d4f235c68e8a65df7272ec57d1d56ea (last visited Nov. 14, 2010). *See also* Rafael Honigstein, *Bayern Munich's New President Will Ensure the Club Continue as FC Uli Hoeneß*, GUARDIAN.CO.UK (Nov. 30, 2009), http://www.guardian.co.uk/football/blog/2009/nov/30/bayern-munich-bundesliga.

128. *Company*, FC BAYERN MUNICH AG, http://www.fcbayern.t-com.de/en/company/company/organe/index.php (last visited Nov. 14, 2010).

129. *Id.*

130. *Members of Supervisory Board*, FC BAYERN MUNICH AG, http://www.fcbayern.t-com.de/en/company/company/organe/00287.php (last visited Nov. 14, 2010).

131. *Id.*

132. *Company*, *supra* note 126.

133. *How Can Bayern Munich Pay Franck Ribery So Much?*, SWISS RAMBLE (June 2, 2010), http://swissramble.blogspot.com/2010/06/how-can-bayern-munich-pay-franck-ribery.html.

134. DELOITTE, *supra* note 2, at 12.

135. *Id.* (noting that revenue from the Allianz Arena comprised 21% of Bayern's 2010 revenue). *See also How Can Bayern Munich Pay Franck Ribery So Much?*, *supra* note 133.

136. DELOITTE, *supra* note 2, at 12.

137. *How Can Bayern Munich Pay Franck Ribery So Much?*, *supra* note 133. As a point of comparison, Bayern Munich's opponent in the 2010 Champions League Final, Inter

Bayern Munich serves as a good model for the AG/e.V. structure, but may be a model that is difficult to emulate for less successful clubs. The club model allows for the fans to feel invested in the club through their membership and express their wishes in electing management. However, the overall AG is somewhat insulated from any disruptions in the e.V. This allows for the professional football operations to be managed more smoothly. The club can raise capital easily through the AG structure, provided that the e.V. retains a controlling stake. Bayern Munich has provided an example of how the AG can accommodate local business leaders, like leaders at Audi and Adidas, who provide corporate advice as well as valuable connections to commercial income. The emphasis on increasing access to commercial revenue has the benefits of increasing money available for the on the field product while keeping ticket prices for the members relatively low. The AG structure does bring the negatives that any public corporation has. The management of the AG can become too isolated from the members of the e.V.[138] Because the same people, namely former players, tend to be elected to positions of leadership in the club and the AG, there does not tend to be much exposure to different management viewpoints.[139] Additionally, the presence of the corporate leaders on the AG supervisory board can lead to the club being more business driven than fan–driven. Although Bayern Munich provides a model for a successful football AG, this may be case because of its leading position in German football.

C. GmbHs

The Bundesliga's reforms also allowed for the club to be constituted in a Gesellschaft mit beschrnäkter Haftung (GmbH) provided that the club itself owned a majority of the GmbH.[140] The GmbH is the German equivalent of the American limited liability company.[141] As a limited liability corporation, the flexibility of the GmbH makes it a favored corporate form for small entities.[142] The GmbH structure can share many of the same characteristics with the AG form, including the shareholder meeting, Aufsichtsrat, and Vorstand.[143] However, the GmbH is not required to have an Aufsichtsrat if

---

Milan, had a wage to turnover ratio of 104%. *The Price of Inter's Success*, SWISS RAMBLE (Aug. 24, 2010), http://swissramble.blogspot.com/2010/08/price-of-inters-success.html.

138. Schalke 04 has addressed this concern by providing that a representative of the official fan group must be on the supervisory board. Wilkesmann & Blutner, *supra* note 110, at 31.

139. The on the field success and financial success of Bayern suggests that Bayern leadership does not need to be changed.

140. Wilkesmann & Blutner, *supra* note 110, at 27–28.

141. Drude & Oltmanns, *supra* note 91, at 94.

142. *Id.*

143. Gesetz betreffend die Gesellschaften mit beschränkter Haftung [GmbHG], Apr. 20, 1892, §§ 6, 45, 46, 48, 52, *available at* http://bundesrecht.juris.de/bundesrecht/gmbhg/gesamt.pdf.

the articles of incorporation specify a different structure.[144] The ability of small investors to influence the GmbH is demonstrated by the right of shareholders holding at least 10% of the shares to call a general meeting of the shareholders. [145] The GmbH is attractive to smaller entities because it provides a great deal of flexibility in the company's structure but also limits the liability of the shareholders only to the amount of their contribution to the GmbH.[146] Additionally, the shareholders are permitted to transfer their shares through sale or inheritance.[147] One aspect of the GmbH that would be very unfavorable as a club structure in football is the provision for capital calls to be made on the shareholders.[148] Sporting clubs are often unprofitable because of unrealistic dreams or unexpected failures, thus the cash call might be exercised on a regular basis. Although fans may voluntarily meet the financial requirements, they would probably not want to be required to do so.

Very few clubs exist in the GmbH form. The most prominent examples are Bayer Leverkusen and VfL Wolfsburg.[149] Bayer Leverkusen is a wholly owned subsidiary of the chemical giant Bayer AG while VfL Wolfsburg is owned by Volkswagen.[150] The GmbH is primarily designed for small, entrepreneurial companies, thus clubs are unlikely to pick this form. If a club is of sufficient size with enough financial resources to consider the GmbH form, additional complexities of the AG are probably not too great of a difficulty to confront. If the club is too small to be an AG, remaining as an e.V. is probably the wisest choice. This dynamic probably explains the rarity of this form among Bundesliga clubs.

D. KGaAs

The third corporate form that is permitted in the Bundesliga is the Kommanditgesellschaft auf Aktien (KGaA).[151] The KGaA is a form of partnership that combines a general partner with limited partners. [152] Investors can become limited partners by purchasing shares that can be

144. *Id.* § 52.
145. *Id.* § 50.
146. *Id.* § 13.
147. *Id.* § 15.
148. *Id.* § 26.
149. Wilkesmann & Blutner, *supra* note 110, at 29; *VfL Wolfsburg-Fußball GmbH*, VFL WOLFSBURG, http://www.vfl-wolfsburg.de/club.html (last visited Nov. 14, 2010).
150. James Callow, *Thoughts for Manchester United: How Other Clubs Are Owned*, GUARDIAN.CO.UK (Mar. 2, 2010), http://www.guardian.co.uk/football/2010/mar/02/manchester-united-ownership-models. This was permitted for historical reasons when the 50+1 rule was adopted. Wilkesmann & Blutner, *supra* note 110, at 29.
151. Wilkesmann & Blutner, *supra* note 110, at 27.
152. HANNES SCHNEIDER & MARTIN H. HEIDENHAIN, THE GERMAN STOCK CORPORATION Act 3 (2000).

traded on a stock exchange.[153] Like the AG, the KGaA has an Aufsichtsrat and shareholders.[154] However, the KGaA lacks a Vorstand.[155] The management is instead entrusted to the general partner who assumes an unlimited personal liability for actions of the KGaA.[156]As a result, the Aufsichtsrat has no influence over appointment of the management of the KGaA, but does retain the supervisory function. The shareholding limited partners retain the rights of AG shareholders to elect the Aufsichtsrat and to vote on extraordinary matters, but many of the shareholders' resolutions can be vetoed by the general partner.[157] The KGaA form is ideal for a corporation wishing to retain a great deal of control while still being able to raise capital.[158] Although the KGaA general partner retains control, the general partner is subject to unlimited personal liability. German law permits this to be mitigated through the use of an AG or a GmbH as a general partner.[159]

The best example of the KGaA structure in the Bundesliga is BVB Borussia Dortmund GmbH & Co. KGaA.[160] The club, BVB Borussia Dortmund e.V., follows the spirit of the 50+1 rule by maintaining control of the general partner, Borussia Dortmund Geschafsfuhrungs–GmbH, while selling shares in the KGaA. The GmbH is solely owned by the e.V.[161] The members of BVB Borussia Dortmund e.V. elect an economic council, which also becomes the advisory council of the KGaA.[162] The advisory council then appoints the managing board of the GmbH.[163] As required in a KGaA, BVB Borussia Dortmund GmbH & Co. KGaA does have a supervisory board, but the articles of incorporation do not grant it the power to hire or remove the managing directors of Borussia Dortmund Geschaftsfuhrungs–GmbH or to restrict the directors' decisions.[164] As a result of this structure, the members of the e.V. ultimately direct the operations of the KGaA, but are several layers removed from any personal liability. The shareholders of the KGaA have essentially no power.

