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The Sports Law Review, in its fifth edition, is intended as a practical, business-focused legal guide for all relevant stakeholder groups in the area of sports, including sports business entities, sports federations, sports clubs and athletes. Its goal is to provide an analysis of recent developments and their effects on the sports law sector in 20 jurisdictions. It will serve as a guidebook for practitioners as to how a selected range of legal topics is dealt with under various national laws. The guidance given herein will, of course, not substitute for any particular local law advice that a party may have to seek in connection with sports-related operations and activities. Specific emphasis is put on the most significant developments and decisions of the past year in the relevant jurisdictions that may be of interest for an international audience.

The Sports Law Review recognises that sports law is not a single legal topic, but rather a field of law that is related to a wide variety of legal areas, such as contract, corporate, intellectual property, civil procedure, arbitration and criminal law. In addition, it covers the local legal frameworks that allows sports federations and sports governing bodies to set up their own internal statutes and regulations, as well as to enforce these regulations in relation to their members and other affiliated persons. While the statutory laws of a particular jurisdiction apply, as a rule, only within the borders of that jurisdiction, these statutes and regulations, if enacted by international sports governing bodies, such as FIFA, UEFA, FIS, IIHF, IAAF and WADA have a worldwide reach. Sports lawyers who intend to act internationally or globally must, therefore, be familiar with these international private norms if and to the extent that they intend to advise federations, clubs and athletes that are affiliated with such sports governing bodies. In addition, they should also be familiar with relevant practice of the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, as far as it acts as the supreme legal body in sport-related disputes. Likewise, these practitioners should have at least a basic understanding of the Swiss rules on domestic and international arbitration as Swiss law is the lex arbitri in CAS arbitration.

While sports law has an important international dimension, local laws remain relevant in respect of all matters not covered by the statutes and regulations of the sports governing bodies. This growing international dimension means that athletes, sports clubs and sports federations are increasingly operating in an international environment and dealing with a variety of jurisdictions. As a result, the need for an international regulation of international sport is growing, and more and more specific legal assessments of individual aspects of local law are required, in particular in respect of local mandatory provisions that may prevail over or invalidate certain provisions of regulations enacted by sports governing bodies. The primacy of local laws is of particular importance in international employment relationships; for example, between clubs and foreign players, where the local laws of the clubs usually provide for a set
of mandatory provisions that may impede performance by the athletes of their contractually agreed rights as regards the employers should they not fulfil the employment agreement.

Each chapter of this fifth edition will start by discussing the legal framework of the relevant jurisdiction permitting sports organisations, such as sports clubs and sports governing bodies (e.g., national and international sports federations), to establish themselves and determine their organisational structure, as well as their disciplinary and other internal proceedings. The section detailing the competence and organisation of sports governing bodies will explain the degree of autonomy that sports governing bodies enjoy in the jurisdiction, particularly in terms of organisational freedoms and the right to establish an internal judiciary system to regulate a particular sport in the relevant country. The purpose of the dispute resolution system section is to outline the judiciary system for sports matters in general, including those that have been dealt with at first instance by sports governing bodies. An overview of the most relevant issues in the context of the organisation of a sports event is provided in the next section and, subsequent to that, a discussion on the commercialisation of such events and sports rights will cover the kinds of event- or sports-related rights that can be exploited, including rights relating to sponsorship, broadcasting and merchandising. This section will further analyse ownership of the relevant rights and how these rights can be transferred.

Our authors then provide sections detailing the relationships between professional sports and labour law, antitrust law and taxation in their own countries. The section devoted to specific sports issues will discuss certain acts that may qualify not only as breaches of the rules and regulations of the sports governing bodies, but also as criminal offences under local law, such as doping, betting and match-fixing.

In the final sections of each chapter, the authors provide a review of the year, outlining recent decisions of courts or arbitral tribunals in their respective jurisdictions that are of interest and relevance to practitioners and sports organisations in an international context, before they summarise their conclusions and the outlook for the coming period.

Each chapter of this fifth edition of The Sports Law Review has been provided by renowned sports law practitioners in the relevant jurisdiction. As editor of this publication, I would like to take the opportunity to thank all of the authors for their skilful and insightful contributions to this publication. I trust that you will find this global survey informative and will avail yourselves at every opportunity of the valuable insights contained herein.

András Gurovits
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Chapter 1

PARTICIPATION IN JAPANESE E-SPORTS

Shigeru Nakayama and Masakatsu Nagashima

I  INTRODUCTION

The e-sports industry in Japan is growing at a quick pace, and, as a result, organisers and players are beginning to look to Japan as a destination for global tournaments and events. Despite this, the legal framework relating to e-sports in Japan (such as restrictive regulations regarding prize money and a rigid immigration system) has not yet adapted to the rise of e-sports, and any player or organiser looking to conduct e-sports activities in Japan must make sure to navigate them successfully. This chapter provides a summary of the e-sports landscape in Japan before focusing on a discussion of how Japanese immigration laws affect participation in e-sports in Japan.

II  OVERVIEW OF THE E-SPORTS INDUSTRY IN JAPAN

Japan is the home of many popular video game companies, including Nintendo, Sony, SEGA, CAPCOM, SQUARE ENIX and KONAMI. Thus, the Japanese video game industry is robust, bringing in US$19.2 billion in game revenue in 2018 and serving 67.6 million players in Japan.2

However, while Japan’s video game industry as a whole is strong and Japan is the third-largest video game market worldwide, e-sports is less popular in Japan than in other countries, such as the United States, China and South Korea. Revenue from the Japanese e-sports market in 2018 was only US$44.2 million,3 accounting for roughly 0.3 per cent of the revenue of the total Japanese video game industry.

However, the landscape is changing quickly, and Japanese e-sports is in the midst of a boom. The 2018 revenue figure of US$44.2 million grew from a mere US$3 million in 2017 and is expected to rise further in 2019. Given that the worldwide e-sports market brought in US$905.6 million in global revenue in 2018,4 Japan is an important emerging market for e-sports.

One of the reasons that the development of e-sports in Japan has been hindered is the uncertainty of interpretation of legal regulations restricting the amount of prize money and the operation of e-sports businesses. Because of the market’s rapid growth, solutions

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1 Shigeru Nakayama is a partner and Masakatsu Nagashima is a senior associate at TMI Associates.
Participation in Japanese e-sports

to these regulatory issues are beginning to arise. However, much of the discussion of the regulatory hurdles facing e-sports has overlooked the immigration aspect despite the fact that immigration issues are critical given the international nature of the e-sports industry. Given this, this chapter aims to provide a basic overview of Japanese immigration laws as they relate to e-sports as a starting point for future discussions.

III GENERAL IMMIGRATION REQUIREMENTS FOR FOREIGN E-SPORTS PLAYERS

Japan has held and will continue to hold several tournaments involving international players, including Evo Japan and the League of Legends Japan League. Foreign players wishing to participate in these tournaments are subject to the Immigration Control and Refugee Recognition Act (the Immigration Act).

The Immigration Act requires that e-sports players obtain visas to participate in e-sports activities in Japan. However, e-sports competitions take various formats, such as league style, knockout tournament style, one-day competitions, exhibition matches and tournaments hosted by local e-sports cafes. Because players may get involved in e-sports in a number of different ways, the types of visas that foreign players must obtain varies (as explained in Section IV).

IV SPECIFIC VISA REQUIREMENTS FOR FOREIGN E-SPORTS PLAYERS

The possible types of visas for foreign players are the entertainer visa and the temporary visitor visa.

i Entertainer visa

Players must obtain an entertainer visa if there is any possibility that they will earn remuneration from their e-sports activities in Japan. Furthermore, even if players will not earn any prize money directly from an e-sports match in Japan, they must still obtain entertainer visas if they are professional players and their activities in Japan are regarded as part of their professional activities.

 Procedures for obtaining an entertainer visa

Under the Immigration Act, the specific requirements and documentation to support an application for an entertainer visa vary based on the circumstances. First, to obtain an entertainer visa, the organisation in Japan sponsoring the player must apply for a Certificate of Eligibility (COE) with the Immigration Bureau. Once the player has received his or her COE, then the applicant must submit it to the local Japanese consulate to apply for the visa. It takes approximately two months for the COE to be issued and five working days

5 For example, a regulation regarding prize money is progressing, as stated in announcements by the Consumer Affairs Agency on 5 August and 3 September of 2019. See https://www.caa.go.jp/law/nal/pdf/info_nal_190805_0001.pdf and https://www.caa.go.jp/law/nal/pdf/info_nal_190903_0002.pdf.
6 Evo Japan is an international tournament involving several fighting games (such as Tekken and Super Smash Brothers.). See: https://www.evojapan.net/2020/english/.
7 League of Legends is a multiplayer online battle arena video game developed and published by Riot Games for PC. This is one of the most popular e-sports titles in the world. See https://na.leagueoflegends.com/en/.
Participation in Japanese e-sports

after acceptance of the visa application for the visa to be issued. However, the Immigration Bureau may expedite the process if the circumstances require it. As a practical example, if the qualifying round for a tournament in Japan is held outside of Japan, the players participating in the qualifying round might apply for the COE or visa upon advancing past the qualifying round, and it would be advisable for the sponsoring organisation and qualifying players to have their application documents prepared before the qualifying round to minimise delays.

A sponsoring organisation in Japan, not an applicant, is the one who applies for a COE. So, the players must find sponsoring organisations to accept them. If an e-sports tournament organiser invites e-sports players to its tournament, for example, then the organiser could serve as a sponsoring organisation. That said, a tournament organiser may not be willing to sponsor. In the past when that has happened, an international e-sports team sometimes establishes a Japanese company, such as a share company (kabushiki kaisha), limited liability company (godo kaisha) or a foreign company (gaikoku kaisha). For purposes of acting as a visa sponsor, any type of corporate formation is allowed, but given that each form has different corporate governance, taxation and maintenance costs, careful consideration should be made in determining which formation is suitable for the team.

Activities allowed under the entertainer visa

As a basic rule, the entertainer visa allows holders to engage in ‘theatrical performances, musical performances, sports or any other form of show business’. Generally, a player cannot perform any commercial activity outside this scope. However, as it is common for e-sports players to participate in interviews, commercial shoots, fan events or video streams on Twitch or YouTube, careful consideration needs to be paid to what kinds of activities are allowed. Interviews strictly pertaining to the competition should be allowed without any special permission under the Immigration Act, but the player would probably need to obtain separate permission to conduct any interview, commercial shoots or fan events unrelated to the tournament. Therefore, if the player wishes to participate in these sorts of activities, another application would be required.

On the other hand, video streaming for compensation would be prohibited because the Immigration Act does not have a category covering video streaming. Therefore, e-sports players may not stream their game plays or programmes on Twitch or YouTube as a business in Japan even if they have the entertainer visa; in other words, players should make sure they are not involved in streams for compensation during their stay in Japan.

Temporary visitor visa

In limited circumstances, an entertainer visa may not be required, and a temporary visitor visa may be sufficient. Under the rules regarding the temporary visitor visa, visitors with such status are permitted to sightsee, perform recreational activities, play sports, visit relatives, go on tours, attend lectures or meetings, meet business contacts or conduct other similar activities during a short period of stay in Japan. However, the Immigration Act states that temporary visitors may not conduct activities related to the management of a business involving income or activities for which they receive remuneration.

8 Article 19(1)(ii) of the Immigration Act.
Under the Immigration Act and its ministry order, anything considered an ‘incidental reward in daily life’ is not regarded as remuneration,⁹ and players can legally receive this type of award while on a temporary visitor visa. Therefore, if a visiting e-sports player is not a professional and will receive no prize money or only an ‘incidental reward in daily life’, then the player may enter Japan as a temporary visitor. As there has been no official announcement regarding the line between ‘remuneration’ and an ‘incidental reward in daily life’ under the Immigration Act, it is highly recommended that visiting e-sports players, teams and organisers seek the advice of Japanese counsel on this issue.

Furthermore, if the player’s country has concluded a Visa Exemption Arrangement with Japan, the player does not have to obtain a temporary visitor visa. Rather, the player is exempt from obtaining a visa at all, receiving the benefits of a temporary visitor upon entry into Japan.¹⁰ There are 68 countries that have a Visa Exemption Arrangement with Japan, including, as of September 2019, some Asian countries, Australia, New Zealand, many European countries, Canada and the United States.¹¹

To be clear, if a player is a professional, or if prize money other than an ‘incidental reward in daily life’ may be earned in Japan, such player will be considered to have earned remuneration, and the player must obtain an entertainer visa. Any compensation outside Japan will also be included in remuneration. Even in situations where professional players participate in a demonstration event without any remuneration, the event will be regarded by Japanese immigration authorities as a professional activity. In these situations, the players may be refused entry or even charged for performing on temporary visitor qualifications only. In other fields, foreign entertainers have sometimes been refused entry to Japan when they failed to obtain entertainer visas even though they were to participate in unpaid activities only, such as interviews or shoots for promotional videos.

V  CONCLUSION

While the Japanese e-sports industry has been developing and growing, regulations governing the industry remain immature. The Immigration Act and corresponding visa regulations have uncertain application, or they have not yet adapted to accommodate e-sports players, as certain routine activities such as video streaming are not allowed in Japan as at the time of writing.

However, considering the internationality of the e-sports industry, it is necessary for players, teams, and organisations to understand and follow the regulations of the Immigration Act for e-sports activities in Japan to run smoothly. Accordingly, it is highly recommended to seek the advice of a Japanese local counsel to ensure compliance with the latest developments.

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⁹ Article 19(1)(i) and Article 19-3(i)(d) of the Regulation for Enforcement of the Immigration Control and Refugee Recognition Act.

¹⁰ See the latest information about visa exemption: https://www.mofa.go.jp/j_info/visit/visa/short/novisa.html.

¹¹ id.
I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

Argentina has a long and well-known sports tradition. Attempting to write a review of the regulations of all sports in Argentina is a daunting task and would, undoubtedly, exceed the scope of this chapter. It is therefore necessary to establish an, albeit arbitrary, narrower scope.

To that end, we have made an initial distinction between team sports and individual sports. This review will focus on the former. Once this distinction is made, it is necessary to choose a subset of the existing team sports. For these purposes, we have chosen to focus on those sports where, at the national team level, Argentina is considered to be among the world's elite. This means sports for which a global competition exists and the Argentine national team has reached no less than the quarter finals in the most recent occurrence of the global competition.

Thus, this chapter will focus on the following sports: football, rugby, field hockey, basketball and volleyball.

However, the Sports Law\(^2\) regulates the promotion of sporting activities throughout the country. The stated purpose of the Sports Law is to promote sports in all its forms.

The Sports Law defines a sporting institution as an association whose stated purpose is the practice, development, maintenance, organisation and representation of sport or any of its variations. The Sports Law further creates a Registry of Sporting Institutions. Registration in said registry is a requirement to participate in organised sports, both amateur and professional.

In 2019, by means of Decree 92/2019 the Agencia de Deporte Nacional (the Agency) was created as the Sports Law's new enforcement body. One of the Agency's main purposes is to contribute to the operational efficiency required in sports.

i Organisational form

Each particular sport is regulated by its own governing body. At the national level, only in football are the individual clubs associated with the governing body. For rugby, field hockey, basketball and volleyball, clubs are associated with a regional federation or association, and the regional federations or associations are then associated with a national confederation.

This confederation issues the regulations at a national level and is then associated with the international sports governing entities.

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1 Pablo A Palazzi is a partner at Allende & Brea.
2 Law 20,655, Article 16.
Thus, football is regulated by the Association of Argentinian Football (AFA), which is further affiliated to both the South American Football Confederation and FIFA (a regional South American entity and worldwide entity, respectively). Rugby is regulated by the Argentine Rugby Union (UAR), which is further affiliated to the International Rugby Board. Hockey is regulated by the Argentine Confederation of Hockey (CAH), which is related to the International Hockey Federation. Basketball is regulated by the Argentine Confederation of Basketball (CABB), which is related to the International Basketball Federation. Finally, volleyball is regulated by the Argentine Volleyball Federation (FeVA), further related to the International Volleyball Federation.

The regulatory entities and associations, at both the regional and the national level, adopt the legal form of a not-for-profit civil association. Further, teams are also civil associations and are not to be profit-making entities. There are historical reasons why this is the case: where teams were originally formed within neighbourhood clubs, the clubs eventually adopted this organisational form, and this has been maintained over time.

Even with the advent of professionalism (within the limits that will be referred to in this chapter) and the success of Argentine players and teams at a global level, the basic entity that unifies the players is a not-for-profit entity. And it is unlikely that this will change in the near future. As mentioned, the Sports Law defines a sporting institution as an association. This would seem to exclude any type of company or corporation being considered as a sporting institution and allowed to participate in organised sports. By way of example, the AFA regulations expressly prohibit affiliated entities from being commercial entities.

Decree 92/2019 established a quota for the lists submitted for the election of members of the board of directors in first-grade civil associations. In this sense, the lists must be composed of a minimum of 20 per cent of women and young people, altogether.

In addition, the above-mentioned decree set a maximum period of two years for mandates of presidents of first and second degree civil sports associations, civil sports associations of national representation and presidents from the Sport and Physical Activity Institutional System.

ii Corporate governance

As mentioned, other than the Sports Law, which is a general law related to the promotion of sports in and of themselves, there is no unified regulation for sports entities. Having said this, there are certain general principles that apply to all clubs and institutions.

Most of these principles do not vary from general corporate governance principles for associations or other legal entities in Argentina. A description of all these principles would vastly exceed the scope of this chapter; however, these generally refer to a prudent administration of resources; accountability and transparency in the decision-making processes; and conflict of interest regulations.

However, there are certain specific requirements that are imposed by the different governing entities. In this sense, for instance, the AFA requires that the clubs affiliated to the AFA have separate accounting for professional football-related matters.

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3 For a history of how these organisations were formed in Argentina with respect to football see Abreu, *El fútbol argentino. Historia jurídico política de su organización*, Marcial Pons, 2016.

4 See Article 5 of the by-laws of the AFA, where the entities are mandated to not become commercial entities (‘ni convertirse en sociedades comerciales’).
iii Corporate liability

There are no specific statutory provisions for liability of managers and officers of a sports organisation. General corporate liability provisions would apply. Sports entities are not corporate entities (in the sense that corporate entities are commercial entities). As mentioned, sports entities are associations that are not for profit.

In that sense, in general, there are no specific regulations relating to sports that attach liability for managers and officers for the simple fact that the individual occupies this a role. The main exception to this lack of regulation is Law 23,184, as amended (for the prevention of violence in sporting events), which establishes the liability of managers and officers, as such and not in their personal capacity, for violations to the obligations imposed under said law.5

The regulatory documents of each of the sports governing entities establish that managers and officers of sports organisations may be subject to disciplinary action if they commit any of the actions described in the relevant regulations in their role as managers. Liability is not given because the individual is an officer of an entity, but the action that the individual committed is punishable because the individual is a manager.6

Likewise, managers and officers are subject to anti-doping regulations, not because of the liability of the club they represent, but a personal liability where they have to have been personally involved.7

II THE DISPUTE RESOLUTION SYSTEM

There is no single dispute resolution system for sports. Each sport has its own dispute resolution system with its own regulations and systems of appeals. In general, most sports governing entities establish an independent dispute resolution system for disciplinary matters, where most establish a two-tiered system for disciplinary hearings and measures.

The references below are to the national governing body of each sport. Most regional entities have similar, if not identical, regulations. Additionally, most entities replicate, at least partially, the general disciplinary systems established by the global governing entity.

i Access to courts

AFA regulations expressly state that the decisions issued by the Tribunal of Sports Discipline are final and unappealable, except in certain cases where the sanction is particularly burdensome.8 Further, among the obligations of the AFA’s member clubs is the obligation not to access judicial courts in any dispute that a member may have with the AFA.9

This being said, certain matters are referred to judicial courts, mainly relating to employment matters. Further, civil liability matters are also referred to courts and if the plaintiff is a player, the action that caused the damage would exceed ordinary play and disciplinary action taken by the sport’s governing entity.

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5 See Section III for further clarification.
6 See, for instance, AFA Regulations of Transgressions and Penalties, Chapter XVI.
7 See Section VIII.1, for more details.
8 See AFA By-laws, Article 13 and Regulations of Transgressions and Penalties, Article 40.
9 See AFA By-laws, Article 5.
For rugby,\textsuperscript{10} field hockey,\textsuperscript{11} basketball\textsuperscript{12} and volleyball\textsuperscript{13} the applicable regulations establish a two-tiered system for disciplinary measures, with an initial tribunal and an appellate tribunal. Access to courts is granted, as none of the regulations specifically prevent access to courts or establish a mechanism of access to courts.

\textbf{ii \quad Sports arbitration}

Given that each sport's governing entity has its own method of discipline, there are no provisions for sports arbitration for matters related to incidents at sporting events.

Further, employment matters are barred, by applicable labour regulations, from being referred to arbitration. Thus, sports matters related to employment cannot be referred to arbitration.

Finally, civil liability matters are, by their very nature, not subject to arbitration through a pre-agreed arbitration agreement.

\textbf{iii \quad Enforceability}

Enforceability of decisions of the governing bodies is not so much a legal issue as a factual issue. Although the governing entities have the power to suspend any entity that does not accept a disciplinary decision,\textsuperscript{14} the most relevant power for enforcing decisions is the monetary power each governing body has over the clubs and entities.

Each of the sports governing bodies controls the financing of the sport and the clubs where that sport is practised. Therefore, any decision by any disciplinary tribunal that is not accepted and enacted by a club may be met with de facto monetary sanctions. Thus, once instances of appeal are extinguished, sports clubs and teams accept the decision issued and act in accordance with said decision.

\section*{III \quad ORGANISATION OF SPORTS EVENTS}

\textbf{i \quad Relationship between organiser and spectator}

It is generally understood that the relationship between the organiser of a sports event and a spectator is a contractual relationship. However, this relationship is not built on a written contract, but rather an implied contract. Through this implied contract the organiser undertakes to organise a sporting event with certain characteristics (regarding participating teams, athletes, venues, timing, etc.), which the spectator accepts through the acquisition of a ticket to said event.

Thus, given the existence of an implied contract and not an actual written agreement between the organiser and each individual spectator, the contract is best understood as a consumer contract. The spectator is a consumer of an organised sports event and, therefore, spectators can avail themselves of the defences included in consumer protection regulations. Most importantly, other than the safety and security provisions that are described in subsection vi, organisers of sports events must be very clear in the promotion and publicity

\begin{footnotesize}
\begin{enumerate}
\item[10] UAR regulations of procedures, sanctions and recourses of the Argentine Rugby Union, Article 38.
\item[11] CAH Regulations of the Disciplinary Tribunal, Articles 15 et seq.
\item[12] CABB Penalty Code, Articles 52 et seq.
\item[14] See, for instance, AFA Regulations of Transgressions and Penalties, Article 75.
\end{enumerate}
\end{footnotesize}
of the event so that the event meets the expectations created by the promotional materials. Any clear discord between the promotional materials and the actual event may give rise to responsibility for false or misleading advertising, for instance.

ii  Relationship between organiser and athletes or clubs

The relationship between the organiser and athletes or clubs is different. For the purposes of this particular section, we will not analyse the ordinary annual competitions of each particular sport (such as the first division football tournament or the national basketball league, to name two), but specific, one-off special events.

In these cases, the organiser would generally secure athlete or club participation through a specific contract detailing the obligations of either club or athlete. In the case of individual athletes, sometimes these contractual provisions may be considered labour provisions and subject to labour regulations. However, this must be analysed on a case-by-case basis.

The contracts in these cases are generally thought of as service agreements or works for hire, where the club undertakes to perform a service (play a sport) for the benefit of the organiser. It is advisable that, in addition to the general contractual provisions that are usual in contracts in Argentina, certain regulations are to be included regarding publicity of the event, athlete participation in promotional materials, pre- and post-competition press events and other event-specific regulations.

iii  Liability of the organiser

The foundation of the civil liability of the organiser of a sports event can be found in a single article of a single law: Article 51 of Law 23,148 (as amended by Law 24,192) states that ‘the entities or associations participating in a sporting event are jointly and severally liable for the damage that may occur in the stadiums.’

The organiser is therefore liable not only for the safety of the athletes and spectators during an event – and further subject to the provisions of Law 23,148 (as amended by Law 24,192) – but also for general security matters, such as theft prevention, damage and accident prevention. Therefore, the organiser of a sports event may be found liable for all types of damage that may occur during the event.

In general, and other than the violation of the riot prevention regulations indicated in subsection vi, the organiser of a sports event will not be directly liable for criminal acts, since criminal liability is attributable to the individual who carries out the criminal act. However, investigation of alleged offences will be either initiated ex officio or through a criminal complaint filed by the victim, depending on the alleged offence.

iv  Liability of the athletes

In general, the liability of athletes for damage that occurred during ordinary play conditions is limited and subject to the disciplinary actions and measures of each club and sports governing body. However, for damage that goes beyond ordinary actions of play, athletes may be liable.15

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15 For instance, in the case Santiago Fabián Santero v. Juan Guillermo Lobato and others (CNCiv, Sala I, 23 December 2003), the appellate tribunal found Mr Lobato liable for damages in favour of Mr Santero after Mr Lobato had punched Mr Santero during a rugby match with enough force to damage Mr Santero’s jaw, beyond ordinary instances of play.
In the case of civil liability claims (i.e., claims for damages), it is the damaged party who must initiate and follow the case. As is usual for civil liability matters, there must be a causal link between the action of the athlete and the damage received by the other party.

There are no specific regulations regarding criminal liability matters for athletes, and thus general regulations apply. In these cases, criminal offences are generally investigated ex officio by the authorities. However, certain matters are dependent on private impulse, such as minor lesions. Therefore, the investigation for criminal liability of an athlete would depend on the type of alleged offence.

v Liability of the spectators
Spectators are subject to some civil and criminal liability regulations as members of an organised society. In addition, there are particular instances where actions carried out related to sports events may give rise to particular criminal liability. For instance, a spectator may be found criminally liable for the interruption, even temporary, of a sporting event carried out in a public venue; or in cases of destruction of private property in the event of a sporting event (where the criminal sanctions are greater than ordinary property damages).

The intervening judge may impose on the spectator the additional penalty of being banned from all sporting events or that particular stadium, or from acting as a manager, officer or even player of any given sport.

vi Riot prevention
Law 23,148 (as amended by Law 24,192) is aimed at preventing violence in sporting events. The Law imposes several obligations and prohibitions to organisers of sporting events, athletes, spectators and authorities, the violation of which constitute criminal offences.

The Law is applicable in cases of a sporting event, in either the stadium or arena and the surrounding areas, before, during and after the event. For instance, among the prohibited matters is having firearms or explosives in the areas indicated during a sport event.

Certain violations may be considered criminal in nature, while others are merely misdemeanours. Among the misdemeanours are rioting and incitement to rioting. In that sense, for instance, inciting violence, throwing objects (including lit or that may cause substantial damage) or creating ‘avalanches’ in the bleachers and stands are considered misdemeanours, and the sanction is the prohibition to access events for a given number of dates of play. However, these are not considered crimes punishable through the regular criminal justice system.

IV COMMERCIALISATION OF SPORTS EVENTS
i Types of and ownership in rights
The commercialisation of rights to sporting events can be divided, mostly, into official and unofficial matches and events.

First, as is further explained in Section V, in Argentina only football is a professional sport. All other sports are still considered amateur, and therefore there are fewer exploitation rights associated with such sports and they are much less lucrative.

Although each sport has its own set-up, as a general rule, the regulating entry owns rights to the sports events where the participating team is the official national team. This includes broadcasting rights, sponsoring and merchandising.
Additionally, the regulating entities own the rights of sponsoring, merchandising and broadcasting official competitions at the national level. The governing entities then execute commercialisation agreements with different entities regarding sponsoring, merchandising and broadcasting rights. Particularly for broadcast rights, this generally involves long-term agreements with either networks or other entities to broadcast local and national team matches.

However, for certain global events, the organising entity may have agreements with broadcasters that are different from the ‘official’ broadcaster of the national team or the local tournament. This is subject to the global agreement, and said global agreement prevails.

In Argentina, the most pertinent of broadcast rights relates to football. Currently, the broadcast of the national first division football tournament is done jointly by Twenty-First Century Fox, Inc, through its subsidiaries, and Turner Broadcasting System Latin America, Inc, through its subsidiaries, which obtained these rights upon licence from AFA and the Argentine Professional Football Superleague after the termination of the agreement with the national government for the programme Fútbol para Todos.

Further, Law 25,243 establishes the obligation that all football matches where the Argentine national team participates must be transmitted live through non-pay TV throughout the country. Additional regulations establish that when Argentine teams (although not the national team) reach decisive instances of regional competitions, the matches are also to be broadcast in this same manner.

Additionally, each individual team or club has sponsoring and merchandising rights and agreements regarding team branded materials. Finally, each individual athlete has the total rights to their own image, notwithstanding any right that the clubs and governing entities have to, within their own rights, broadcast or publicise images of the athlete.

ii Rights protection

In general, violations of sports-related rights are mostly found in the area of merchandising. In that sense, there are two different instances that can be distinguished.

On the one hand, there are the ‘generic’ team merchandise products that are not intended to look like the original, being, for instance, simply jerseys that reproduce the team colours. This is mostly found for national team jerseys and the ‘big’ team jerseys. On the other hand, counterfeit products exist that are branded as the original product while not being original brand merchandise.

In both cases the issue deals with proprietary rights and intellectual property rights, and the measures available to the teams and sportswear manufacturers are those available under general intellectual property regulations.

Broadcast rights have rarely been violated. However, given the recent termination of the state-owned programme Fútbol para Todos and the return of the pay-per-view system regarding the national first division football tournament, Twenty-First Century Fox, Inc, together with Turner Broadcasting System Latin America, Inc have stated that they believe their broadcast rights will be severely infringed, particularly through the use of the internet, as a response from the public who became accustomed to the free-of-charge system run by the government in recent years; so to this end, the current licensees of broadcast rights have taken several steps to be prepared for a copyright battle in courts against potential infringers in the coming years.
iii  Contractual provisions for exploitation of rights

There are no mandatory contractual provisions for the exploitation of sports-related rights. The usual contractual provisions should be included, particularly regarding termination rights.

Rights holders are the governing entities, which have substantial negotiating power, particularly given the importance of Argentine national teams. This makes the teams a desirable commodity for sponsors, merchandisers and broadcasters alike.

iv  Ambush marketing

In connection with commercialisation of sports events and sponsorship rights, there is a practice globally known as ambush marketing, where advertisers work to connect their product with a particular event or team in the minds of potential customers, without having to pay sponsorship expenses for the event or team sponsorship.

Argentina has no specific regulations on ambush marketing or protection of sponsored events. In addition, there are no special statutes on unfair competition. Judicial cases on ambush marketing are scarce. The legal analysis of these types of infringements was focused on traditional trademark law. However, the application of traditional trademark law to advertising and ambush marketing has been troublesome, since this kind of advertising does not usually mention trademarks. Therefore, there is no trademark use in the sense of statute.