Despite its complicated structure, the GmbH & KGaA has certain interesting aspects. The structure of the club is such that it grants

---

153. *Id.*

154. AktG §§ 278, 287.

155. *NYSE Declaration*, FRESENIUS MEDICAL CARE, http://www.fmc-ag.com/431.htm (last visited Nov. 14, 2010).

156. AktG § 278.

157. *Id.* § 285.

158. One prominent non–football example is Merck KGaA.

159. AktG § 279.

160. Wilkesmann & Blutner, *supra* note 110, at 27.

161. *General Information on Corporate Governance at Borussia Dortmund GmbH & Co. KGaA*, BORUSSIA DORTMUND INVESTOR RELATIONS, http://eng.borussia-aktie.de/?%9FY%1B%E4%F4%9D (last visited Nov. 14, 2010).

162. Wilkesmann & Blutner, *supra* note 110, at 32.

163. *Id.*

164. *Id.*

considerable autonomy to the managers of the various aspects of the organization. In addition, the members directly have a voice as members of the e.V. and as shareholders, albeit largely symbolic. The share structure allows for the club to raise cash through offerings of equity, provided that the 50+1 control is maintained. However, the KGaA stock has limited appeal for an investor because it grants very little power. The nature of a football club KGaA means that essentially only fans will be interested in any new share offerings by the club.[165]

The same autonomy that is granted to the managers of the operations can prove fatal to the club if the proper managers are not chosen. BVB Dortmund is a prime example of this danger. BVB Dortmund initially issued shares in 2000 at €10 per share.[166] As a result of poor financial planning, the club faced bankruptcy in 2005.[167] New management managed to save the club through an outside loan and the generosity of the Dortmund community.[168] As part of these efforts, BVB Dortmund GmbH & Co. KGaA issued approximate €50 million in new shares.[169] The issuance of new capital and the poor history of management have driven the share price down to €2.60.[170] However, this financial rebalancing has come at the expense of on the field success.[171]

By any financial measure, German football clubs are the model for the rest of Europe. They collectively make a profit and have the highest attendance in the major European leagues.[172] German clubs provide fans a voice in the governing of their clubs in a variety of unique corporate forms while also allowing for outside investment. The 50+1 rule plus the flexibility in the allowed corporate forms allows clubs to balance commercial interests with the interests of its members. German football

165. Money can be made by investing in football clubs. *See infra* Part V. However, a club usually seeks investors who are not fans because fans do not have the same type of expectations as an investor. The fan is motivated out of loyalty to the club and probably sees the purchase of shares more like a souvenir than an investment. A fan is motivated by the ability to voice an opinion about the playing capabilities of the team not only in the stands, but also in the boardroom.

166. *Basic Data*, BORUSSIA INVESTOR RELATIONS, http://eng.borussia-aktie.de/?_%1B%E4%F4%9D (last visited Nov. 14, 2010).

167. *Borussia Dortmund's Road to Recovery*, SWISS RAMBLE (Oct. 28, 2010), http://swissramble.blogspot.com/2010/10/borussia-dortmunds-road-to-recovery.html.

168. *Id.*

169. *Basic Data*, *supra* note 164.

170. *Borussia Dortmund (BVB.DE)*, YAHOO! FINANCE, http://uk.finance.yahoo.com/q?s=BVB.DE (last visited Jan. 9, 2011). The share price has seen about a 1.5 Euro increase in the last three months, probably in large part due to BVB Borussia Dortmund's league leading performance this year.

171. Borussia Dortmund has failed to qualify for the Champions League in each of the last seven seasons, but appears poised to qualify for the 2011/12 Champions League. At the halfway point of the season, Borussia Dortmund led the Bundesliga by ten points.

172. Jackson, *supra* note 107.

governance seems to be the envy of Europe, yet this appears to have come at the cost of European success.

VI. ENGLISH MODELS

Despite being the most popular league worldwide, the English Premier League (EPL) has faced a number of problems. The top players that once joined the top EPL teams are now joining the best teams in Spain and Italy. Furthermore, 70% of English clubs lost money in the 2008/09 season.[173] Last year saw one of its clubs, Portsmouth, enter bankruptcy during the season.[174]

The typical English club is constituted as a public limited company (PLC), which is the equivalent of the American corporation. The benefit of a PLC is that it is permitted to sell shares to the general public and trade shares on a stock exchange.[175] The PLC is required to have a board of directors, but is only required to have two directors and a secretary.[176] The interesting characteristics of the English football clubs is not how they are constituted, but how they are controlled. There are two basic categories of clubs. One type of club is controlled by a rich individual who acts as a benefactor for the club. The other type is controlled by an individual or group of individuals that treats the club like a normal business.

A. The Benefactor Model

1. Chelsea

Chelsea F.C. is a club that has been historically unsuccessful until a renaissance in the last decade and a half. Since the club's establishment in 1905, Chelsea has played its home matches at Stamford Bridge in West London.[177] Despite its wealthy location, Chelsea had won only one league title, in 1955, until its recent run of three titles in the past six years.[178]

---

173. *When Will the Premier League Bubble Burst?*, SWISS RAMBLE (June 28, 2010), http://swissramble.blogspot.com/2010/06/when-will-premier-league-bubble-burst.html.

174. *Portsmouth's Administration Move Deemed Valid by High Court*, GUARDIAN.CO.UK (Mar. 16, 2010), http://www.guardian.co.uk/football/2010/mar/16/portsmouth-administration-high-court.

175. COMPANIES HOUSE, INCORPORATION AND NAMES 7 (2010), *available at* http://www.companieshouse.gov.uk/about/pdf/gp1.pdf.

176. *Id.* at 23.

177. *See* Robert Booth, *Chelsea in Talks to Leave Stamford Bridge and Move to Earls Court*, GUARDIAN.CO.UK (Nov. 8, 2010), http://www.guardian.co.uk/football/2010/nov/08/chelsea-leave-stamford-earls-court. Ironically despite its name, Chelsea FC is not located in Chelsea, but in the borough of Fulham.