Another legal avenue to combat this kind of conducts will be the recent unfair competition regulation.16

In 2002, FIFA filed a complaint accusing Pepsi of using ‘below-the-belt techniques that imply it is an official sponsor of the World Cup tournament, when in fact its rival Coca-Cola has paid £20m for that privilege’. FIFA achieved a court ruling in Argentina banning the Pepsi TV and press advertisement that suggested a ‘presumed sponsorship relationship between Pepsi and the FIFA World Cup’. The Pepsi campaign used the words ‘Tokyo 2002’ alongside famous footballers and associated them with the Pepsi logo.17

Argentine courts validated a claim on ambush marketing and ordered the defendant to immediately cease the advertising campaign being objected to and remove already published advertisements in any medium.18

In this particular case, the advertisement campaign being objected to showed Javier Mascherano, one of the major players of the Argentine football team in the Brazil 2014 World Cup, in a Unilever advertisement for the laundry detergent trademarked ‘ALA’. The advertisement had been launched on TV and on the internet a few days before the 2014 World Cup started, portraying a child (representing Javier Mascherano) playing football with other children and wearing a t-shirt in the Argentine colours – white and light blue (at this stage, there had been no use of any AFA trademarks). Later in the video, Javier Mascherano appears wearing a blue t-shirt with ‘No. 14’ on his back (his number as a player in the 2014 Brazil World Cup), carrying a ball in his hand and entering the football field through a tunnel. Finally, an announcer’s voice is heard off screen, saying: ‘ALA, official sponsor of all we’ve learnt growing up’.

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16 See Decree 274/2019.
17 See Federation Internationale de Football Association v Pepsi de Argentina S.R.L. S/ Medidas Cautelares. Causa No. 4422/02. Juzgado Civil y Comercial Federal No 1, Secretaría No 1. 03/06/02.
18 This ruling was issued in the case Asociacion del Fútbol Argentino and others v. Unilever de Argentina SA (Federal Court Division III, 06/10/2014).
Based on consumer law and unfair competition provisions, Division III of the Federal Court on Civil and Commercial matters reversed the decision of the lower court denying the injunction filed against Unilever and ordered the defendant to immediately remove the advertising campaign using the phrase ‘official sponsor of all we’ve learnt growing up’. The decision was welcomed by scholars.19

V PROFESSIONAL SPORTS AND LABOUR LAW

Argentine elite sports have the distinction of probably being among the only sports that are, to date, mostly amateur.

Football was the only sport played professionally until the creation of a professional rugby team within the UAR for the SuperRugby championship. In general, rugby and field hockey are purely amateur sports (where the regulations of the UAR specifically prohibit professional athletes).20 However, given the recent international success of Argentine teams, the sport’s governing entities have created elite ‘professional’ teams made up of the sport’s best players so that they may dedicate themselves full-time to the practice and training of the sport.21 In these cases, the players are paid by the relevant governing entity, and not affiliated with a particular club.

i Mandatory provisions

Given that football is the only professional sport at the club level, it is the only sport where the athletes are employed by the club in which they perform and, therefore, employment regulations come into play.

The employment of professional football players is regulated by Law 20,160 and further regulated by the applicable collective bargaining agreement (CBA) (currently CBA 557/2009). The applicable regulations establish that the contract may be between one and five years, with no extension provision. The relevant contract must be registered with AFA.

The contract must detail compensation items, which must include: monthly salary, bonus for official matches won, bonus for friendly matches won or tied bonus for qualification to national or international competitions. The applicable CBA sets forth the minimum amounts for each item.

Given the recent introduction of a professional rugby team by the UAR and its limited amount of professional athletes, there is no applicable CBA. As a consequence, those athletes’ rights and obligations are ruled by their individual employment contracts and, also by Labour Contract Law 20,744.

ii Free movement of athletes

The law does not prevent a limit on foreign players in local professional teams. In fact, the applicable CBA to football players establishes that a maximum of four professional players


20 See UAR by-laws, Article 5, where it states that the member entities must ‘exclusively’ promote the sport between amateurs.

21 Rugby is particularly well known, having created first the High Performance Plan and now a franchise of the world’s SuperRugby Los Jaguares. For more information see www.jaguares.com.ar/tag/uar.
per club may be foreign nationals. There is an exception to this, which is if the foreign player performed in the club’s lower divisions for a period of no less than four years prior to his or her 21st birthday (at which point he or she must sign their first contract). In this case, the player will not be considered a foreign national for the duration.

iii Application of employment rules of sports governing bodies

In general, Argentine labour law is considered public policy and therefore the parties may not agree to terms contrary to the principles of the law. However, specific regulations may be included, as long as they do not violate the principles of the applicable labour regulations (the General Labour Law, Law 20,160 and the applicable CBA).

VI SPORTS AND ANTITRUST LAW

There is no development of antitrust law as related to sports in Argentina. As mentioned in Section I.i, clubs and entities are civil associations and not for profit, with the exception of football. As such, there is little scope, at present, for the development of antitrust regulations related to sports.

VII SPORTS AND TAXATION

In general, Argentine-sourced income is taxable even for non-residents even for one-off events.

In this regard, gross income earned by non-resident athletes present in Argentina on a temporary basis for a period not exceeding six months in a calendar year is subject to a withholding of 24.5 per cent (32.45 per cent with grossing up). When the payment is made to an entity, the general withholding rate applicable is 31.5 per cent (45.99 per cent with grossing up).

Under double taxation treaties executed by Argentina, income derived by foreign athletes from their personal activities exercised in Argentina, or by another person or entity in respect of the activities carried out by athletes, may be taxed in Argentina in accordance with its domestic rules. Nevertheless, in most cases, the income shall not be taxable in Argentina if the visit to the country is wholly or mainly supported by public funds of the state where the athlete is a resident.

However, when both the club or athlete and the organising entity (the entity that makes payment to the athlete or club on its own behalf) are non-Argentine residents, there is a mechanism in place under Argentine law for payment of the tax.

Finally, the Argentine Income Tax Law (Law 20,628) provides for an exemption for income obtained by sports associations that do not have a lucrative purpose. This exemption is extended to foreign sports associations under a reciprocity rule.

VIII SPECIFIC SPORTS ISSUES

i Doping

Doping, or rather, the prohibition of doping in sports, is regulated for all sports generally through Law 24,819.

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The above-mentioned Law is applicable to all national sports events. International sporting events are excluded from the scope of the Law, and a specific reference is made that in international sporting events the regulations of the applicable international body or the International Olympic Committee will apply.

Doping is defined as the use of prohibited substances or methods, regardless of the medium of administration, by sportsmen and women before, during and after a competition. Doping is also considered to be the administration of the prohibited substances or methods to animals participating in a sporting event.\(^{23}\) The Law refers to an annex that lists the prohibited substances and methods. This list is updated from time to time. The Law states that it is applicable not only to the individual participating in sports, but also to individuals who facilitate or incite doping in others, provide prohibited substances or methods or impede anti-doping controls.

The penalties for the individual are: suspension of the practice of regulated sports for between three months and two years; and suspension of a minimum of two years in the case of reiterated offences, as well as disqualification or loss of points in the relevant competition. To determine whether it is a reiterated offence, violations of doping regulations abroad will be taken into account.

For managers and trainers who participate or incite doping, or impede anti-doping controls, the sanction will be two years’ suspension from their role. In the case of a repeat offence, the suspension may be a lifetime ban.

Additionally, managers and trainers are subject to criminal sanctions, including prison terms of between one month and three years, if they incite or participate in doping. If the substances provided for doping purposes are further recognised as illegal narcotics as per the updated listing of illegal narcotics, the prison term will be increased to between four and 15 years.\(^{24}\)

Clubs and entities may also be sanctioned, and said sanction entails the suspension of participation in the National Sports Fund and the Registry of Sports Institutions.

**ii** **Betting**

Organised betting on sports events is very strictly regulated in Argentina through Law 25,295, the Sports Forecast Law. The stated purpose of the Law is to generate resources to be applied to the financing, promotion, organisation, participation and development of sports and the contribution to the prevention of violence in sports.

The Law further defines sports forecasts as any game or betting instance the result of which is related (totally or partially) to a sporting event of any sort, excluding horse racing.

At a national level, betting on sports forecasts is managed and regulated by the national lottery agency. Law 25,295 specifically prohibits any sort of sports forecast contest or game that is not exploited or commercialised by the national lottery.\(^{25}\)

In essence, therefore, all betting in sports is state regulated. Any sort of betting not regulated by the national agency would be considered illegal betting and subject to the penalties related to prohibited gambling in each relevant jurisdiction.

\(^{23}\) Law 24,819, Article 2.

\(^{24}\) Said listings can be found in Law 17,818 (groups I to IV); Law 19,303 and the updated listing of the International Narcotics Control Board of the United Nations.

\(^{25}\) Law 25,295, Article 19.
Manipulation

The Sports Law establishes the fixing of matches as a criminal offence and specifically establishes that the individual that offers, gives or promises compensation to facilitate or assure the irregular result of a sporting event, or the irregular performance of a participant, shall be sanctioned with a prison term of between one month and three years. This prohibition is for throwing the match or competition; that is to say, prohibiting payment for underperformance of athletes against their own interests.

Additionally, each sport regulatory entity may have specific sanctions in its disciplinary regulations addressed to players, officers of the entities and referees and match officials both for offering and accepting payments to benefit or harm a specific team in a given event. The sports regulations address further participation in events, and any sanctions that may be imposed are in addition to the criminal sanctions imposed by the Sports Law.

In certain sports, such as football, players often receive additional compensation for successful results, for particular matches, advancing to further rounds in competitions or winning local tournaments. These are usually granted by the club or team, and are generally within the compensation scheme of the player.

However, there is a grey area still to be determined, which is when one team or individual offers an ‘incentive’ to players or teams to play to the best of their ability since an adverse result of the opposing team benefits the ‘offering’ individual or team. In football, said incentive payment is considered illegal and the entity that offers the payment is subject to suspension of a term of between four months and two years.26

Grey market sales

The only sport that has sufficient following for grey market sales to occur and potentially be worthwhile for resellers is football. None of the other sports discussed in this chapter have sufficient following for grey market sales to be an issue. Additionally, access to first division matches is neither complex nor expensive where, in most cases, a nominal amount for access to the stadium or club is paid.

Grey market sales are more frequent in football and national team matches (for all the sports mentioned). For national team matches, tickets are sold through authorised dealers and agencies. However, resale of the tickets is a widespread practice, mostly through online ‘market’ sites (similar to eBay, which has no presence in Argentina). This resale is not legal, although it is very difficult to prevent and sanction it, since it is not a crime but a misdemeanour.27 The sanctions are fines, which are not very significant. However there have been several cases against online platforms reselling football tickets.

AFA IN CRISIS

The AFA has been the victim of a power struggle since Julio Grondona passed away in 2014, while also being embroiled in the FIFA corruption scandal. The AFA, after several setbacks, finally managed to elect a new president, Claudio Fabián Tapia, on 29 March 2017.

Further, the Argentinian government is investigating the AFA for alleged irregularities in the Fútbol para Todos programme.

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26 AFA Regulation of Transgressions and Penalties, Article 74.
27 In the city of Buenos Aires this is prohibited under Article 91 of the Contraventional Code of the City of Buenos Aires.
X THE YEAR IN REVIEW

The most relevant matter in 2018 was that the Youth Olympic Games took place in Buenos Aires from 6 to 18 October.

XI OUTLOOK AND CONCLUSIONS

Argentine sports, at least those that are the focus of this chapter, are among the world's elite. Nevertheless, the discipline of sports law has not been developed to its full potential.

This is probably owing to a combination of factors, including the amateur status of most sports, and the not-for-profit status of all clubs and governing entities. This means that the scope for sports law is narrow and limited.
I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Organisational form

There is no legal requirement for a sporting club (whether professional, amateur, commercial or non-profit) to become incorporated in Australia. However, many sports clubs (including non-profit amateur sports clubs) choose to incorporate, either as ‘incorporated associations’ under the applicable state or territory legislation (the Associations Incorporations Acts) or as corporations under the Corporations Act 2001 (Cth) (the Corporations Act). There are a number of advantages to incorporating a sporting club, the main being that it provides the members of the club with a degree of limited liability. Additionally, under Australian law, unincorporated amateur sporting clubs are not considered legal persons separate from their members, which means that these sporting clubs do not have capacity to enter into contracts (other than through their members). In the past, Australian courts have often found individuals involved with unincorporated sporting clubs liable for the actions of the clubs.

In some instances, the governing body for a sport has imposed a requirement that sporting clubs be incorporated. For example, AFL NSW/ACT, the governing body for Australian football in New South Wales and the Australian Capital Territory, recently imposed a requirement that all Australian football clubs must be incorporated as either an incorporated association or a company.

The national governing bodies for major sporting codes in Australia are structured as public companies, limited by guarantee and registered with the Australian Securities and Investments Commission under the Corporations Act. For example, the Australian Football League (AFL), the Australian Rugby League Commission (ARLC), which owns the National Rugby League (NRL), Football Federation of Australia (FFA), Cricket Australia and the Australian Rugby Union are all registered companies limited by guarantee. Companies limited by guarantee do not have shareholders or share capital, but rather the guarantors (the members) give an undertaking to pay a fixed, small amount in the event that the company is

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1 Annie E Leeks and Prudence J Smith are partners, and Mitchell O’Connell and Lachlan J Green are associates at Jones Day. The authors appreciate and acknowledge the work of Michael Whitbread and Matthew Whitaker in previous versions of this chapter.

2 Australian courts have found contracts with unincorporated sporting clubs to be unenforceable; for example, see Carlton Cricket and Football Social Club v. Joseph (1970) VR 487.

3 For example, see Carlton Cricket and Football Social Club v. Joseph (1970) VR 487.

wound up. The sporting clubs that play in these leagues are the members. Similarly, many of
the professional sporting clubs that play in these leagues are registered as public companies
limited by guarantee, whose supporters pay an annual membership fee. For example, there
were more than one million members of AFL clubs in 2019, and more than 300,000
members of NRL clubs in 2019. Although registration as companies listed by guarantee
is the most common legal structure for professional sporting clubs, other structures are also
used. For example, in the NRL, there are also privately owned clubs, which are incorporated
as private companies limited by shares (such as the Brisbane Broncos), and partially privatised
clubs (e.g., the South Sydney Rabbitohs, who are currently 75 per cent owned by Russell
Crowe and other individuals, and 25 per cent owned by members through a company limited
by guarantee).6

ii Corporate governance

The Australian Sports Commission (ASC) has released a set of guidelines (the Sports
Governance Principles), which, although not legally binding on professional sporting leagues
or sporting clubs, are in effect mandatory, because adherence is a prerequisite to government
funding. The ASC is the Australian federal government body responsible for distributing
approximately A$300 million in public funds to sports governing bodies throughout Australia
each year. The Sports Governance Principles require, among other things, that national
sporting organisations be registered under the Corporations Act as companies limited by
guarantee, and sets out additional requirements for board composition, roles, powers and
processes, governance systems, ethical and responsible decision-making and reporting.

There are no specific statutory requirements for corporate governance of sporting clubs
or leagues. Corporate governance structures for amateur sporting clubs and leagues that are
incorporated associations are set by the relevant state or territory Associations Incorporation
Acts. These provide rules addressing, among other things, the associations’:

- duties to hold general meetings;
- financial reporting obligations;
- duties regarding the constitution of the management committee;
- constitution; and
- duties to notify members of decisions.