178. RICK GLANVILL, CHELSEA FC: THE OFFICIAL BIOGRAPHY 370 (rev. ed. 2006); Kevin McCarra, *Chelsea and Carlo Ancelotti Are Worthy Winners of Premier League Title*,

Although Chelsea fans are among England's richest, Chelsea has continually had financial difficulties. The blame for this financial hardship can be blamed both on the mediocre on the field results and on the costs incurred in renovating Stamford Bridge. During one financial crisis, the club devised a scheme to thwart the efforts of a developer eager to exploit the valuable property. A nonprofit group, Chelsea Pitch Owners, P.L.C., was created to own the property on which Stamford Bridge sits.[179] The group is constituted in a manner that caps the voting rights of individual shareholders in order to prevent a takeover.[180] The club also transferred ownership of the name Chelsea F.C. to Chelsea Pitch Owners, P.L.C. to exercise a check upon later owners wishing to move the club elsewhere.[181] During the 1990s, Chelsea followed the trend of modernizing English stadia with its Chelsea Village project.[182] The Chelsea Village project included a hotel and shopping complex that were not as successful as originally planned.[183] Ultimately, the debts incurred during redevelopment financially crippled the club and later led to its sale.[184]

Chelsea's history of financial woes came to an abrupt end in June 2003. As the club prepared to enter bankruptcy, the Russian oil magnate Roman Abramovich purchased the assets of the club for £60 million and assumed the club's £80 million in debt.[185] Abramovich has embarked on a remarkable spending spree since assuming control. He is estimated to have spent well over £500 million on the acquisition of players.[186] As a result of his lavish spending, Chelsea has recorded financial losses every year during his ownership.[187] Despite a pledge to balance the books by 2010, Chelsea still incurred a £71 million loss on revenue of £209.5 million in 2010.[188] This actually been an improvement on a record loss of £140 million in

---

THE GUARDIAN (London), May 10, 2010, http://www.guardian.co.uk/sport/blog/2010/may/09/chelsea-premier-league-title-winners.

179. GLANVILL, *supra* note 178, at 91.

180. *Id.* at 91.

181. *Id.* at 91–92.

182. *See Russian Businessman Buys Chelsea*, BBC NEWS (July 2, 2003), http://news.bbc.co.uk/2/hi/business/3036838.stm.

183. *Id.*

184. *See id.*

185. *Id.*

186. *When Will Chelsea Reach Their Target?*, SWISS RAMBLE (Apr. 22, 2010), http://swissramble.blogspot.com/2010/04/when-will-chelsea-reach-their-target.html. In the recent January 2011 transfer window, Chelsea spent in excess of £70 million on Fernando Torres and David Luiz. Owen Gibson, *Chelsea Owner Pursues Champions League Fixation Before UEFA Rules Bite*, GUARDIAN.CO.UK (Feb. 1, 2011), http://www.guardian.co.uk/football/2011/feb/01/roman-abramovich-chelsea-uefa.

187. *When Will Chelsea Reach Their Target*, *supra* note 186.

188. *Id. Chelsea's Financial Fair Play Challenge*, SWISS RAMBLE (Feb. 14, 2011), http://swissramble.blogspot.com/2011/02/chelseas-financial-fair-play-challenge.html.

2005.[189] Further prudence is shown in the cost cutting that has led to a wage to revenue ratio of 73%.[190] Abramovich has funded these lavish expenditures through £726 million in interest free loans to the club.[191] The looming Fair Play Rules have made this debt extremely unfavorable to maintain on the balance sheet, thus Abramovich has recently converted the loans into equity.[192] As a result of Abramovich's vast injections of capital into Chelsea, the club has enjoyed by far its most successful period in its history.

2. *Manchester City*

Manchester City FC has a reputation as an unlucky club that continually languished in the shadow of its more successful neighbor, Manchester United. Manchester City was founded in 1880 and had its most successful period during the 1960s and 1970s.[193] However, since its heyday in the 1970s, Manchester City has failed to win a single trophy and has been relegated.[194] The club lived on a relatively modest income until it was acquired for £81.6 million in June 2007 by the former Prime Minister of Thailand Thaksin Shinawatra.[195] Shinawatra had been exiled from Thailand in 2006 as the result of a coup.[196] Because he wished to return from exile, he wanted a way to generate positive publicity in Thailand. Despite having an estimated £800 million in assets frozen by the coup leaders because of allegations of fraud and corruption, Shinawatra managed to purchase Manchester City as well as fund player purchases in the short term.[197] Eventually his problems in Thailand caught up with him. Shinawatra did not

---

189. *When Will Chelsea Reach Their Target*, *supra* note 186. What is especially remarkable about the loss is that its group revenue was £149.1 million. *Id.*

190. *Id.*

191. David Conn, *Roman Abramovich Still Owed £726m Under Complex Chelsea Structure*, THE GUARDIAN (U.K.), May 19, 2010, http://www.guardian.co.uk/football/2010/may/19/roman-abramovich-chelsea-loan-debt.

192. *Id.* It is important to note that the debt was totally forgiven and still remains from Abramovich to the holding company that owns Chelsea. *Id.*

193. *Club History*, MANCHESTER CITY FC, http://www.mcfc.co.uk/The-Club/Club-History (last visited Nov. 15, 2010).

194. *Id.* The three worst teams in each league are demoted, or relegated, to a lower division. The best three teams in the lower division are promoted to the higher division.

195. James Ducker, *City Bewildered as Thaksin Shinawatra Doubts Sven-Goran Eriksson*, TIMES (U.K.), Apr. 17, 2008, http://www.timesonline.co.uk/tol/sport/football/premier_league/manchester_city/article3761153.ece.

196. *Id.*

197. David Conn, *Thaksin Shinawatra Doubled His Money When He Sold Manchester City Claim Sources*, GUARDIAN.CO.UK (Oct. 8, 2008), http://www.guardian.co.uk/football/2008/oct/08/manchestercity.premierleague; Sean Hamil & Geoff Walters, *Financial Performance in English Professional Football: 'An Inconvenient Truth'*, 11 SOCCER & SOC. 354, 364 (2010). Shinawatra's wife eventually returned to Thailand and was found guilty. *Id.*

have sufficient free cash to continue to fund the club. At the same time, the Thai authorities issued warrants for his arrests.[198] The legal actions prompted the Premier League to consider declaring him an unfit and improper owner.[199] With problems mounting, Shinawatra sold the club to the Abu Dhabi United Group.[200]

The Abu Dhabi United Group has generated a great deal of controversy in its short term of ownership, but this controversy has generally centered around the vast sums of money spent by the owners. The Abu Dhabi United Group is headed by Sheikh Mansour bin Zayed al Nahyan.[201] The backing of a prominent member of the Abu Dhabi royal family meant that considerable money was and is available for the club. Sheikh Mansour originally appointed Dr. Sulaiman Al–Fahim to be his agent for the takeover.[202] After Al–Fahim made outlandish and controversial statements about the resources now available to the club, Al Fahim was removed and a more reserved chairman was appointed.[203] In the two years since Sheikh Mansour's takeover, Manchester City has spent an astounding £300 million on player acquisitions.[204] This lavish spending has had predictable effects upon the financial statements. Manchester City followed a loss of £92.6 million in 2009 with a £121 million loss in 2010.[205] The wage to revenue ratio has alarmingly increased from 95% in 2009 to 107% in 2010.[206] These

198. Andy Hunter, *League Ready to Subject Thaksin to Second Fit and Proper Person Test*, THE GUARDIAN (U.K.), Aug. 12, 2008, http://www.guardian.co.uk/football/2008/aug/12/manchestercity.premierleague1.

199. *Id.*

200. Hamil & Walters, *supra* note 197, at 365.

201. *See* Matt Scott, *Revealed: Sheikh Mansour's £500m Manchester City Cash Injection*, THE GUARDIAN (U.K.), Aug. 26, 2010, http://www.guardian.co.uk/football/2010/aug/26/manchester-city-sheikh-mansour.

202. James Montague, *The Crazy World of Dr Al Fahim*, GUARDIAN.CO.UK (Oct. 23, 2010), http://www.guardian.co.uk/sport/blog/2008/oct/23/man-city-alfahim.