For professional sporting clubs that are registered as companies limited by guarantee or
companies limited by shares, their governance structures are dictated by the Corporations
Act, with powers being split between the boards and the members. Both the Associations
Incorporation Acts and the Corporations Act provide rules in relation to the constitution

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au/news/2019-08-06/thanks-a-million-afl-club-memberships-hit-alltime-record; LeagueUnlimited Media,

6 The company limited by guarantee that owns 25 per cent is the South Sydney Members Rugby League
Football Club Limited.

chapter_4/summary_of_financial_outcomes.
of the sporting clubs, their reporting requirements and their management. Incorporated associations are required to establish a committee to manage their affairs, while registered companies are required to establish a board of directors.

Committee members and directors are bound by duties contained in the applicable legislation, including duties:

- to act in good faith in the best interests of the company and for a proper purpose;⁸
- to exercise care and diligence;⁹
- to disclose conflicts between the interests of the company and personal interests;¹⁰ and
- to prevent the company trading while insolvent (that is, when it is unable to pay its debts as and when they fall due).¹¹

### iii Corporate liability

The Associations Incorporation Acts and Corporations Act both contain statutory provisions imposing liability upon managers and officers of sporting organisations (i.e., committee members and directors). For example, there are criminal prohibitions on officers dishonestly using their position, or information obtained by virtue of their position, to gain a financial advantage or cause detriment to their organisation.¹² As discussed above, the legislation also imposes duties on officers to carry out their functions for the benefit of their organisation, and the Corporations Act prohibits insolvent trading by directors. The prohibition on insolvent trading is particularly relevant for sporting clubs in Australia, who are often on the brink of insolvency. Clubs must be careful if they are operating on the assumption that either their creditors will absolve their debts, or their members or the governing body will contribute funds to bail them out.¹³ For unincorporated associations operating as sporting clubs, Australian courts have in the past found the individuals responsible for management of the club liable for debts or an award of damages where the legal personhood of the club itself cannot be established.

Additionally, directors and officers also have obligations to ensure that their sporting club or organisation complies with its work health and safety obligations under the applicable work health and safety (WHS) laws. In most states and territories this legislation imposes a duty on directors and officers to exercise due diligence to ensure that their clubs comply with health and safety duties.¹⁴

A breach of this due diligence duty (and all health and safety duties) is a criminal offence, which can involve penalties for individuals of up to five years’ imprisonment or a fine of A$600,000, or both. Corporations or associations can be fined up to A$3 million.¹⁵

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⁸ Corporations Act 2001 (Cth) Sections 181 and 184.
⁹ Corporations Act 2001 (Cth) Sections 180 and 184.
¹⁰ Corporations Act 2001 (Cth) Section 191.
¹¹ Corporations Act 2001 (Cth) Section 588G.
¹² Corporations Act 2001 (Cth) Section 184.
¹³ In 2015, only six of 18 AFL clubs were profitable, and each club is heavily reliant on fund distributions from the AFL (see www.theage.com.au/afl/afl-news/unprofitable-clubs-get-millions-in-aid-from-afl -20150228-13qw.html).
¹⁴ For example, Work Health and Safety Act 2011 (NSW) Section 27(5); Occupational Health and Safety Act 2004 (Vic) Section 21; Work Health and Safety Act 2011 (QLD) Section 27(5); and Occupational Health and Safety Act 1984 (WA) Section 19.
¹⁵ See, for example, Occupational Health and Safety Act 2011 (NSW) Sections 31 to 33.
For example, in 2015, the Essendon Football Club was convicted by WorkSafe Victoria, the statutory body responsible for administering Victoria’s WHS laws, of failing to provide its players with a workplace free of health risks. This prosecution followed a ‘supplements saga’ that saw 34 players being found guilty of using the banned peptide thymosin beta-4. The football club was fined A$200,000 for the breaches.

There has been increased attention on the activities of sports scientists in Australia after a number of professional sporting clubs in Australia came under scrutiny for employing sports scientists who are alleged to have facilitated the use of unlawful or banned substances.16 In 2013, the Australian Senate Regional Affairs and Transport References Committee published the results of an inquiry into the ‘practice of sports science in Australia’.17 The publication identified three ‘key governance practices’ that should be established by all professional sporting clubs with the assistance and endorsement of the sports’ governing bodies. These involve:

a regular reporting of the activities of sports scientists to the CEO and board;
b the primacy of medical advice and direction over the decisions of sports scientists, such that sports scientists must seek endorsement from club doctors where decisions affect athlete health and welfare; and
c the importance of ensuring that while the CEO and the board are kept informed of the activities of sports scientists, the privacy of athletes and the protection of personal medical information are ensured.

II THE DISPUTE RESOLUTION SYSTEM

i Access to courts

In Australia, it is settled law that a sporting organisation’s rules cannot completely remove the jurisdiction of the courts, because to do so would be against public policy.18 However, each sporting league has established quasi-judicial tribunals that are responsible for administering and enforcing the rules of the sport, including in relation to on-field infringements. Courts will generally only be able to be called upon to resolve disputes where:

a an issue of law arises;
b the sporting organisation makes a decision that is outside its jurisdiction under its rules;
c there is a breach of natural justice;
d the sporting organisation does not comply with its own rules, which constitutes a breach of contract with its members; or
e the sporting organisation, its members or athletes are alleged to be involved in breaches of statutory obligations or criminal laws being investigated or prosecuted by a regulator or third party.

Examples can include where a sporting participant claims that they were not dealt with in accordance with the sporting league’s rules (and this constitutes a breach of contract), or

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18 For example, see Stollery v. Greyhound Racing Control Board (1972) 128 CLR 509.
where a sports tribunal fails to accord a participant procedural fairness in making its decision. In cases where the issue of procedural fairness is raised, the court will not substitute its own decision for that of the tribunal; it will instead mandate that the tribunal remake its decision such that the participants are afforded natural justice.

An example of an alleged breach of statutory obligations by a sporting organisation can be seen when Cricket Australia dismissed the head coach of the Australian cricket team, Mickey Arthur, two years before his employment contract was to expire. Mr Arthur was the first non-Australian coach of the Australian cricket team. He was dismissed abruptly and replaced by former Australian cricketer, Darren Lehman. Mr Arthur subsequently brought a claim under the anti-discrimination provisions of the Fair Work Act 2009 (Cth), which alleged, among other things, that he was subjected to discrimination owing to his South African heritage. Cricket Australia and Mr Arthur subsequently reached a confidential settlement.

ii Sports arbitration

Most major Australian sporting leagues have established quasi-judicial tribunals, which are responsible for administering and enforcing the rules of the sport, including in relation to on-field infringements (e.g., the NRL Judiciary, the AFL Match Review Panel and Tribunal and the FFA Tribunal). Additionally, collective bargaining agreements and standard players’ contracts often provide that it is a condition precedent to bringing court proceedings that the dispute is first referred for determination by a tribunal (e.g., in standard contracts with AFL players), or that the tribunal has exclusive jurisdiction, and its determination is final and binding (e.g., in standard contracts with A-League players). However, this does not prevent recourse to the courts in the situations described above.

The appeals process for a decision depends on the rules governing a particular sporting organisation. In some cases, decisions can also be appealed to the international sporting organisation responsible for the sport, such as the International Cricket Council or FIFA. For example, these tribunals make decisions about, among other things:

- eligibility of players to play for a particular sporting club or nation;
- disputes between members of the international organisation;
- disputes between sporting clubs in different leagues;
- contractual disputes between players and sporting clubs; and
- sanction to players for breaking of sports’ rules or doping.

If all avenues of appeal within a sporting organisation’s tribunal system are exhausted, a case can usually be appealed to the Court of Arbitration for Sport (CAS) and then the Swiss Federal Tribunal for the resolution of the dispute. A recent example can be seen in the decision of the AFL Anti-Doping Tribunal not to suspend 34 Essendon Bombers players for alleged violations of anti-doping rules. The World Anti-Doping Authority (WADA) appealed the Tribunal’s decision, backed by the Australian Sports Anti-Doping Authority (ASADA), to the CAS, who suspended the 34 players for 12 months. The players then appealed to the Swiss Federal Tribunal, who upheld the CAS decision.


20 However, like other jurisdictions, the CAS only has jurisdiction to hear a dispute if an agreement between the parties (e.g., in the rules governing the sport), specifies the CAS as the avenue of appeal.
The CAS has an Oceanic registry based in Sydney, Australia. This registry hears a broad range of selection and doping disputes. A recent example is the dispute between Mitchell Iles, a professional trap shooter, and Shooting Australia, in relation to Mr Mitchell’s non-selection for the 2016 Olympic Games. Mr Mitchell first appealed to Shooting Australia’s Appeals Tribunal, where his appeal was dismissed, and he subsequently appealed to the CAS. The CAS overturned the decision of the Appeals Tribunal and remitted the matter to Shooting Australia to reconsider his non-selection, which then selected him to compete.21

iii Enforceability

Decisions made by Australian courts are directly enforceable within Australia. However, decisions made by sporting organisation tribunals are not directly legally enforceable. In practice, parties must either accept a decision if they wish to continue participating in the sport or appeal the decision to a court on the grounds that the tribunal did not have jurisdiction to make the decision.

III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser, spectators, athletes and clubs

There is no special or unique relationship under Australian law between organisers and spectators. Their relationship is governed by, among other things, consumer, contract and tort law. However, each state has implemented, to differing degrees, legislation that applies to the staging of major sporting events.22 This legislation provides protections to organisers, spectators and athletes, including through provisions governing the resale of tickets for major events and the control and management of event venues during events.

The primary contractual relationship that exists between organisers and spectators is in the terms and conditions of the ticket sale. Under contract, organisers can impose terms and conditions of access to the sporting venue, such as restrictions on resale or transfer or restrictions on entry. However, ticket sales and membership conditions are also governed by the Australian Consumer Law (ACL), which contains additional protections for consumers, including protection against unfair contract terms for standard form consumer contracts. For example, a term or condition to a ticket sale that excludes all liability of the organiser for death, personal injury or loss by the consumers, or that denies refunds in all circumstances, will be held to be unfair and consequently void. Additionally, spectators are entitled to expect that organisers and clubs will comply with anti-discrimination laws.

The primary contractual relationships that exist between organisers, clubs and athletes are in the playing contracts of the athletes and the contracts between the sporting clubs and sporting leagues or organisations, including the relationship of the clubs as members of the league (as an incorporated association). This also includes the rules of the sport, which may be incorporated as a contract between the sporting organisation, clubs and athletes.

22 For example, the Major Sporting Events Act 2009 (Vic) and the Major Events Act 2014 (Qld).
Liability of the organiser, athletes and spectators

Under both common law and statute, as the occupiers of the sporting venue, organisers owe a duty of care to avoid causing harm to spectators and athletes that is ‘reasonably foreseeable’. Under the civil liability legislation of each state and territory, organisers owe a duty of care to take reasonable precautions against risks of harm that are foreseeable and not insignificant.  

For example, in a well-known case before the High Court of Australia, an indoor cricketer sued the organiser after serious injury during a game, alleging that the organiser breached its duty of care by failing to provide protective eyewear, and by failing to erect a sign warning of possible hazards (although in this case, the High Court of Australia held that the organiser’s duty of care did not extend to require these precautions be taken).

Additionally, if a professional athlete causes injury to a third party, such as an opponent, both the athlete and his or her sporting club (as his or her employer) may be liable for damages. In another well-known case, a professional rugby league player for the Wests Tigers in the NRL brought proceedings against Melbourne Storm and two of its players after being seriously injured in a tackle that ended his career. The two players and Melbourne Storm (as their employer) were held to be liable for damages for the injury.

In Australia, like many other jurisdictions, consent to minor assaults will often absolve the accused from criminal liability. This means that although minor assaults technically occur in contact sports, there is usually no liability as it is implicit in the participation of the athletes that they have consented. However, consent is not a defence for athletes where the assault is outside the rules of the sport. For example, rugby league players have previously been convicted of assault for punching an opponent and causing a fractured jaw in one case, and biting an ear after a tackle in another case. However, in other cases, on-field actions by athletes that could lead to a criminal conviction for assault have been met with only sanctions from the sports’ governing body, rather than police prosecution. For example, there have been several high-profile instances of footballers violently punching opponents on the field that have not been prosecuted, in both the AFL and NRL and also at lower levels of the sport. The fact that such athletes have not been charged with criminal offences is a consequence of the police’s discretion in enforcing the criminal law.

IV COMMERCIALISATION OF SPORTS EVENTS

Types of and ownership in rights

Broadcasting rights are arguably the most valuable and lucrative rights available to sporting organisations to gain revenue from a sporting league. For example, the AFL currently has

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23 Civil Liability Act 2002 (NSW) Section 5B; Civil Liability Act 2003 (Qld) Section 9; Civil Liability Act 1936 (SA) Section 32; Civil Liability Act 2002 (WA) Section 5B; Civil Liability Act 2002 (Tas) Section 11; and Wrongs Act 1958 (Vic) Section 48.
28 For example, see the incidences described in an article published by *The Age* in July 2017 involving Barry Hall, Bachar Houli and Thomas Bugg (professional footballers) and Ali Fahour (an amateur footballer in a lower division) www.theage.com.au/afl/afl-news/ali-fahour-incident-would-the-police-act-on-an-afl-punch-20170707-gx6ym.html.
a broadcast rights agreement in place with Channel 7 (a commercial free-to-air television station), Foxtel (a subscription television station) and Telstra (a telecommunications provider) that is worth approximately A$2.5 billion.\textsuperscript{29} The ARLC currently has a broadcast rights agreement in place with Channel 9 (another commercial free-to-air station) Foxtel, News Corp Australia (a media outlet) and Telstra, which is worth approximately A$1.8 billion.\textsuperscript{30}

Additionally, Australia has enacted ‘anti-siphoning’ laws, which provide a list of events that must be made available free to the general public.\textsuperscript{31} This means that in practice, subscription television providers, such as Foxtel, are prohibited from acquiring the rights to these events unless a free-to-air television channel also has the right to broadcast them. Any rights that are not acquired by free-to-air channels can then be acquired by subscription television providers. Currently, the list of ‘anti-siphoning events’ that ‘should be available to the general public’ includes the following:\textsuperscript{32}

\begin{enumerate}[a]
\item each event in the Olympic Games and Commonwealth Games;
\item each match of the AFL and NRL;
\item each international rugby union test match and cricket match involving the Australian team; and
\item each match of the FIFA World Cup, each match of the FIFA qualification tournament involving the Australian team and the English Football Association Cup final.
\end{enumerate}

Image rights, sponsorship and merchandising are also valuable rights available to be exploited. However, the relatively small size of the Australian market, and the fact that many of Australia’s major sports are primarily, if not solely, domestic (e.g., the AFL and NRL) or played at an international level but among a relatively small number of nations (e.g., cricket and rugby union), mean that their value is often limited.

\section*{ii Rights protection}

Broadcasting, image rights, sponsorship and merchandising are primarily protected by the contractual provisions in place between the owners and licensees of these rights, but also by the statutory intellectual property rights. Primarily, this consists of ownership in:

\begin{enumerate}[a]
\item trademarks under the Trade Marks Act 1995 (Cth), in property such as club names, logos and mascots; and
\item copyright under the Copyright Act 1968 (Cth), in property such as rulebooks, recorded images and footage of events, and photographs.
\end{enumerate}

Additionally, rights owners are able to take action under the common law tort of ‘passing off’, to protect the goodwill of their brand from misrepresentation through unauthorised use. In this context, passing off occurs when one person misrepresents that their goods (e.g., merchandise) are the official, sanctioned goods of the rights owner (usually the sporting organisation or sporting club), or that he or she is affiliated with the rights owner. Similarly, action can be taken against persons who engage in misleading or deceptive conduct or make false or misleading representations via the ACL. These laws can apply to examples of ambush marketing.

\begin{footnotesize}
\textsuperscript{31} Broadcasting Services Act 1992 (Cth).
\textsuperscript{32} Broadcasting Services (Events) Notice (No. 1) 2010 (Cth).
\end{footnotesize}
Australia also has several other legislative protections, in addition to laws protecting intellectual property rights that can be used to prevent ambush marketing at sporting events. Legislation was enacted to regulate the commercial use of images associated with the 2015 Asian Cup, the 2015 Cricket World Cup and the 2018 Commonwealth Games to restrict the ability of entities that are not official sponsors to use event images, or represent that they are associated with the event. Similar legislation prohibits the unauthorised use of images and phrases associated with the Olympics.

Recently, the Australian Olympic Committee (AOC) brought proceedings against Telstra in relation to alleged ambush marketing. Telstra had entered into an agreement with Channel 7 under which Telstra would sponsor Channel 7’s broadcast of the Olympics and create a mobile app called ‘Olympics on 7’, which would allow Telstra customers to view Olympic events. Telstra’s advertising campaign then promoted watching the Olympics on the Olympics on 7 app, despite the fact that it did not have any direct association with the Olympics. The AOC alleged that Telstra engaged in misleading and deceptive conduct and made false or misleading misrepresentations in representing that they were associated with the Olympics, in breach of the ACL, and engaged in an unlawful use of protected Olympic expressions for commercial purposes in breach of the Olympic Insignia Protection Act 1987 (Cth). However, the Federal Court of Australia ruled against the AOC and held that Telstra’s advertisements did not suggest to the reasonable person that Telstra was a sponsor of an Olympic body. The Court held that the legislation was not breached if the advertisements simply created uncertainty as to the nature of Telstra’s association with the Olympics. The AOC appealed the decision, which was heard in February 2017. However, in October 2017, the Full Court of the Federal Court of Australia upheld the first instance decision, and agreed that the advertisements did not suggest to a reasonable person that Telstra was a sponsor of bodies and teams associated with the Rio Olympic Games.

V PROFESSIONAL SPORTS AND LABOUR LAW

i Mandatory provisions

Labour laws in Australia are largely dictated by the Fair Work Act and associated regulations and industrial instruments. The Fair Work Act sets out national employment standards that act as the minimum requirements for employers to abide by, including in relation to hours of work, annual leave, compassionate leave and notice of termination. Additionally, the Sporting Organisations Award 2010 sets out further minimum requirements in relation to employment for national, state and territory sporting organisations of coaching, clerical and administrative staff. Matters such as workers’ compensation and WHS and anti-discrimination laws are addressed in state and territory legislation (which is broadly universal around Australia).

Significantly, Australian law does not recognise the concept of ‘at will’ employment. This means that employers are required to provide a period of notice, or payment in lieu of notice, to terminate an employment contract. Additionally, where an employer makes a decision to terminate an employee’s employment, this decision can be challenged through various claims.
that can be made in the Fair Work Commission (an industrial tribunal) or Australian courts. However, this is often not applicable to contracts between professional athletes and sporting clubs, as these are usually fixed-term contracts that terminate automatically at the expiry of the term.

In general, contracts between sporting clubs and athletes are set as standard form agreements by the sport’s governing body, and are not subject to individual negotiation (with some exceptions, for example, remuneration and term). Many professional sportspersons in Australia, including players in the AFL, NRL, A-League and representative cricket, are represented by players associations that are responsible for, among other things, negotiating the terms of standard contracts and engaging in collective bargaining (not dissimilar from a workers’ union).

ii Free movement of athletes

Most major sports in Australia impose restraints of trade in their player contracts and sport’s rules. These restraints include salary caps, player draft rules, player transfer limitations and limitations on the ability of players to license their image and identity through endorsements. The common law doctrine of restraint of trade applies to such restraints. Australian courts have applied this doctrine to enforce these restraints only to the extent that it is:

a reasonably necessary to allow the sport to protect a legitimate interest; and

b reasonable having regard to the public interest.

Australian athletes have used this doctrine to challenge a number of different types of restraints that appear in their contracts (as unreasonable). In Beetson v. Humphries, rugby league player Arthur Beetson challenged a bylaw of the Australian Rugby League (ARL) that restricted him from writing newspaper columns critical of the league’s referees. In Adamson v. New South Wales Rugby League Ltd, 154 players who competed in the NSW rugby league challenged a rule that provided that when a player wished to change clubs, they could only do so by participating in the NSW rugby league draft.

Australian sports also impose restrictions on the number of foreign athletes who can play in their leagues. For example, the A-League restricts each club in the league to five foreign players (at least one of whom must come from a member of the Asian Football Confederation). Further, foreign athletes will only be able to compete in Australian sporting leagues if they receive appropriate visas from the Australian Department of Immigration and Border Protection.

VI SPORTS AND ANTITRUST LAW

The key antitrust legislation is the Competition and Consumer Act 2010 (Cth) (CCA). The CCA contains, among other things, prohibitions against:

a cartel conduct;

b anticompetitive agreements between competitors;

collusion in fixing prices or wages or limiting production or output; and

d unreasonable dominance (where a relevant market is dominated by a single entity).

40 Beetson v. Humphries (unreported, Supreme Court of New South Wales, Hunt J, 30 April 1980).
c exclusionary provisions in agreements; and

d misuse of market power by a corporation with substantial market power.

Each major domestic sporting league in Australia constitutes a monopoly (e.g., the AFL and the A-League). While there have been several instances where rival leagues have emerged, including in cricket and NRL, these have ultimately been unsuccessful in establishing a foothold in the Australian market.

Arguably the most notable application of Australian antitrust laws in a sporting context involved a dispute between a media organisation, News Limited, and the predecessor to the ARLC, the ARL.42 At the time, News Limited was attempting to establish a rival ‘Super League’ to replace the ARL. In response, the ARL sought commitment agreements and loyalty agreements requiring the current ARL clubs to commit themselves to the ARL for an extended period. News Limited alleged that these agreements contained exclusionary provisions or constituted a misuse of market power in seeking to prevent the entry of the proposed Super League into the market, in breach of Australian antitrust legislation.

A single judge of the Federal Court of Australia found that there had been no breach of the antitrust legislation. However, on appeal, the Full Federal Court reversed the decision and concluded that the agreements constituted an illegal collective boycott, and were therefore void.43 A collective boycott occurs when a group of competitors agrees not to acquire goods or services from, or not to supply goods or services to, a business with whom the group is negotiating, unless the business accepts the terms and conditions offered by the group. In this case, the Full Federal Court held that there was a boycott of the Super League by the ARL and the clubs. Subsequently, the Super League and ARL merged to form the NRL, restoring the monopoly.

VII SPORTS AND TAXATION

Under Australian taxation legislation, a sporting organisation is exempt from income tax if it meets all of the following requirements:44

a it is a non-profit organisation;

b it has been established for the purpose of the encouragement of a game or sport;

c it is not a charity; and

d it meets either the ‘physical presence in Australia’ test, the ‘deductible gift recipient’ test or the ‘prescribed by law’ test.45

43 News Ltd v. Australian Rugby League Ltd (No. 2) (Superleague) (1996) 64 FCR 410.
45 An organisation will meet the ‘physical presence in Australia’ test if it has a physical presence in Australia and, to the extent it has a physical presence in Australia, it pursues its objectives and incurs its expenditure principally in Australia. An organisation will meet the ‘deductible gift recipient’ test if it is either listed by name as a deductible gift recipient (DGR) in the legislation, or if it meets the requirements of a general DGR category set out in the legislation. An organisation will meet the ‘prescribed by law’ test if it is prescribed by name in income tax regulations, and it is located outside Australia and is exempt from income tax in its country of residence.
Many professional sporting clubs meet these requirements, which are satisfied by inserting relevant clauses into the constitution of the club. For example, the Carlton Football Club's Constitution provides that 'The assets and income of the Club shall be applied solely in furtherance of the objects of the Club set forth in this Constitution and no portion shall be distributed directly or indirectly to the members of the organisation except as bona fide compensation for services rendered or expenses incurred on behalf of the organisation', which establishes it as a non-profit organisation. The Constitution also provides that 'If a surplus remains following the winding up or dissolution of the Club, the surplus will not be paid to or distributed among members, but will be given or transferred to another corporation or club with similar objects to that of the Club'.

For individual athletes, prize money, playing fees, sponsorships, salaries and media fees are each considered to be taxable income.

VIII SPECIFIC SPORTS ISSUES

i Doping

State and federal criminal laws cover conduct involving some (but not all) substances that appear on the WADA World Anti-Doping Code Prohibited List, including a large number of anabolic steroids. These laws include the following offences associated with these substances:

- trafficking or supplying a prohibited substance;
- using or administering a prohibited substance without appropriate medical or therapeutic justification;
- possession of a prohibited substance; and
- aiding, abetting or concealing any of the above offences.

Individuals who are found guilty of the above offences can potentially face life imprisonment and fines in excess of A$1 million (in particular, for serious trafficking offences).

It has also been suggested by some commentators that doping by professional athletes may constitute the offence of fraud, which is defined as where a person gains a financial advantage, property, services, a benefit, dishonestly or by deceit. However, this has not been judicially established, and doping itself is not a criminal offence in Australia.

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47 For example, see Schedule 3 of the Criminal Code Regulations 2002 (Cth); and Schedule 2 of the Drugs Misuse Regulation 1987 (Qld).
48 For example, Drug Misuse and Trafficking Act 1985 (NSW), Section 25.
49 For example, Drug Misuse and Trafficking Act 1985 (NSW), Sections 12 and 13.
50 For example, Drug Misuse and Trafficking Act 1985 (NSW), Section 10.
51 For example, Drug Misuse and Trafficking Act 1985 (NSW), Sections 19 and 20.
52 For example, see Christopher McKenzie, ‘The use of criminal justice mechanisms to combat doping in sport’ (July 2007), Sports Law eJournal.
ii  Betting
Betting on sporting events is legal in every state and territory, but highly regulated.\textsuperscript{53} The licensing laws vary between each state and territory jurisdiction, but each jurisdiction provides that customers must be over the age of 18 to place a bet, and that licensees must obtain reasonable proof of identity from their customers. The state and territory gambling laws are supplemented by federal legislation that, among other things, has banned online ‘in-game’ betting on sports (although customers can still place in-game bets over the phone).\textsuperscript{54}

In 2008, the Western Australian government attempted to implement legislative amendments that would prohibit the operation of betting exchanges, such as that operated by Betfair Pty Ltd.\textsuperscript{55} Specifically, the legislation prohibited ‘out-of-state’ betting exchanges, where the operator is licensed in another jurisdiction (e.g., Betfair was licensed in Tasmania), and preventing Western Australian residents from placing wagers through such betting exchanges.

The High Court of Australia held that it was constitutionally unlawful for a state or territory government to protect local betting operators from online bookmakers that were licensed in other jurisdictions, as an impermissible restriction on free trade between the states.\textsuperscript{56} As such, online betting operators licensed in one state or territory can offer wagering products to anyone in Australia. Most online operators are now licensed in the Northern Territory, owing to its lower taxation and less stringent regulation.\textsuperscript{57}

In 2015, legislation was introduced to Parliament proposing a ban on gambling advertising during sports events, and the establishment of a national regulator and national self-exclusion register for people struggling with a gambling habit. This legislation, however, is not supported by the two major political parties in Australia.\textsuperscript{58}

iii  Manipulation
Each state and territory has implemented, or is in the process of implementing, laws designed to prevent match fixing. For example, in New South Wales, South Australia and Victoria it is an offence to knowingly or recklessly corrupt a betting outcome of an event with the intention of obtaining a financial advantage or causing a financial advantage in relation to any betting on an event.\textsuperscript{59} It is also an offence to facilitate conduct that corrupts a betting

\textsuperscript{53} For example, the Betting and Racing Act 1998 (NSW); Gambling Regulation Act 2003 (Vic); Wagering Act 1998 (Qld); Betting Control Act 1954 (WA); Authorised Betting Operations Act 2000 (SA); Gaming Control Act 1993 (Tas); Racing and Betting Act 1983 (NT); and Racing and Sports Bookmaking Act 1901 (ACT).
\textsuperscript{54} See the Interactive Gaming Amendment Act 1997 (Cth), which amended the Interactive Gaming Act 2001 (Cth).
\textsuperscript{55} In a betting exchange, the operator acts as the facilitator, matching the wagers of participants betting on opposing outcomes, and takes a commission of the winner’s payout.
\textsuperscript{56} Betfair Pty Limited v. Western Australia (2008) 234 CLR 418.
\textsuperscript{57} Many of the large corporate online bookmakers in Australia are subsidiaries of UK corporate bookmakers, licensed in Australia. This includes the three largest corporate bookmakers by turnover: Sportsbet is a subsidiary of Paddy Power, Sportingbet is a subsidiary of William Hill and Ladbrokes operates a subsidiary in Australia. Each of these is licensed in the Northern Territory.
\textsuperscript{59} See Crimes Act 1900 (NSW) Section 193N; Criminal Law Consolidation Act 1935 (SA) Section 144H; and Crimes Act 1958 (Vic) Section 195C.
outcome of an event. In Queensland, it is an offence to engage in match-fixing conduct for the purpose of obtaining a pecuniary benefit for any person, or causing a pecuniary detriment to another person.\textsuperscript{60} For each of these jurisdictions, a person found guilty of an offence is liable for imprisonment up to 10 years.

There have been several recent high-profile match-fixing incidents in Australian sport:

\textit{a} In 2011, a professional rugby league player in the NRL was convicted of ‘conspiring to gain financial advantage for others’, namely that he intentionally gave away a penalty to the opposing team so that others could succeed in a ‘first points scorer’ bet. He was convicted prior to the introduction of specific match-fixing laws in New South Wales, but his conduct would now be caught by the prohibition against corrupting the betting outcome of an event. He was fined A$4,000 and placed on a 12-month good behaviour bond.\textsuperscript{61} He was also banned for life from the NRL.

\textit{b} In 2016, Australian tennis player Nick Lindahl was convicted of match-fixing after deliberately losing a match at a Toowoomba Futures event in 2013. He was given a 12-month good behaviour bond and fined A$1,000. He was also subsequently banned from professional tennis by the International Tennis Federation and fined US$35,000.

\textbf{iv} \hspace{1em} Grey market sales

The extent to which sporting event ticket sales in the grey market, also referred to as ‘scalping’, is prohibited depends on the state or territory. For example, in New South Wales, ticket scalping is only prohibited in areas around particular sporting venues.\textsuperscript{62} In Queensland, there are prohibitions on reselling tickets to ‘major sports facility events’ at a price greater than 10 per cent of the original ticket price.\textsuperscript{63} Major sports facilities are listed in the regulations, and a declaration that a facility is a major sports facility may only be made with the agreement of the owner. In Victoria, if the Minister for Sport declares a particular event to be a ‘major sport event’, and it is a condition of sale of the ticket that the buyer is not authorised to sell or distribute it, it is an offence for the buyer to redistribute the ticket.\textsuperscript{64} In South Australia, if the Minister declares an event a ‘major event’, ticket scalping is prohibited inside declared areas. It is also prohibited in South Australia to resell ‘major event’ tickets at a price that exceeds the original ticket price by more than 10 per cent.\textsuperscript{65}

Additionally, the ACL contains general consumer protections that apply to ticket resellers. For example, it is prohibited for an unauthorised reseller to represent that they are authorised to sell the tickets, or to misrepresent the original face value of the ticket, and the consumer guarantee provisions ensure that tickets purchased from unauthorised resellers are valid, and for the event they are represented to be for.

Recently, the Australian Competition and Consumer Commission instituted proceedings in the Federal Court of Australia against Viagogo AG, a ticket reseller for live sporting events (among other events). In 2019, the court held that, by referring to tickets as ‘official’ in online advertising, failing to disclose substantial fees and claiming tickets to

\textsuperscript{60} Criminal Code 1899 (Qld) Section 443A.