203. *Id.* Al Fahim later resurfaced as the owner of Portsmouth FC, but sold the majority of his stake after only a few weeks. Jamie Jackson, *Sulaiman al-Fahim Says His Work At Portsmouth Is Not Yet Finished*, THE GUARDIAN (U.K.), http://www.guardian.co.uk/football/2009/oct/07/sulaiman-al-fahim-portsmouth-ambassador.

204. Scott, *supra* note 201.

205. *How Manchester City Could Break Even*, SWISS RAMBLE (Oct. 5, 2010), http://swissramble.blogspot.com/2010/10/how-manchester-city-could-break-even.html. Qualifying for the Champions League would alleviate much of the financial pressure through increased television, ticket, and prize revenue. Another option would be to generate added revenue through their stadium. Manchester City leases the City of Manchester stadium from the City of Manchester. The terms of the lease initially specified that Manchester City was to pay a percentage of their match day revenue. Manchester City appears to have renegotiated the lease to provide for a flat lease payment. There may be plans for alterations to the stadium. Mike Keegan, *Manchester City Give Council An Extra £1m*, MANCHESTER EVENING NEWS, Oct. 2, 2010, http://menmedia.co.uk/manchestereveningnews/news/s/1338690_manchester_city_give_council_an_extra_1m.

206. *How Manchester City Could Break Even*, *supra* note 205.

are certainly not acceptable under the Fair Play Rules. Sheikh Mansour has directly financed £400 million of these expenditures through equity offerings as well as shareholder loans that are later converted to equity.[207] Despite the lavish spending, Manchester City has still failed to finish in the fourth place spot in the EPL necessary to qualify for the Champions League.

3. *Blackburn Rovers*

Although Roman Abramovich was the first foreign benefactor in the EPL, the model did not originate with him. Rich men have always funded their local clubs as a type of community service, but the scale seen in the last twenty years is completely new. Despite the benefits of a benefactor, there are dangers associated with it. One of the best examples of the negatives of the benefactor model is Blackburn Rovers F.C. The Blackburn Rovers were acquired in the early 1990s by the steel magnate Jack Walker.[208] Under Walker, Blackburn spent £25 million in the transfer market during the early 1990s, including two British record signings.[209] The spending culminated in the 1994–95 Premier League title.[210] Walker died in 2000, but provided for the club in his will.[211] For a decade, the club was managed by the Jack Walker Trust.[212] The trustees ended up writing off £100 million in loans made by Walker and the trust as well as loaning a further £5 million to the club. [213]The trustees put the club up for sale in 2007, but it took until November 2010 to find a buyer.[214] Due to a lack of certainty as to the future of the club as well as the limited ability of the trust to fund the club, the club has lacked a clear direction since Walker's death.

---

207. *See* Scott, *supra* note 201.

208. DAVID CONN, THE FOOTBALL BUSINESS 72 (rev. ed. 1998).

209. *Id.* at 75–77.

210. Blackburn are still the only club other than Manchester United, Arsenal, and Chelsea to win the Premier League since its formation in 1992.

211. Nick Harper, *Great Footballing Sugar Daddies*, THE GUARDIAN (U.K.), July 2, 2003, http://www.guardian.co.uk/football/2003/jul/02/newsstory.sport9. The club received all of the profits of Walker's businesses. *Id.*

212. David Conn, *Trustees Desperate to Find Safe Pair of Hands for Blackburn Rovers*, THE GUARDIAN (U.K.), Nov. 10, 2010, http://www.guardian.co.uk/football/blog/2010/nov/10/venkys-blackburn-rovers-takeover-proposed [hereinafter Conn, *Trustees Desperate*]. Since completing the sale, the Indian chicken and egg producer Venky's has become a source of controversy because of the company's puzzling actions. *See, e.g.*, David Conn, *How an Agent Came to Hold So Much Power at Blackburn Rovers*, THE GUARDIAN (U.K.), Dec. 21, 2010, http://www.guardian.co.uk/sport/david-conn-inside-sport-blog/2010/dec/21/blackburn-rovers-venkys-jerome-anderson.

213. Conn, *Trustees Desperate*, *supra* note 212.

214. *Id.*

4. *Benefactor Model Analysis*

As Chelsea, Manchester City, and Blackburn have demonstrated, the benefactor model has positives and negatives. The benefactor can directly inject cash into the club to acquire new and better players.[215] Because the benefactor holds all the control in the club, the benefactor can make quick decisions for the club without needing to gain the approval of others. However, the strengths of the benefactor model are also its great weakness. Because all of the power rests in one person, the fans can feel marginalized. The benefactor can alleviate most but not all of this feeling through success on the field. The benefactor may be forced to make decisions that are best for the financial health of the club at the expense of the sense of community that the fans have.[216] In the benefactor model, fans have very few concrete ways of expressing their views on the direction of the club other than at the game.[217]

The total influence of the benefactor over club affairs can be dangerous. Although the benefactors are typically extremely successful businessmen, sports are a unique type of business. Success in the business world does not necessarily translate into on the field success.[218] Failing to take the advice of individuals experienced in football team building can lead to on the field failure. Additionally, the influence of the owner can taint the image of the club. Roman Abramovich gained his immense fortune in 1990s Russia by means that could be considered illegal today. Abramovich's negative reputation has led to rival fans calling Chelsea "Chelski." A similar type of venom may be targeted at Manchester City because of its Emirati ownership.

The presence of a single man in charge can lead to chaos when that one man becomes incapacitated. This phenomenon can be also observed in politics and in other types of business. Sophisticated businessmen like the benefactors mentioned above obviously have estate planning mechanisms in place of such an eventuality. However, the example of Blackburn shows that when the one man in charge is no longer in charge, there is a leadership void that ensues. That void may be filled by the relatives of the benefactor, but there is no guarantee that these relatives will be as vested in the club's success as the benefactor. That void may linger for quite a long time and lead to stagnation if the club is unlucky. The power collected in a single

---

215. The Fair Play Regulations will limit this ability.

216. The best example of this idea is the raising of ticket prices.

217. One exception is the Chelsea Pitch Owners, PLC. Chelsea fans who own shares in Chelsea Pitch Owners, PLC have the ability to exercise a veto over any moving plans that Chelsea may have. *See supra* notes 179–81.

218. An example of this idea can be seen in the Washington Redskins. Owner Dan Snyder is a tremendously successful businessman, but continually spends lavish amounts on the Redskins with very little success to show for it.

benefactor ultimately has the potential to shape the club in a positive or negative manner.

B. The Normal Business Owner Model

The other model of English clubs is what I have termed the normal business owner model. The normal business owner model is a company that is run, or is intended to be run, like a sustainable business. This can take a number forms depending upon the ownership. The club may be owned by a single individual or group of individuals. In many ways, this can resemble the benefactor model, but the business owner model generally features more restrained spending.

1. Manchester United

Manchester United has dominated English football for the past two decades. Since the Premier League was formed in 1992, Manchester United has won eleven league titles as well as two Champions League trophies.[219] This remarkable run of success has come under the direction of manager Sir Alex Ferguson who has been in charge of Manchester United since 1986.[220]

Manchester United had a humble beginning in 1878 as a club founded by railway workers in the Newton Heath area of Greater Manchester.[221] Only when the club joined the professional Football League in 1892 was the club incorporated.[222] The incorporating members took this step to limit their liability rather than to obtain equity for later sale. For many years, shares were of negligible monetary value. The club periodically issued shares to its fans when it faced financial hardships, but the shares entitled the shareholders only to minor perks like a season ticket.[223]

In the 1950s, Louis Edwards became involved in Manchester United. At first he held only a few shares, but when his company began trading on the stock exchange, Louis Edwards began a quest to buy Manchester United shares.[224] By 1964, Edwards had obtained 2,223 shares, giving him 54% control of the club.[225] Later purchases in the 1970s took the Edwards shareholding up to 74%.[226] Up until the early 1980s, the English Football Association had maintained regulations that forbade paying club directors

---

219. *Manchester United Football Club*, PREMIERLEAGUE.COM, http://www.premierleague.com/page/manchester-united (last visited Nov. 16, 2010).

220. *Sir Alex Ferguson*, PREMIERLEAGUE.COM, http://www.premierleague.com/page/ManagerProfileManchesterUnited (last visited Nov. 16, 2010).

221. CONN, *supra* note 208, at 32.

222. *Id.*

223. *Id.* at 32–33.

224. *Id.* at 31–34.

225. *Id.* at 34.

226. *Id.* at 36.

and restricted the dividends that could be paid.[227] Because of the five pence per share restriction on dividends, Louis Edwards created a right for each shareholder to buy 208 new shares for each existing £1 share that the shareholder owned.[228] As a result, there were 209 times as many shares to pay out the five pence dividend. By evading the restrictions, Louis Edwards was able to dramatically increase the amount of money paid out of the club in dividends.[229] Sensing that the club could command a large amount of money, Louis Edwards attempted to sell the club to a number of individuals.[230] After those plans fell through, Louis Edwards created a holding company for Manchester United and traded shares in the holding company on the London Stock Exchange.[231] Louis's son Martin Edwards gradually sold the family's entire holding in the club, making a profit of approximately £88 million on the initial £800,000 investment.[232]

Manchester United's time on the London Stock Exchange was an interesting period. In 1998, Rupert Murdoch launched a £625 million takeover bid that was thwarted by the UK government on competition reasons.[233] Following the failure of the Murdoch bid, the Irish investors John Magnier and J.P. McManus built up a significant stake in the club by the end of 2001.[234] In March 2003, the American Malcolm Glazer announced that he had acquired a small stake in the club.[235] By October 2004, Glazer had raised his stake to 28.11%.[236] After Glazer acquired Magnier and McManus's 28.7% shareholding, Glazer continued to acquire shares until he owned the entire club.[237]

---

227. CONN, *supra* note 208, at 35.

228. *Id.*

229. *Id.*

230. *Id.* at 37–39.

231. *Id.* at 41.

232. *See id.* at 47; David Conn, *Forget Glazer, the Edwards Family Were Happy to Milk United Cash Cow*, THE INDEPENDENT (U.K.), Feb. 19, 2005, http://www.independent.co.uk/sport/football/news-and-comment/david-conn-forget-glazer-the-edwards-family-were-happy-to-milk-united-cash-cow-483908.html.

233. John Nauright & John Ramfjord, *Who Owns England's Game? American Professional Sporting Influences and Foreign Ownership in the Premier League*, 11 SOCCER & SOC. 428, 432 (2010).

234. Vivek Chaudhart & John Cassy, *United Shares Coup Boosts Sir Alex*, THE GUARDIAN (U.K.), July 19, 2001, http://www.guardian.co.uk/football/2001/jul/19/newsstory.sport4.

235. Simon Bowers, *US Tycoon Stirs Old Trafford Bid Rumours*, THE GUARDIAN (U.K.), Mar. 3, 2003, http://www.guardian.co.uk/business/2003/mar/03/football.

236. Adam Jay, *Glazer's Man Utd Stake Nears 30%,* THE GUARDIAN (U.K.), Oct. 19, 2004, http://www.guardian.co.uk/business/2004/oct/19/football.money. Under U.K. stock market rules, an investor must make an offer for all shares once the 30% threshold is crossed. *Id.*

237. Nils Pratley, *Irish Sellout Was Simply A Matter of Arithmetic*, THE GUARDIAN (U.K.), May 13, 2005, http://www.guardian.co.uk/football/2005/may/13/newsstory.sport3; *Glazer Takes Control of United*, THE GUARDIAN (London), May 16, 2005, http://www.guardian.co.uk/football/2005/may/16/newsstory.manchesterunited; Nils Pratley

The Glazer acquisition was very costly and controversial. The entire cost of acquisition was approximately £831 million.[238] The most controversial part of the takeover was that Glazer transferred loans amounting to £559 million of the acquisition cost to the club.[239] The debt was both in bank loans as well as "payment in kind" loans, which carried an initial interest rate of 14.25%.[240] Unlike a normal loan where interest is repaid regularly, the high interest rate on the "payment in kind" loans continue to accumulate until the time of repayment.[241] As a result, Manchester United went from a financially successful club to one that was heavily laden with debt.

This heavy debt load is very unpopular with fans who believe that the Glazers have diverted the club's revenue to paying the interest on the debt. The fans worry that the Glazers have not invested sufficient resources in players to win trophies as a result of interest payments on the debt. Because fans have lost their voice in the boardroom, they have organized a number of protests. Just after the takeover, a group of fans formed a new club called FC United of Manchester. In 2010, another round of protests began under the title of Green and Gold.[242] An offshoot of this movement, calling themselves the Red Knights, prepared a £1 billion offer for the club.[243] Ultimately, the Glazer family has stood firm and has steadfastly ignored the protests about their ownership.

& Daniel Taylor, *Glazer Poised for 100% Ownership*, THE GUARDIAN (U.K.), June 28, 2005, http://www.guardian.co.uk/football/2005/jun/28/newsstory.sport1.

238. David Conn, *Cash-Strapped Glazers Banking on Manchester United*, THE GUARDIAN (U.K.), June 7, 2010, http://www.guardian.co.uk/sport/david-conn-inside-sport-blog/2010/jun/07/glazer-banking-manchester-united.

239. *Id.*

240. *Id.* The Glazer family issued a £521.7 million bond in January 2010 to alleviate the loan pressure. Owen Gibson, *David Gill Says Manchester United Are Healthy Despite Record Losses*, GUARDIAN.CO.UK (Oct. 8, 2010), http://www.guardian.co.uk/football/2010/oct/08/david-gill-manchester-united-losses. The bond issue cost resulted in a loss of £83.6 million. *Id.* One controversial portion of the bond issue allowed the Glazer family to withdraw up to £127 million from the club. *Id.* Recently the Glazer family announced that they were in the process of paying off the payment in kind loans, which had reached £220 million and were increasing at 16.25% per year. Tariq Panja, *Manchester Utd. to Pay Off 220 Million Pounds of Team's Debt*, BLOOMBERG (Nov. 15, 2010), http://www.bloomberg.com/news/2010-11-15/manchester-united-to-pay-off-353-million-of-soccer-team-s-corporate-debt.html.

241. *Manchester United's Debt: Six Key Questions*, THE TELEGRAPH (U.K.), Jan. 12, 2010, http://www.telegraph.co.uk/sport/football/teams/manchester-united/6969460/Manchester-Uniteds-debt-six-key-questions.html.

242. Luke Bainbridge & Ed Vulliamy, *Manchester United Fans Go Green and Gold at Wembley in Colour-Coded Protest Against Owners*, THE OBSERVER (U.K.), Feb. 28, 2010, http://www.guardian.co.uk/football/2010/feb/28/manchester-united-green-gold-wembley. Green and Gold were the club's original colors.

243. Daniel Taylor, *Red Knights to Press Ahead with Offer for Manchester United*, GUARDIAN.CO.UK (May 7, 2010), http://www.guardian.co.uk/football/2010/may/07/red-knights-manchester-united.