\textsuperscript{61} M Whitbread, ‘Fixing match-fixing in Australia – Australian sporting administrators propose stricter criminal sanctions’ (October 2010) 18 SLAP 6.

\textsuperscript{62} Major Events Act 2009 (NW) Section 41.

\textsuperscript{63} Major Sports Facilities Act 2001 (Qld) Section 30C.

\textsuperscript{64} Major Sporting Events Act 2009 (Vic) Section 166.

\textsuperscript{65} Major Events Act 2013 (SA) Section 9.
certain events were scarce when the scarcity referred only to tickets available on the Viagogo resale platform, Viagogo had made false or misleading representations and engaged in misleading or deceptive conduct. For example, the total price for three Ashes 2017–2018 (cricket matches) tickets increased from A$330.15 to A$426.82 (29 per cent increase) when the A$91.71 booking fee and A$4.95 handling fees were included. Penalties for the infringements are yet to be handed down.

IX THE YEAR IN REVIEW

i Rugby Australia – unfair dismissal claim by Israel Folau

The most controversial saga in Australian sport in 2019 has been the ongoing dispute between Rugby Australia and Israel Folau. After posting inflammatory and homophobic comments on social media, Israel Folau was issued with a breach notice by Rugby Australia recommending termination of his four-year, A$4 million contract. Folau appealed the notice to a code of conduct hearing held by an independent panel, who ruled in May 2019 that he was guilty of a ‘high-level breach’ of the Professional Players’ Code of Conduct.

Following the panel’s decision, Folau’s contract was terminated. Following an unsuccessful mediation in the Fair Work Commission, he then launched legal proceedings against Rugby Australia in the Federal Court, alleging that his contract had been unlawfully terminated on the basis of religious discrimination and stating that he would seek A$10 million in compensation for the remainder of his contract and lost commercial opportunities. The matter has been adjourned to a hearing in early 2020.

In September 2019, the Tongan National Rugby League issued a media release stating that Folau and his brother would play with the Tongan team later in the year. However, this would require the approval of the Rugby League International Federation, made up of eight national sporting bodies including the ARLC. The ARLC has indicated it will oppose the request.

ii Essendon Football Club doping saga

As discussed above, in 2016, CAS suspended 34 Essendon Football Club players for violations of anti-doping rules, and this decision was subsequently upheld by the Swiss Federal Tribunal. Subsequently, however, in late 2017, separate proceedings were commenced by a third party against the AFL, its CEO and its former chair, alleging that they engaged in misleading and deceptive conduct in comments made to the media during the course of the ASADA investigation in 2016 and 2017.

The AFL sought a ‘mini-trial’ in early 2018 to determine three preliminary issues, including the question of whether the impugned comments were made in ‘trade or commerce’, a prerequisite element that must be determined to establish a breach of Australia’s consumer laws. However, this was opposed by the plaintiff, and in June 2018, the Court rejected the AFL’s application and found in favour of the plaintiff.71

The plaintiff sought declarations from the Victorian Supreme Court that the AFL, its CEO and its former chair acted unlawfully, on the basis that they attempted to ‘engineer outcomes’ before players and officials were actually interviewed by ASADA. The plaintiff has also sought an order that the three defendants publish corrective advertising in relation to their alleged conduct. In July 2018, the plaintiff withdrew their claim and the proceeding was dismissed. The AFL was ordered to pay an amount towards costs as a result of the preliminary hearing.

iii Application of anti-discrimination laws in the AFL

In the past years, several events have occurred in relation to alleged discriminatory conduct by the AFL. Most recently, in June 2019, the AFL and the 18 AFL clubs came together to make an unreserved apology to indigenous player Adam Goodes, following the release of a documentary regarding discriminatory and racist treatment that ultimately led to his retirement from the AFL in 2015. The AFL apologised for its failures during the period and reaffirmed its commitment to diversity and inclusion.72

In May 2018, a former Australian footballer for the Gold Coast Suns filed a complaint with the Australian Human Rights Commission, alleging that he was subject to discrimination, vilification and harassment on racial, sexual and religious grounds by AFL staff, the Gold Coast Suns, club officials, teammates, opposition players and spectators. He alleges that the AFL did not do enough to prevent the discrimination, and has sought compensation for loss of both past and future wages, in addition to compensation for pain, suffering and humiliation.73

Additionally, in early 2017, the AFL ruled that a transgender player was ineligible for selection in the 2018 draft for the AFLW, the professional women’s AFL league. It cited the Victorian Equal Opportunity Act 2010, which provides that a person may exclude people of one sex or with a gender identity from participating in a competitive sporting activity ‘in which the strength, stamina or physique of competitors is relevant’.74 In 2018, the AFL then released its gender diversity policy, in which it advised that transwomen would need to maintain certain maximum levels of testosterone for at least two years to ensure that the competitive advantage of higher levels of testosterone have ‘dissipated to an acceptable degree at the time the trans or non-binary person proposes to play in the AFLW competition’.75

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74 Equal Opportunity Act 2010 (Vic), Section 72.
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Subsequently, in early 2018, the AFL announced that the transgender player would be permitted to play in the state and territory women’s leagues in 2018. It also stated that it was in the process of developing a more comprehensive policy on the participation of trans and gender-diverse athletes. Because the AFL’s initial ruling only applied to the 2017 draft and the transgender player declined to nominate for the 2018 draft, the AFL’s policy moving forward is not yet clear. However, it has not ruled out the possibility of allowing her to nominate for the AFLW draft in future.76

iv NRL referees industrial action and enterprise agreement

The year 2018 saw a high-profile pay dispute in the NRL. The Professional Rugby League Match Officials (PRLMO) have been engaged in negotiations with the NRL in relation to agreement of a new enterprise bargaining agreement. This followed an increase in the salary cap for players of approximately 30 per cent, a new broadcast rights deal for the NRL worth approximately A$2 billion and an increase in revenue for the NRL of approximately A$530 million, without a comparable increase in remuneration for referees.

In early September 2018, on the eve of the NRL’s finals schedule, the PRLMO obtained a ruling from Australia’s Fair Work Commission, allowing its members to vote on whether they wish to take industrial action over the dispute through a ‘protected-action ballot’. This was the first time in the NRL’s history that the Fair Work Commission has been approached by a union seeking recourse.77

Pursuant to the Fair Work Act, a protected-action ballot is required to authorise industrial action, before that industrial action can be lawfully taken.78 Following the ruling, the PRLMO asked its members to vote in a ballot to authorise industrial action. More than 50 per cent of the PRLMO’s members voted and of those who voted, more than 50 per cent voted in favour of industrial action.79 Following further negotiation, the NRL was able to secure an enterprise agreement with a four-year term in early 2019, avoiding industrial action and raising salaries for match officials.80

X OUTLOOK AND CONCLUSIONS

In 2019, we have continued to see prominent members of Australian sport take action to progress:

a equality of opportunity; and

b greater distribution of revenue (often through collective bargaining and industrial action).


78 Fair Work Act 2009 (Cth), Section 437.


In the Australian chapter of the fourth edition of *The Sports Law Review*, we discussed similar trends developing in 2018, which were apparent in:

- enterprise bargaining undertaken by the PRLMO to ensure improved pay conditions;
- and
- the expansion of opportunities for transgender athletes to participate in the AFLW.

In 2019, we continue to see a focus from athletes, the Australian public and sports organisations on diversity and equality in Australian sport. This year, this was demonstrated by the apology issued by the AFL for past failures in addressing racism, and the termination of rugby player Israel Folau by Rugby Australia for his homophobic and incendiary social media posts.

Australian sport is part of a broader public movement that acknowledges the importance of diversity and equality of opportunity. To remain relevant, our most successful sporting codes now target much broader bases.

We have also seen a continued focus on integrity in sport. Sports governing bodies are prepared to take strong action to protect (or salvage) public confidence in their code, particularly in the face of international scrutiny following the 2018 Australian men’s cricket team ball tampering scandal.
Chapter 4

CANADA

Richard H McLaren

I OVERVIEW

Canadian sports law is shaped by Canada’s federal system of government. The Constitution Act, 1867\(^2\) gives the federal and provincial governments authority to legislate over particular subject matters. Section 92 of the Constitution Act, 1867 assigns the provinces legislative authority over matters related to property and civil rights, which encompasses most aspects of sport. However, in recent years the federal government has played an increasingly larger role in Canadian sport; though it lacks the constitutional authority to do so. As a consequence, many programmes and policies to support participation and success in Canadian sport have emerged. The federal government has relied on its jurisdiction over Canadian heritage to justify this governance role. The federal spending power has also allowed the federal government to fund sports organisations and programmes, even though sport is not directly part of its legislative mandate.\(^3\) Canada has been chosen to host the FIFA World Cup in 2026, together with Mexico and the United States.

Another notable feature of Canadian sports law is the cross-border nature of many of the nation’s professional leagues. The Canadian Football League (CFL) is the country’s only professional league made up exclusively of Canadian teams. The National Hockey League (NHL) includes seven Canadian teams.\(^4\) The National Basketball Association (NBA) includes one Canadian team: the Toronto Raptors, the NBA champions in 2019. Similarly, the only Canadian team in Major League Baseball (MLB) is the Toronto Blue Jays. There are several Canadian teams in Major League Soccer (MLS), including the Toronto Football Club, which became the first Canadian club to win the MLS Cup in 2017. Each of these cross-border professional leagues must navigate the laws of both the United States and Canada.

Despite the legalisation of cannabis use in Canada, effective from 17 October 2018, effects on sports law and sports doping have not materialised. The legalisation has brought

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3 Jean Harvey, ‘Multi-Level Governance and Sport Policy in Canada’ in Lucie Thibault and Jean Harvey, eds, Sport Policy in Canada (Ottawa: University of Ottawa Press, 2013) 37 to 39.

4 The Edmonton Oilers, the Calgary Flames, the Vancouver Canucks, the Winnipeg Jets, the Montréal Canadiens, the Toronto Maple Leafs and the Ottawa Senators.
the Canadian legislative stance on cannabis use in direct conflict with many American states but, as at the time of writing, no issues have been reported. Within Canada, teams may still adopt workplace policies that restrict athletes’ use of cannabis.

II ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Organisational form
Sport Canada is a key actor in Canadian non-professional sport. As a branch of the federal Department of Canadian Heritage, it is responsible for promoting and supporting non-professional sport at the national level. Sport Canada provides funding to national sport organisations (NSOs) with a view to improving Canada’s competitive performance at the international level and increasing opportunities for all Canadians to participate in sports. Each NSO is incorporated under the federal Canada Not-for-profit Corporations Act, SC 2009 c 23 (the NFP Act) and governs the development and promotion of their respective sport across Canada. Despite the fact that they are private independent bodies, NSOs are responsible for carrying out the federal government’s sport policy objectives. Although the federal government encourages NSOs to generate revenue through membership fees and corporate sponsors, many NSOs are also reliant on funding from Sport Canada.

Similar to NSOs, provincial sport organisations (PSOs) govern individual sports within the provinces. PSOs are funded by each provincial government’s department responsible for managing sport, fitness and recreation. For example, the Ministry of Tourism, Culture and Sport in Ontario formally recognises and funds PSOs that meet the mandatory requirements in Ontario’s Sport Recognition Policy. Though municipalities in Canada play no formal role in governing sport, they provide significant subsidies to local sport organisations and invest in infrastructure to facilitate recreational and competitive sport. The three Canadian cities that will host the FIFA World Cup in North America in 2026 are Edmonton, Montreal and Toronto. Each of these three cities will have a significant legislative and financial role to play in the infrastructure and financing of their venue for the World Cup.

At the professional level, sports clubs in major Canadian cities participate in most North American professional leagues under a variety of ownership models. For instance, NHL teams are organised either as partnerships or private corporations to avoid regulations and disclosure requirements associated with public ownership. The ownership model of professional teams may also vary depending on the market in which they operate. For

5 Part II of the old Canada Corporations Act, RSC 1970, c C-32 governed not-for-profit corporations in Canada until it was replaced by the NFP Act.
8 Harvey, footnote 3 at 43. In Canada, municipalities are creations of the provinces under Section 92(2) of the Constitution Act 1867.
9 Barnes, Sports and the Law, footnote 6 at 28.
10 John Barnes, The Law of Hockey (Markham, Ont: LexisNexis, 2010) at 280 [Barnes, Hockey].
example, two CFL teams, the Saskatchewan Roughriders and the Edmonton Eskimos, have thrived under the community ownership model because this model particularly caters to their small but vibrant fan bases.¹¹

ii Corporate governance
To encourage good corporate governance, the federal government requires NSOs to comply with government policy to qualify for funding. NSOs must meet the requirements set out in Sport Canada’s Sport Funding and Accountability Framework (SFAF) to be eligible for government funding from the Sport Support Program. The SFAF requires NSOs to comply with the 2012 Canadian Sport Policy,¹² a value-based sports system emphasising inclusiveness, collaboration and sustainability.¹³ Sport Canada encourages NSOs to have governance practices that enshrine the following principles: a commitment to mission and guidance by a strategic plan; clarity of roles and responsibilities; effective financial control; a focus on human resources; and transparency and accountability for outcomes and results.¹⁴

iii Corporate liability
Canadian law imposes a wide range of duties and liabilities on directors of NSOs. Many of these duties and liabilities are prescribed under the NFP Act, while others are established by other federal, provincial and territorial statutes.¹⁵ Section 148 of the NFP Act imposes a duty of loyalty and a duty of care on corporate directors, which are measured on an objective standard. The Act also requires directors to comply with the NFP Act and its regulations, as well as the NSO’s by-laws, articles, and any unanimous member agreements.¹⁶ Directors may also be responsible for the financial consequences of their decisions and actions.¹⁷

III THE DISPUTE RESOLUTION SYSTEM
i Access to courts
Canadian courts are hesitant to interfere with the decisions of NSOs because they are private, voluntary associations.¹⁸ However, parties may seek remedies from the courts in limited circumstances, such as when an NSO exceeds its authority or unduly punishes a member.¹⁹

¹³ ibid. at 2.
¹⁷ ‘The Directors’, footnote 16.
¹⁸ Barnes, Hockey, footnote 10 at 97.
¹⁹ Barnes, Sports and the Law, footnote 6 at 68.
Courts may also oversee disputes that involve the observance of contractual rights and the interpretation of regulations, especially if such rules require objective determinations. Courts may evaluate the propriety of an NSO’s decision-making process through their power of judicial review.

If a party to an arbitration agreement commences court proceedings with respect to a matter that it had agreed to submit to arbitration, Section 7(1) of Ontario’s Arbitration Act requires that the court stay judicial proceedings. However, recourse to the courts will not be denied early on in a dispute in cases where the internal dispute resolution process can be shown to be unfair or futile. For example, a long delay in a hearing may impose undue hardship on an athlete or a sports organisation. In urgent matters such as team selection, a court order may therefore be the only venue able to provide an appropriate remedy to the parties.

In court proceedings, typical remedies available to athletes include damages, a declaration of legal rights or an injunction. Kaillie Humphries, a two-time Canadian Olympic gold medallist, was denied her request for an injunction against Bobsleigh Canada Skeleton in September 2019 to be released from the Canadian team and allowed to compete for the US.

ii Sports arbitration

Arbitration is regulated by provincial legislation. The use of arbitration in Canadian sport is contractually based. NSOs and their athletes sign athlete agreements that include a dispute resolution clause. If an NSO receives federal government funding, a dispute resolution clause must be included in the athlete agreement. This clause specifies the steps that are involved in dispute resolution. It also states that all disputes must first use internal procedures for potential resolution, failing which arbitration external to the sport will be required.