Despite strong revenue generation, Manchester United faces an uncertain future. A substantial portion of the club's revenue is allocated to servicing the acquisition debt. At some point the debt may grow to a point where it cannot be financed any further. Alternatively, the club may fail to reach the Champions League, thus depriving the club of a substantial amount of revenue needed to service the debt. The fate of Manchester United rests, as it has for two decades, on manager Sir Alex Ferguson's ability to generate a winning product on the field. Sir Alex is now in his late sixties and expects to retire within the next few years. The debt has placed an immense pressure on him and his future successor to continue to deliver consistent revenue growth on minimal reinvestment. Ultimately, the Glazer acquisition resolved some short term uncertainty in ownership but has posed new, longer term questions about the financial viability of the club.

2. *Liverpool*

Liverpool is one of the most famous clubs in world football. The club has won five European cups, more than any other English team.[244] Although Liverpool dominated the 1970s and 1980s, it has failed to win a league title since 1990. Despite the recent failings, the memory of Liverpool's greatness remains and gives the club considerable worldwide marketing potential.

Liverpool was founded in 1892 by the owner of its stadium, Anfield, to utilize the vacant stadium after the departure of Everton F.C., Liverpool's other major club.[245] For most of the past half century, the club was under the control of the Moores family.[246] In the mid–2000s, the majority shareholder David Moores decided that he could not compete in the changing climate in football as evidenced by Roman Abramovich's acquisition of Chelsea. Moores entertained a number of bids, including bids from Thaksin Shinawatra and Dubai Investment Capital, before deciding to sell to Americans Tom Hicks and George Gillett.[247]

The Hicks and Gillett group paid £218 million for the club and took out £350 million in loans to fund the acquisition as well as the planning phases of a new stadium.[248] Despite initially claiming that their takeover was not like the Glazer takeover of Manchester United, Hicks and Gillett managed to transfer about half of the debt to the club.[249] As at Manchester United,

244. *Football's Premier Club Competition*, *supra* note 79.

245. *Liverpool Football Club is Formed*, LIVERPOOL F.C., http://www.liverpoolfc.tv/history/timeline/1892-1917/liverpool-football-club-is-formed (last visited Nov. 17, 2010).

246. *Who Owns Liverpool Football Club*, REUTERS (Mar. 5, 2008), http://uk.reuters.com/article/idUKB81717020080305.

247. *Id.*

248. Andy Hunter, *Liverpool Ponder Move to Buy Out Hicks*, THE GUARDIAN (U.K.), Jan. 18, 2008, http://www.guardian.co.uk/football/2008/jan/18/newsstory.liverpool.

249. *Id.*

this action did not endear Hicks and Gillett to the Liverpool fans. Hicks and Gillett also were unfortunate in the timing of their takeover of the club. A centerpiece of their business plan was to build a new stadium. When the acquisition was completed, Hicks and Gillett decided to revise the existing plans.[250] By the time the plans were revised, the credit crisis made obtaining a loan to build a new stadium virtually impossible.[251] Due in part to the financial pressures from the loan repayment, Hicks and Gillett developed a great deal of animosity toward each other and toward manager Rafael Benitez.[252] Adding to the soap opera between Hicks and Gillett and Benitez was an incident where Hicks's son sent a derogatory email to a fan and was forced to resign from his club position.[253] The many controversies and perceived lack of investment in the club made Hicks and Gillett very unpopular with the fans.

The financing structure of the takeover deal ultimately proved to be the undoing of Hicks and Gillett. A large portion of the debt was due in April 2010.[254] The holder of the debt, Royal Bank of Scotland (RBS), granted Hicks and Gillett a six month extension in an effort to find a buyer for the club.[255] However, RBS instituted a number of conditions for this extension. Among these conditions were that Martin Broughton, chairman of British Airways, was to be made chairman of the holding company.[256] RBS also required that Liverpool's articles of association be amended to grant the chairman the exclusive right to appoint or remove directors.[257] Broughton was given the task of finding a buyer that would serve the best interests of the club.[258] The sale was complicated not only by conflicts between the

---

250. Andy Hunter, *Hicks' Anfield Takeover Plans Threatened by Credit Crunch*, THE GUARDIAN (U.K.), May 16, 2008, http://www.guardian.co.uk/football/2008/may/16/liverpool.premierleague..

251. *Id.* There still are no concrete plans for a new stadium.

252. *Id.*

253. Andy Hunter, *Tom Hicks Jr Quits Liverpool Board Following Row Over Obscene Email*, GUARDIAN.CO.UK (Jan. 11, 2010), http://www.guardian.co.uk/football/2010/jan/11/tom-hicks-jr-quits-liverpool-email. *See also Liverpool FC: Life Under the Control of Tom Hicks and George Gillett*, GUARDIAN.CO.UK (Oct. 6, 2010), http://www.guardian.co.uk/football/2010/oct/06/liverpool-takeover-hicks-gillett.

254. Andy Hunter, *Liverpool Owners Asked by Royal Bank of Scotland to Relinquish Control*, THE GUARDIAN (U.K.), Apr. 13, 2010, http://www.guardian.co.uk/football/2010/apr/13/gillett-hicks-sell-liverpool.

255. *Id.* It is also important to note that RBS is currently owned by the British government.

256. *Id.*

257. David Conn, *Chairman Holds the Cards But Tom Hicks Vows to Come Out Fighting*, GUARDIAN.CO.UK (Oct. 7, 2010), http://www.guardian.co.uk/football/2010/oct/07/tom-hicks-martin-broughton.

258. David Conn, *Tom Hicks Plans for Return of His Son to Liverpool*, THE GUARDIAN (U.K.), Sept. 18, 2010, http://www.guardian.co.uk/football/2010/sep/18/tom-hicks-liverpool.

owners and the manger, but also by Liverpool's failure to qualify for the 2010/11 Champions League.

As the October deadline approached, a bid from New England Sports Ventures (NESV) emerged.[259] The bid proposed repaying the RBS loan, but left no money for the shares of Hicks and Gillett or the loans to the holding company made by Hicks and Gillett.[260] Hicks and Gillett were not pleased with the bid and attempted to replace two of the five directors of the club's holding company with Hicks appointees.[261] Broughton then launched a legal action to prevent Hicks and Gillett from blocking the sale to NESV.[262] The English High Court granted Broughton's request for an injunction.[263] Before the sale could proceed, Hicks obtained a temporary restraining order from a Texas court to block the sale.[264] Broughton responded by obtaining an order from the English High Court preventing the enforcement of the Texas injunction.[265] Eventually, the sale was completed before the RBS deadline.[266] The new owners at NESV have refrained from any public relations disasters in the short time they have owned the club, but so far have not given much indication as to future actions.

3. *Arsenal*

Although the club has not won anything in five seasons, Arsenal F.C. remains one of the most successful clubs in English football history and one of the most famous names in world football. Arsenal originated as a club of workers at the Woolwich Arsenal in Southeast London.[267] The club later incorporated to limit the liability of the members. The club struggled financially in Southeast London, but came under the influence of Sir Henry Norris in the years leading up to World War I.[268] Sir Henry moved the club

---

259. Conn, *supra* note 257. NESV owns the Boston Red Sox.

260. *Id.*

261. *Id.*

262. *Id.* This case does present interesting questions regarding the ability of a board to make decisions that are not in the best interests of the asset, but not in the best interest of the shareholders.

263. *Royal Bank of Scotland, PLC v. Thomas Hicks*, [2010] EWHC (Ch) 2568 (Eng.).

264. *Tom Hicks and George Gillett Claim Injunction to Halt Liverpool Sale*, GUARDIAN.CO.UK (Oct. 13, 2010), http://www.guardian.co.uk/football/2010/oct/13/liverpool-hicks-gillett-block-sale.

265. *Royal Bank of Scotland, PLC v. Thomas Hicks*, [2010] EWHC (Ch) 2579 (Eng.).

266. Richard Williams, *NESV Completes £300m Liverpool Takeover with Promise to Listen*, GUARDIAN.CO.UK (Oct. 15, 2010), http://www.guardian.co.uk/football/2010/oct/15/liverpool-sale-nesv-takeover-john-henry.

267. *'Royal Arsenal' Formed in Woolwich*, ARSENAL.COM, http://www.arsenal.com/history/laying-the-foundations/-royal-arsenal-formed-in-woolwich (last visited Nov. 10, 2010).

268. *Club Moves from Woolwich to Highbury*, ARSENAL.COM, http://www.arsenal.com/history/laying-the-foundations/club-moves-from-woolwich-to-highbury (last visited Nov. 17, 2010).

to the Highbury area of North London, where the club has remained every since.[269] After Sir Henry left the club, Sir Samuel Hill–Wood gained control of the club.[270] For much of the past eighty years, the Hill–Wood family, including Peter Hill–Wood, the current chairman, has controlled the club.[271]

Around the same time that Louis Edwards began extracting money from Manchester United, a trader named David Dein purchased 16% of Arsenal for £292,000.[272] Dein later increased his shareholding dramatically, but sold a substantial portion of his shares to diamond trader Danny Fiszman throughout the 1990s.[273] Although he was only vice–chairman of the club, Dein had considerable influence over football matters, including the responsibility for hiring manager Arsene Wenger.[274] Since hiring Wenger in 1996, Arsenal has won three English Premier League titles and four FA Cups. Because the nature of Arsenal's stadium constrained further development, plans were made to move the club to a modern stadium which could generate much more revenue. Dein was initially not a supporter of the move, but Fiszman pushed the idea through.[275] The costs of the stadium project amounted to approximately £390 million.[276] The project was financed with a combination of £260 million of debt and cash from naming rights, equity offerings, and an advance on commercial revenues.[277] Although the stadium has resulted in a tremendous increase in revenue, the debt restricted the ability of the club to invest in players until a large amount of the property associated with the project was sold.[278]

The financial restrictions imposed by the stadium as well as the emergence of Abramovich's Chelsea led to a fracture in the ownership

---

269. *Id.*

270. David Conn, *Arsenal Batten Down Hatches Against Latest Atlantic Crossing*, THE GUARDIAN (U.K.), Apr. 18, 2007, http://www.guardian.co.uk/football/2007/apr/18/newsstory.sport.

271. *Arsenal's A to Z... H is for Henry*, ARSENAL.COM, http://www.arsenal.com/155/unhoused-import-pages/arsenal-s-a-to-z...-h-is-for-henry (last visited Nov. 10, 2010).

272. David Conn, *Danny Fiszman's Love for Arsenal Pays Dividends*, THE GUARDIAN (U.K.), Apr. 8, 2009, http://www.guardian.co.uk/sport/blog/2009/apr/08/arsenal-usmanov-fiszman-david-conn. At the time, the chairman Peter Hill-Wood called it dead money. *Id.*

273. *Id.*

274. Paul Doyle, *Dein Leaves Arsenal Following Takeover Dispute*, GUARDIAN.CO.UK (Apr. 18, 2007), http://www.guardian.co.uk/football/2007/apr/18/newsstory.sport12.

275. David Conn, *Dein Forced Out as Arsenal Board Flexes Its Muscle*, THE GUARDIAN (U.K.), Apr. 19, 2007, http://www.guardian.co.uk/football/2007/apr/19/newsstory.sport5.

276. *Stadium FAQs*, ARSENAL.COM, http://www.arsenal.com/emirates-stadium/emirates-stadium-history/frequently-asked-questions (last visited Nov. 17, 2010).

277. *Id.* The plan provided for some of the debt to be offset by property development sales. The debt was later paid for by a bond. *Arsenal Sell £260m Bond to Help Finance Stadium*, SOCCERNET.COM (July 13, 2006), http://soccernet.espn.go.com/news/story?id=373845&cc=5901.

278. *Cash City Rockers*, SWISS RAMBLE (Sept. 28, 2010), http://swissramble.blogspot.com/2010/09/cash-city-rockers.html.

group. Dein believed that the club needed a billionaire benefactor for Arsenal to achieve the success it desired. Dein took steps toward that goal by introducing American billionaire Stan Kroenke to the club through the sale of a 10% stake in the club owned by ITV.[279] The Arsenal board was not pleased by the suggestion and forced Dein to resign from his vice–chairman position.[280] Chairman Peter Hill–Wood went so far as to say that he didn't want Kroenke's sort at the club.[281] Dein subsequent sold his 14.58% stake in the club to Uzbek billionaire Alisher Usmanov.[282] Faced with the threat of a takeover by Usmanov, the Arsenal board subsequently decided that Kroenke was the sort that they wanted at the club and made him a board member. In an effort to counter a takeover, the board entered into a lockdown agreement that prevented the board members from selling their shares to a nonapproved person until October 2010.[283] In the midst of the controversy, the Arsenal board also forced out Nina Bracewell–Smith, who holds 15.9% of the shares.[284] As of November 2010, Arsenal's ownership seems to have reached some measure of stability, with Usmanov owning 27% and Kroenke owning 29.9%.[285]

The controversy regarding the ownership of Arsenal greatly concerned many fans. Although Arsenal, through its holding company Arsenal Holdings, PLC, is quoted on the PLUS exchange,[286] shares trade currently

---

279. Conn, *supra* note 275.

280. *Id.*

281. Gary Jacob & Ben Smith, *Stan Kroenke Refuses to Declare Arsenal Takeover Intent*, TIMES (U.K.), Oct. 22, 2009, http://www.timesonline.co.uk/tol/sport/football/premier_league/arsenal/article6885477.ece.

282. Dominic Fifield, *Arsenal Get An Oligarch As Dein Sells His Stake*, THE GUARDIAN (U.K.), Aug. 31, 2007, http://www.guardian.co.uk/football/2007/aug/31/newsstory.arsenal2.

283. Matt Scott, *Arsenal Bring Kroenke on Board and Stymie Usmanov Takeover*, THE GUARDIAN (U.K.), Sept. 20, 2008, http://www.guardian.co.uk/football/2008/sep/20/arsenal.premierleague.

284. Matt Scott, *Arsenal Board Treated Me Appallingly, Says Shocked Bracewell-Smith*, THE GUARDIAN (U.K.), Dec. 19, 2008, http://www.guardian.co.uk/football/2008/dec/18/matt-scott-on-arsenal-board. Despite her efforts to sell, her shares still remain unsold.

285. David Conn, *Arsenal Step Back From Era of Rich Owners and Offer Fans a Voice*, THE GUARDIAN (U.K.), Aug. 18, 2010, http://www.guardian.co.uk/football/david-conn-inside-sport-blog/2010/aug/18/arsenal-kroenke-usmanov-owners-fanshare. It is crucial to note that both are under the 30% threshold that mandates an offer for all of the shares. Kroenke is currently a board member and effectively controls the club with the voting power of the board. One of the major reasons why a full takeover bid has not yet been launched is that Arsenal's market cap is approximately £681 million. *Arsenal Holdings PLC*, PLUS, http://www.plusmarketsgroup.com/home.html (search for "Arsenal Holding" link) (last visited Nov. 17, 2010).