The Sport Dispute Resolution Centre of Canada (SDRCC) was established by the Physical Activity and Sport Act, SC 2003 c 2 as a national organisation designed to assist in resolving ‘sport disputes’ arising in Canadian sport. Section 10(2) of this Act defines ‘sport disputes’ as ‘disputes among sport organi[s]ations and disputes between a sport organi[s]ation and persons affiliated with it, including its members’. This definition has proven to be broad, as the SDRCC commonly hears disputes involving a variety of issues, including national team selection, harassment, eligibility, discipline, contract interpretation, doping, or decisions of NSOs that affect their members. The SDRCC provides resolution facilitation, mediation, and arbitration services through a roster of arbitrators and mediators. The SDRCC’s arbitral process only becomes involved in sports disputes after an NSO’s internal dispute resolution process has been exhausted. Article 6.17 of the SDRCC Code grants arbitration panels the

20 ibid.
21 ibid. at 70.
22 ibid.
25 ibid.
26 McLaren, footnote 19 at 5-111.
27 Parties may choose between the different processes that the SDRCC offers, but if the parties cannot agree as to the appropriate process they will be deemed to have chosen to pursue arbitration.
jurisdiction to review and rectify the previous decisions of NSOs.28 If a dispute involves an international competition or an international level athlete, decisions of the SDRCC’s Doping Tribunal may be appealed to the Court of Arbitration for Sport.29 The SDRCC has proven to be an important feature of Canadian sports law as it grants NSOs a degree of accountability and leaves them free from unnecessary judicial interference.

The SDRCC only has jurisdiction over sports disputes involving NSOs. International, professional, provincial and local level disputes must be resolved through their respective dispute-resolution mechanisms. Most provinces require PSOs to have a dispute resolution policy to receive government funding.

iii Enforceability

An arbitrator who is appointed to resolve a sports-related dispute has the authority to render a binding decision within the scope of his or her jurisdiction. Provincial and territorial arbitration statutes provide for the enforcement of domestic arbitration awards and outline the limited situations in which a court can refuse to recognise or enforce an arbitral award.30

IV ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator and liability of the organiser

Provincial legislation in Canada enshrines an occupier’s duty to take reasonable care to protect the safety and security of spectators. In Ontario, Section 3 of the Occupiers’ Liability Act, RSO 1990, c O.2 establishes the general duty of an occupier to ‘take such care as in all the circumstances of the case is reasonable to see that persons entering on the premises, and the property brought into the premises by those persons, are reasonably safe while on the premises’.31 An occupier’s duty applies to risk caused by the condition of the premises and by activities that occur on the premises.32 The occupier must not deliberately create a risk or act with reckless disregard to a visitor’s safety, and can limit its duties to spectators through posted signs, tickets, signed entry waivers or other agreements33 so long as they are properly executed.34 Spectators are taken to have consented to the ordinary risks of attending a sporting event.35 Other provinces have similar legislation with local variations.

28 Barnes, Hockey, footnote 10 at 32.
29 McLaren, footnote 19 at 5-115.
31 Similar legislation is in place in British Columbia, Alberta and Manitoba.
32 CED 4th (online), Sports, ‘Civil Liability for Sports Injuries: Occupiers’ Liability: Legislation’ (VII.3(a)) at §145.
33 CED 4th (online), Sports, ‘Civil Liability for Sports Injuries: Exclusion of Liability’ (VII.5) at §166.
35 CED 4th (online), Sports, ‘Civil Liability for Sports Injuries: Occupiers’ Liability: Statutory Liability: Injury to Spectators’ (VII.3(b)(ii)) at §150.
ii Relationship between organiser and athletes or clubs

An athlete is taken to accept the ordinary and necessary risks incidental to a sport. However, they may sue a sporting event operator in tort for negligent administration of the event.36 An operator of a sporting event or facility is under a duty to exercise reasonable care in supervising sport activities and maintaining sport venues in order to prevent injuries and harm to participants.37 Operators also owe duties to prevent crowds or collisions, to provide necessary warnings and suitable equipment and to take reasonable precautions to ensure activities are not unduly hazardous.38

Sports clubs operate under a duty to exercise reasonable care for the health and safety of team members and may be liable where team training staff do not provide adequate treatment of an athlete’s injuries.39 Litigation against the CFL and the NHL in recent years regarding concussions has compelled sporting organisations, leagues and clubs to have appropriate concussion protocols in place to ensure the safety of athletes.

iii Liability of the athletes

In Canadian criminal law, players in contact sports are taken to consent to the ordinary risks of the game; thus, contact incidental to the game will not be considered an assault.40 However, blows delivered with intent to cause serious injury, regardless of whether they occur in the heat of the game, do not fall within the scope of this implied consent,41 and athletes in non-contact sports cannot impliedly consent to physical contact.42

Athletes may also be held civilly liable for their conduct during a sporting event. For example, an athlete may be liable in negligence for failing to exercise due care to another athlete. In contact sports, an athlete’s conduct will be measured against the conduct of a reasonable competitor in his or her place.43 Where a player injures a spectator by ignoring their personal safety, that player may be found personally liable.44

iv Liability of the spectators

Spectators may be held both civilly and criminally liable for their conduct while attending sports events. The police have the authority to investigate any criminal conduct ex officio. This occurred in 2016 after a spectator tossed a beer can onto the field of the Rogers Centre during an MLB playoff game between the Toronto Blue Jays and the Baltimore Orioles. The spectator pleaded guilty to mischief under C$5,000.

v Riot prevention

A riot is defined by Section 64 of the Criminal Code, RSC 1985 c C-46 as ‘an unlawful assembly that has begun to disturb the peace tumultuously’. In 2011, riots ensued in Vancouver, British Columbia after the Vancouver Canucks lost in the Stanley Cup finals.

36 CED 4th (online), Sports, ‘Civil Liability for Sports Injuries: Negligence: Operators’ (VII.4(b)) at §155.
37 ibid.
38 ibid.
39 CED 4th (online), Sports, ‘Civil Liability for Sports Injuries: Negligence: Others’ (VII.4(d)) at §163.
40 ibid. at §139. See Wright v. McLean, 1956 CarswellBC 139, 20 WWR 305.
42 ibid. at §143. See Roundell v. Brodie, 1972 CarswellNB 233, 7 NBR (2d) 486.
43 CED 4th (online), Sports, ‘Civil Liability for Sports Injuries: Negligence: Players’ (VII.4(a)) at §153.
to the Boston Bruins. In the criminal proceedings that followed, the British Columbia Provincial Court imposed short prison sentences for those who played significant roles in the riots, reasoning that harsher treatment was necessary in order to denounce rioters and deter future riots.\(^{45}\)

\section{V \hspace{1em} COMMERCIALISATION OF SPORTS EVENTS}

The image rights of well-known Canadian athletes can be a highly profitable commercial asset.\(^{46}\) However, athlete agreements between NSOs and individual athletes have become more restrictive of athletes’ image rights in recent years.\(^{47}\) Athlete agreements often restrict athletes from promoting themselves unless they have the permission of their NSO. The tort of misappropriation of personality is available to Canadian athletes when their likeness is used for commercial gain without their consent.\(^{48}\) However, this tort is unavailable when athletes have voluntarily signed an athlete agreement that allows the NSO to appropriate their image for commercial purposes.

An NSO or professional league may restrict athletes from receiving certain types of sponsorships if the sports organisation has an exclusive sponsorship agreement with a particular company, or if sponsorship from a particular company would be detrimental to the organisation’s image.\(^{49}\) Athletes must consider these restrictions before signing any sponsorship contracts, and must also be mindful of conflicts between sponsors when accepting new sponsorship offers. Section 7 of the Canadian Code of Advertising Standards\(^{50}\) requires athlete testimonials or endorsements of products to be genuine and reflect the reasonably current opinion of the athlete. These messages must also be based on adequate information about or experience with the product in question.

Broadcasting rights may be held by a team, a league, a broadcaster or jointly by a combination of each of these parties.\(^{51}\) Exclusivity of broadcasting rights is often granted based on the broadcasting platform or territory. Broadcasting ‘blackouts’ are a notable feature of sports broadcasting in Canada.

\section{VI \hspace{1em} PROFESSIONAL SPORTS AND LABOUR LAW}

\subsection{Mandatory provisions}

Professional athletes are employed under a standard player contract (SPC). The SPC is an appendix to the league’s collective bargaining agreement with the players’ association,
which is a union under the various provincial labour codes. Players are typically able to negotiate some of the terms of their SPC with their respective teams, including their salary and timing of payments, the length of the contract, option and renewal clauses, assignment of the contract, bonuses and additional ‘perks’. Non-negotiable terms include the player’s obligations, the arbitral process and endorsement restrictions. Rights that are recognised in provincial labour law will apply to the operation of American-based leagues and to franchises located in Canada.

ii  

**Free movement of athletes**

The Competition Act, RSC 1985, c C-34 includes provisions that aim to protect professional athletes’ employment freedom. Section 48(1)(a) of the Act makes it an indictable offence ‘to limit unreasonably the opportunities for any other person to participate, as a player or competitor, in professional sport or to impose unreasonable terms or conditions on those persons who so participate’. Similarly, Section 48(1)(b) of the Act makes it an indictable offence ‘to limit unreasonably the opportunity for any other person to negotiate with and, if agreement is reached, to play for the team or club of his choice in a professional league’. These provisions are directed at oppressive contract provisions that aim to give a league a perpetual power of renewal over a player’s contract.

iii  

**Application of employment rules of sports governing bodies**

In determining whether a limitation on freedom of movement violates Section 48(1)(a) of the Competition Act, subsection (2) requires courts to consider whether the sport in question is organised on an international basis, and if so, whether any limitations should for that reason be accepted in Canada. This provision recognises that Canadian participation in a league may depend on accepting an international regulation. It also acknowledges that the vast majority of professional franchises are located in the United States and subject to American law.

VII  

**SPORTS AND ANTITRUST LAW (COMPETITION LAW)**

In Canada, antitrust is federally regulated by the Competition Act and administered by the Competition Bureau of Canada. The Act applies to professional sports leagues and contains both civil and criminal provisions. Restrictions on the sale and relocation of franchises may be reviewed under Section 79 of the Act as a potential abuse of a dominant position. The Competition Bureau has acknowledged that some restrictions on competition within professional sports leagues will be inevitable to further legitimate business interests and sustain the competition and rivalry that is vital to the sports industry’s commercial success.

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56 Ibid.
VIII SPORTS AND TAXATION

Given the cross-border nature of many Canadian and US professional leagues, athletes participating in these leagues may be subject to the tax regimes of both countries. Most non-resident athletes who play for Canadian franchises will be subject to Canadian income tax on part of their salary for services that they have performed in Canada. However, the Canada–US Income Tax Treaty prevents double-taxation of athletes who participate in a professional sports league with games that are scheduled in both countries. As a result, athletes who are not residents of Canada will only be taxed on Canadian-sourced income. Article XV of this treaty exempts most players from US-based franchises from Canadian income tax on games that are played in Canada as long as the athlete is present in Canada for no more than 183 days in a given 12-month period.

Individual professional athletes do elect, from time to time, to become non-resident of Canada for tax purposes, preferring to locate their residency in lower tax jurisdictions such as the Bahamas, Turks and Caicos or Monaco.

IX SPECIFIC SPORTS ISSUES

i Doping

Doping is not a criminal offence in Canada. However, Canadian non-professional sports organisations adhere to the international anti-doping regime established by the World Anti-Doping Code (WADC). Even though doping itself is not a criminal offence, the use, importation and sale of certain drugs included in the WADC’s Prohibited List is illegal under the federal Controlled Drugs and Substances Act, SC 1996, c 19. The mandatory provisions of the WADC are applied in Canada under the Canadian Anti-Doping Program (CADP), which is administered by the Canadian Centre for Ethics in Sport. The CADP’s stated objective is to prevent, deter and detect doping in sport. Not all NSOs have adopted the policy, but must do so if they wish to receive federal funding and participate in the Olympic movement. Once the CADP is adopted by an NSO, it becomes part of the sport organisation’s policy framework and is incorporated into Athlete Agreements, which in turn binds athletes to anti-doping rules.

The federal government of Canada legalised the use of marijuana on 17 October 2018. The full ramifications of this change have yet to be worked out in such contractual schemes as the World Anti-Doping Agency (WADA) Prohibited List and the NSOs’ codes of conduct and disciplinary policies. All such documentation will require significant revisions.

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58 ibid. at 201. The same approach is taken under the US tax regime for games played in the US.
59 Paul Melia, ‘Is doping a criminal offence in Canada?’, Canadian Centre for Ethics in Sport: Melia’s Take (blog), online: http://cces.ca/blog/is-doping-criminal-offence-canada.
61 ibid. at 5.
63 ibid.
ii  Betting
Sections 201 to 206 of Canada’s Criminal Code prohibit sports betting in Canada, but this criminal prohibition is subject to some notable exceptions. For example, Section 207 of the Criminal Code allows the provincial governments to provide lottery schemes to their residents. However, Section 207(4)(b) of the Criminal Code forbids provincial lotteries from offering betting on single sport events or athletic contests. Provincial lotteries may therefore only offer parleys where bettors can place bets on the outcome of two or more matches. With most online sports books hosted offshore, online sports betting operates in a legal ‘grey zone’ in Canada.64 The authorities tend to ignore this phenomenon, and it appears that they have never successfully prosecuted a Canadian bookmaker or punter for participating in online betting.65

The May 2018 decision of the US Supreme Court striking down the federal legislation controlling gambling in the United States has led several states to legislate sports gambling. While this development is not directly related to Canada, it will have an impact on how Canadians gamble, which will undoubtedly require some legislative adjustments in Canada. No such actions have been announced or taken as of the time of writing.

iii  Manipulation
Canada does not have laws specifically prohibiting match-fixing. Rather, match-fixing may be dealt with under a number of Criminal Code provisions, including the fraud and cheating at play provisions.66 However, it does not appear that a Canadian has ever been successfully prosecuted for match-fixing under these provisions.67

iv  Grey market sales
The law governing sport events tickets in the grey market varies from province to province. Reselling tickets beyond their original purchase price is legal in both Alberta and British Columbia, with no legislation in place banning grey market sales.68 Under the Saskatchewan Ticket Sales Act, SS 2010, c T-13.1, official merchants are forbidden from reselling tickets but individuals may resell tickets 48 hours after the tickets are originally released. Both Manitoba and Quebec have enacted legislation that makes it illegal to resell tickets beyond their original purchase price.69

Ontario, in particular, has struggled with its approach to regulating grey market ticket sales. In 2015, the Ontario legislature amended the Ticket Speculation Act, RSO 1990, c T.7 to make it legal to resell tickets beyond their original value. According to a subsequent survey

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64 Jamie Strashin, ‘Online sports gambling thrives in Canada’s legal “grey zone”’, CBC Sports (2 May 2016), online: www.cbc.ca/sports/sports-gambling-canada-1.3559733.
65 ibid.
66 International Olympic Committee and United Nations Office on Drugs and Crime, ‘Criminalization Approaches to Combat Match-Fixing and Illegal/Irregular Betting: A Global Perspective’ (Lausanne/ Vienna: The Olympic Studies Centre, July 2013) at 60–79.
68 Miriam Yosowich, ‘Is Ticket Scalping Legal in Canada?’, FindLaw (Thomson Reuters), online: consumers.findlaw.ca/article/is-ticket-scalping-legal-in-canada/. Alberta notably repealed its Amusement Act in 2009 after finding the scalping ban included in this legislation too difficult to enforce.
69 ibid.
conducted by Ontario’s Attorney General, these amendments were unpopular with Ontario residents as they resulted in drastically increased ticket prices.\textsuperscript{70} In 2019, Ontario repealed legislation that capped the resale price of tickets to live music and sporting events at 50 per cent above face value.