286. The PLUS exchange is a London-based stock exchange that trades primarily in small and medium size enterprises. *See Plus Prepared for Bear*, WORLD FINANCE (May 23, 2008), http://www.worldfinance.com/news/world-market/foreignexchange/article220.html.

trade in excess of £10,000.[287] The price of the Arsenal share is far outside the reach of most fans, but Arsenal has begun an initiative called the Arsenal Fanshare.[288] The Fanshare is a plan that allows fans to make monthly contributions to a pool of money that will buy shares when they become available.[289] If a fan contributes at least 1% of the cost of a share, the fan will be able to vote as a shareholder and attend the shareholder meeting.[290] Although the impact of this initiative will be small in view of the considerable obstacles to blocking a takeover, it is a step toward making Arsenal fans more involved in the decision–making at the club.

Although Arsenal has experienced mixed results on the field, the financial situation is excellent. Arsenal recorded a £56 million profit while reducing the net debt by £154 million in the 2010 annual report.[291] The future is not quite as promising as it may appear at first glance. Manager Arsene Wenger has been responsible for a large part of the impressive performance by finding great value in players, but when Wenger eventually leaves Arsenal, there is no guarantee that his successor will be able to keep it up. Despite Usmanov's announcement that he plans to raise his stake to just under 30%,[292] the cold war between Kroenke and Usmanov could become hot at any moment. There is also the potential that a takeover bid could be launched by Kroenke or Usmanov or from unknown third party. The danger is that such a takeover bid would likely be financed by debt and thus lead to a Manchester United or Liverpool situation. Arsenal's ownership appears precariously balanced for the time being.

4. *Normal Business Owner Model Analysis*

As the examples of Manchester United, Liverpool, and Arsenal show, the business owner model has advantages and disadvantages. The primary advantage of a PLC is the easy ability to raise capital. In a situation like Arsenal or Manchester United before the Glazer takeover, the ability to own

287. *Arsenal Holdings PLC*, *supra* note 285.

288. Conn, *supra* note 285.

289. *Id.*

290. *Id.*

291. *Cash City Rockers*, *supra* note 278. The financial results were not so promising for the first six months of the 2011 annual report. The club reported a £ 6.2 million loss before taxes as a result of a decrease in income from property sales, player sales, and less home matches, coupled with an increase in player salaries. ARSENAL HOLDINGS, PLC, RESULTS FOR THE SIX MONTHS ENDED NOVEMBER 30, 2010 (2011), *available at* http://www.arsenal.com/assets/_files/documents/feb_11/gun__1298899376_Arsenal_Holdings_plc_-_Half_Ye.pdf.

292. Matt Scott, *Alisher Usmanov's Attempt to Increase Arsenal Stake Looks Set to Fail*, GUARDIAN.CO.UK (Dec. 21, 2010), http://www.guardian.co.uk/football/2010/dec/21/alisher-usmanov-arsenal-stake. Once a shareholder reaches 30%, the shareholder is obliged to make an offer for the remaining shares of the company. If the bid fails, the shareholder must reduced the stake to just under 30%. *See id.*

shares in the club allows for fans to play at least a minor role in club decisions. The lack of a benefactor guaranteeing losses necessitates that the club break even every year. Only with the introduction of the Fair Play Rules has this become a benefit. Additionally, the absence of a benefactor drives the owners of the club to maximize all available revenue sources. This added revenue then can be expended upon players and facilities.

As Manchester United and Liverpool have demonstrated, the business owner model has a number of great flaws. The ability of a club to trade on the stock exchange makes it vulnerable to attempts to take over the club because of a limited ability for fans to block the action. The more alarming aspect of the takeovers is the acquisition debt that owners place upon the clubs. This crushing debt diverts money from the on the field expenditures to interest repayment. As Arsenal and Liverpool have shown, the presence of multiple owners has a potential to create a great deal of problems for the club. At Liverpool, the owners were at war with themselves, the manager, and the fans. As a result, the club was thrown into chaos and was a contributing factor to the club's failure to qualify for the 2010/11 Champions League. The Arsenal crisis was confined to the boardroom, but this was probably due only to the great influence of Arsene Wenger over the club. The lack of one clear decision–maker often creates a void of leadership that can cripple a club. Although the business owner model often gives the fan some amount of involvement in the club, the fan involvement has been almost nonexistent in practice. When the fan feels excluded from the club and sees that large sums of money are diverted to interest payments, dividends, or club bank accounts, the fan can feel quite unhappy with the state of the club.

VI. What Model is Best?

A number of models for ownership of a football club have been explained above: the socio model of Spain, the variety of mixed models in Germany, and the benefactor and business owner PLC models of England. The variety of corporate forms has grown out of the cultural differences in the business and sports of each nation. It is important to note that every corporate model can meet UEFA's Financial Fair Play Regulations with competent managers and realistic on the field expectations.

As Europe becomes more integrated, a unified model may be appropriate for UEFA to create a level playing field for clubs competing in UEFA competitions. This UEFA model needs to balance the desire of the club's fans to influence club decisions about buying and selling players and choosing managers with the commercial realities of the modern club. Aspects of an ideal form can be derived from examining the structures currently in place. The socio model provides for heavy involvement of the fans in club decisions, but is not a great model commercially or financially because equity cannot be sold and management can get distracted in club politics. The PLC model run by a benefactor provides excellent resources and central direction but leaves fans on the outside. The normal business owner PLC model can allow for fans to gain some voice in club decisions but is very vulnerable to a leveraged buyout. The KGaA model provides fans a small voice, but grants its managers too much leeway while neglecting shareholders. The AG model combines a measure of fan involvement with the ability to raise equity and effectively manage the business operations of the club.

The UEFA model club should adopt the features of the German AG. The fans have control of the underlying club while also allowing for equity investment. The dual board structure characteristic of German AGs allows for much active corporate governance than the single board that exists in PLCs and clubs like Barcelona and Real Madrid. As Bayern Munich demonstrates, the AG best attempts to balance the desire for fan involvement with the commercial and financial realities of the competitive club.

The implementation of the model club structure would be extremely difficult. The process of convincing clubs to adopt this type of structure while remaining within European Union law would be difficult. Although the AG structure might be best for the club, club owners have their own interests to protect. For instance, the Glazer family will never give control of the Manchester United to the fans when they have such a valuable asset and so much debt. For clubs like Barcelona and Real Madrid, the possibility of a conversion is not quite so remote. Because these types of clubs have no single owner, a change in structure would not be so financially painful, but very culturally painful.

Any UEFA regulation must also comply with European Union law, therefore any UEFA rule must be carefully drafted. Any move to enforce a model club structure would most likely violate European Union law. The implementation efforts would first require the European Union to grant a general sporting exemption in European Union law or, at the very least, an ad hoc exemption. Despite football's unique place in European culture, the European Union refuses to accept UEFA's advocacy for an exemption and likely will continue to do so in the future.[293] Although UEFA may argue that this is the best way to balance fan interest and commercial realities, the European Union is extremely unlikely to agree to implement a plan that effectively deprives many owners of a multi–million Euro asset.

---

293. The European Union has considered this issue, but has chosen to reject any further steps at this time. *See*, *e.g.*, *Commission Communication*, *supra* note 17, at 12. However, there continue to be investigations into these areas. *See Commissioner Vassilieu*, *supra* note 13.

VII. Conclusion

As the financial crisis in football worsens, the Financial Fair Play Rules have provided a basis to consider what types of football club structures might be preferable for a financially sustainable club. Although it may be practically impossible to force significant changes without governmental involvement, adopting a German style model is the preferable option. The German model provides the optimum amount of fan involvement in club affairs while providing the benefits of centralized control. Despite different club structures, a financially sustainable club is possible with the right leadership and realistic expectations. Revenue in football has saturated the European market and the tantalizing North American and Asian markets may never by fully exploited by clubs. It is important that clubs exercise sufficient discipline to ensure that the club exists for the fans of the future.