\section{THE YEAR IN REVIEW}

The Ontario government passed Rowan’s Law (Concussion Safety) 2018, SO 2018, c 1, legislation designed to protect amateur athletes from, and educate them about, concussions and head injuries. The Bill is named after a 17-year-old athlete who died after suffering two concussions within a week while playing rugby. Ontario is the first province in Canada to pass this type of legislation. At the time of writing, only one provision of Rowan’s Law has not been proclaimed with Royal Assent. This provision relates to protocols governing the removal from, and return to, sporting activities following a concussion.

\section{OUTLOOK AND CONCLUSIONS}

Canadian sport is increasingly commercialised, which presents new challenges that lawyers and business stakeholders will have to face. It is hoped this chapter will serve as a starting point for those who are seeking to navigate Canadian sports law. The past decade has seen a notable increase in Canada’s profile at international sports competitions. The nation hosted the 2010 Olympic Winter Games in Vancouver and the 2015 Pan American Games in Toronto. Canada also held the 2014 U-20 Women’s World Cup and the 2015 Women’s World Cup. In addition, Canada, Mexico and the United States were successful in a joint bid to host the 2026 World Cup.

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Organisational form

Depending on their size, level of sophistication and aims, sports clubs and governing bodies typically take one of the following forms:

- unincorporated associations;
- companies limited by shares;
- companies limited by guarantee; or
- one of a variety of charitable or community interest vehicles.

Clubs that have taken no formal steps to incorporating will be unincorporated associations that are, therefore, not separate legal entities, and all of their contracts will need to be entered into by a member of the club (such as a member of the managing committee and as dictated by the club’s constitution). A private company limited by shares is the usual form taken by professional clubs that are operating with a view to making a profit and that wish to raise finance through the issue of shares. Some Premier League football clubs have listed their shares on public markets over the years (with varying degrees of success).

ii Corporate governance

Governance of sport in the UK has generally been left to sports governing bodies, with the state taking a hands-off approach. Sports organisations can be compelled to comply with certain corporate governance requirements as a condition of receiving public funds, such as from Sport England or UK Sport, or as a condition for participation in a competition. For example, the Premier League restricts persons from having an interest in, or having the power to influence the decision-making of, more than one club. The Sport and Recreation Alliance also maintains a Voluntary Code of Good Governance that it encourages sports bodies to adopt.

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1 Paul Shapiro and Ben Rees are managing associates at Northridge Law LLP.
3 Premier League Rules, 2019/2020, Section I.
Beyond the above, there are no specific governance laws that apply only to sports organisations. Instead, organisations will need to comply with the applicable legal framework that is in place for its particular legal form. For example, if the organisation is incorporated as a company, it will need to comply with the Companies Act 2006.

### iii Corporate liability

The laws of England and Wales do not include any specific statutory provisions covering the liability of officers of sports clubs or governing bodies. Most sports organisations are structured as companies (see Section I.i), and the directors of such companies are subject to the same duties and liabilities as directors of companies generally.

The Companies Act 2006 codified certain common law and equitable duties of directors for the first time. It sets out the general duties of directors, which include, inter alia:

- **a** to act within their powers in accordance with the company’s constitution, and to use those powers only for the purposes for which they were conferred;
- **b** to promote the success of the company for the benefit of its members;
- **c** to exercise reasonable care, skill and diligence; and
- **d** to avoid conflicts of interest.

A director of a sports organisation will also be subject to a wide range of further regulation and legislation, including the Insolvency Act 1986, the Company Directors’ Disqualification Act 1986, the Health and Safety at Work etc. Act 1974, and the Corporate Manslaughter and Corporate Homicide Act 2007.

Failure to comply with the relevant duties or obligations can result in personal liability (both civil and criminal) being incurred by a director of a sports organisation.

### II THE DISPUTE RESOLUTION SYSTEM

The rules that govern the different sports in England and Wales typically specify the forum for disputes arising between the governing body and the participants in that sport. The rules may also specify how disputes between two participants (e.g., two clubs) are to be resolved. Where a dispute arises outside the rules of the sport, for example between a club and sponsor, the parties are free to choose how disputes between them are to be resolved.

### i Access to courts

In the absence of an agreement to arbitrate, the courts have jurisdiction over sporting disputes.

Where a party seeks to challenge a disciplinary decision, the courts do not apply a *de novo* jurisdiction, but instead conduct a ‘supervisory review’ whereby they seek to ensure that the ‘primary decision-maker’ (the disciplinary body) ‘has operated within lawful limits’.\(^4\)

In essence, a challenge can be raised if a governing body has made a decision or exercised its regulatory functions in a manner that:

- **a** is outside of its powers;
- **b** is procedurally unfair or contrary to natural justice;
- **c** takes into account irrelevant considerations or fails to take into account relevant considerations;

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d has no factual basis;
e is contrary to legitimate expectation; or
f is unreasonable in the sense of being irrational, perverse, arbitrary or capricious.

ii Sports arbitration

Parties are free to resolve their disputes through arbitration. The relevant legislation, the Arbitration Act 1996, provides that for an arbitration agreement to be valid, it must be in writing.

By electing to submit disputes to arbitration, the parties are precluded from bringing proceedings in the courts, save that the courts always have jurisdiction to determine appeals arising out of arbitrations (the grounds of which are limited under the Arbitration Act 1996), and that there are functions (such as compelling an individual to give evidence) that the courts can exercise in support of arbitrations.

Many sports in England and Wales require that disputes are resolved through arbitration. For example, domestic football disputes are subject to the arbitration rules provided for by the Football Association (the FA), the Premier League or the Football League (EFL).

While there is no one standard arbitral process, many sports utilise the arbitration rules of Sport Resolutions (UK), a dispute resolution service that establishes tribunals and assists in resolving sports disputes. In other cases, such as anti-doping cases or where required by a sport’s international federation, the Court of Arbitration for Sport will have jurisdiction.

iii Enforceability

Disciplinary sanctions, such as fines or suspensions, can be enforced by governing bodies through their rules.

In court cases, a party is able to utilise the full range of enforcement powers that are available to litigants when enforcing court orders.

Arbitral awards can be enforced through the domestic courts pursuant to Sections 42 and 66 of the Arbitration Act 1996.

III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator

There is no proprietary or exclusive right in a sports event in the UK, so an event owner’s relationship with spectators, athletes and clubs is governed by the relevant laws, including contract, intellectual property and real property legislation.

In relation to spectators, the organiser can restrict entry to the venue, and can stipulate the conditions for access through its ticket terms and conditions. These terms must be incorporated into the contract by being brought to the spectator’s attention on purchase. This is traditionally done through ‘small print’ on the back of the ticket. This will not always be sufficient, however, as all terms must be legible and in plain and intelligible language, and must also comply with a range of measures designed to protect consumers from unfair terms. Typically, these terms and conditions will include restrictions such as on taking photos, on making recordings or collecting data, on the resale, transfer or use of the tickets.

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5 Victoria Park Racing v. Taylor (1937) 58 CLR.
6 Consumer Rights Act 2015, Section 64.

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as a promotion, and on the promotion of non-sponsors. Breach of these conditions would render the ticket void. In these cases, a spectator can then be evicted and the organiser may sue for trespass, breach of contract or both.

ii Relationship between organiser and athletes or clubs

Where the event organiser also acts as the governing body, it will typically form one part of a pyramid structure of sport organisation and regulation, which is the traditional model adopted in the UK and throughout Europe. This model sees tiers of governance with global organisers at the top (such as FIFA), regional bodies below them (such as UEFA), then national bodies (such as the FA), followed by clubs and players at the bottom.

Where the event organiser is separate to the governing body, such as in the Premier League or Premiership Rugby, a shareholder model is typically used. For example, each Premier League club is a shareholder of the Football Association Premier League.

In both arrangements, the event organiser can define the structure and format of the competition, along with a whole range of other measures such as commercial exploitation and distribution of revenues, through its rule book or participation agreement, which acts as a contract between the organiser and the clubs (and to which each player must also adhere).

iii Liability of the organiser

The civil liability of organisers of sporting events falls within two principal categories.

Occupiers' Liability Act 1957

The Occupiers' Liability Act 1957 enshrines in statute the duty that an occupier of premises (which includes those exercising control over the premises) owes to its 'visitors'. The duty of care is 'to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises'.

The above is in addition to the regime pursuant to the Safety of Sports Grounds Act 1975, which imposes certain further obligations on the owners of sports grounds, such as the requirement for stadia with a capacity of over 10,000 to have a safety certificate (which imposes various obligations on the owner).

Negligence

Claimants must show that they were owed a duty of care, that such duty was breached and that the breach caused the loss or damage complained of. The general duty of care owed by an occupier is the same duty as is owed by anyone to his or her 'neighbour', as enshrined in English common law.

The extent of the duty of care attracts much judicial deliberation. This duty, and the scope of people to whom that duty is owed, is fact-specific. However, as a general principle,

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8 Occupiers' Liability Act 1957, Section 2(2).
9 The foundations of which are found in Donoghue v. Stevenson [1932] AC 562.
the duty is said to be that of taking reasonable care to avoid injury to a person. In determining what is reasonable, the courts will consider the particular circumstances, such as the sporting context in which the alleged negligence took place.

iv Liability of the athletes
Athletes and participants may be held liable in negligence in respect of damage or injury caused both to spectators or to other athletes.

As regards liability to spectators, the duty is one of reasonable care, having taken into account the sporting context. As regards other athletes, liability can arise under the torts of trespass to the person or negligence.

Trespass requires the claimant to show that the defendant intended to injure him or her. This is a high hurdle that has limited the instances where such a cause of action has been successfully alleged.

Importantly, so far as negligence is concerned, athletes are taken to have accepted the risks inherent in sport (and particularly so in sports of skill and physicality). Courts are unlikely to find negligence where the relevant sporting rules have not been breached, but it does not automatically follow that a breach of the rules will lead to a finding of civil liability.10

The damages that may be awarded in sport can be significant, particularly where a professional athlete suffers a career-ending injury. For example, in Collett v. Smith,11 a player whose career was ended following an injury he suffered playing for Manchester United’s reserve team was awarded around £4.3 million in damages.

v Liability of the spectators
Much of the statutory framework in this area is linked to prevention of football disorder or hooliganism. Pursuant to powers provided under the Football Spectators Act 1989, a football banning order can be made against a supporter. This is a civil sanction, and has the effect of banning an individual from attending football matches, both domestic and international, for a prescribed period of time. Such an order can be imposed owing to evidence of previous football violence, a previous conviction for football-related violence or during a control period (before, during and after an overseas match or tournament).

vi Riot prevention
Rioting, hooliganism and more general issues of crowd disturbance have been most commonly associated with football. These issues, which were at their peak in the 1970s and 1980s, led to the implementation of a variety of legislative measures aimed at curbing them; for example, legislation prohibiting standing at certain categories of football match (although this measure was principally introduced for safety reasons)12 and prohibiting the sale (or resale) of football tickets by unauthorised persons.13 Football supporters can also be the subject of banning orders pursuant to the Football Spectators Act 1989 (see Section III.v).

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12 Football Spectators Act 1989, Section 11.
Clubs are obliged to pay for the attendance of police services at matches at their grounds. However, the police cannot charge clubs for the cost of crowd control and public order policing outside the immediate vicinity of the club’s premises and policing that is on land not owned by, or under the control of, the club.

IV COMMERCIALISATION OF SPORTS EVENTS

i Types of and ownership in rights

The key sports-related rights that can be exploited are broadcasting, sponsorship, merchandising and ticketing. Additionally, sports data is now an important revenue stream.

In relation to broadcasting, a secure venue allows the event organiser to stipulate that only officially appointed licensees can broadcast from the event. The ownership of the moving images will initially sit with the producer and director, and of the sound recordings with the producer. Copyright should be assigned to the event organiser (through the broadcaster) who will then license the rights back to the broadcaster for broadcast in a particular territory.

Broadcasting rights in many high-profile sports are sold collectively. The collective sale by the Premier League had been the subject of an investigation by Ofcom, the competition regulator, but this was dropped in August 2016. In any event, the sale of broadcasting rights should be done by way of a tender process that complies with the criteria in the Champions League, Bundesliga and FAPL cases.

Sponsorship encompasses a wide variety of different rights and categories depending on the entity being sponsored. The rights holder can protect its sponsorship rights through maintaining trademark registrations for its team logo and emblems and through the tort of passing off.

ii Rights protection

In summary, the framework for the protection and enforcement of the above-noted rights is as follows.

Trademarks

A rights holder can register its brand names, logos and other brand indicators as a national UK registered trademark with the UK Intellectual Property Office. This allows a trademark owner to enforce his or her rights in the UK where an infringer uses an identical or similar mark in the circumstances detailed in Section 10 of the Trade Marks Act 1994 (TMA). Among

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14 Police Act 1996, Section 25.
16 Copyright Design and Patents Act 1988 (CDPA), Section 9.
other criteria, a trademark must be capable of distinguishing the goods or services of one undertaking from those of another.\footnote{TMA, Section 1.} Therefore, it is not possible to register marks that are, inter alia, non-distinctive, generic or primarily descriptive.\footnote{ibid., Section 3(1)(b) and Rugby Football Union and another v. Cotton Traders Ltd [2002] All ER (D) 417 (Mar).}

The EU Trade Mark Regulation\footnote{EU Trade Mark Regulation (207/2009/EC).} currently affords protection for European Union trademarks (previously known as Community trademarks). In a sporting context, the importance of such protection is demonstrated in the EU General Court’s recent ruling of bad faith over the attempted registration of the wordmark ‘NEYMAR’.\footnote{Case-no. T 795/17.} This protection is afforded throughout the UK but this may change once the UK leaves the EU (see Section X).

**Copyright and database rights**

Copyright arises automatically and can provide protection for 70 years for literary, dramatic, musical or artistic works,\footnote{CDPA, Section 12.} and 50 years for broadcasts\footnote{ibid., Section 14.} and sound recordings.\footnote{ibid., Section 13A.} Not all unauthorised use of a copyrighted work will amount to infringement. For example, the ‘fair dealing’ exceptions allow copyright protected works to be used for the reporting of current events, provided sufficient acknowledgement is given.\footnote{ibid., Section 30(2).}

Neither literary nor database copyright will subsist in a fixture list, and fixture lists are not protected by the *sui generis* database right (SGDR).\footnote{Football DataCo Ltd v. Yahoo, Brittens Pools and others [2010] EWHC 841 (Ch).} However, in *Football DataCo*, the courts confirmed that the SGDR subsists in a database of live match data\footnote{Football Dataco Ltd and others v. Stan James plc and others; and Football Dataco and others v. Sportradar GmbH and another [2013] EWCA Civ 27, 6 February 2013.} if there has been a substantial investment in obtaining, verifying or presenting its contents.\footnote{Copyright and Rights in Databases Regulations 1997, Regulation 13.}

**Image rights**

English law does not recognise a proprietary right in a person’s image\footnote{Elvis Presley Enterprises Inc v. Sid Shaw Elvisly Yours [1999] RPC 567, Paragraph 597.} or a specific right of privacy.\footnote{Douglas v. Hello! Ltd [2007] UKHL 21, Paragraph 293.} There is a web of laws, however, that can be stitched together to protect an individual’s ‘image rights’. If a sportsperson’s image is used to endorse goods\footnote{Edmund Irvine & Tidswell Ltd v. Talksport Ltd [2002] 2 All ER 414.} or on merchandise,\footnote{Robyn Rihanna Fenty and others v. Arcadia Group Brands Ltd (t/a Topshop) and another [2013] EWHC 2310 (Ch).} without his or her authorisation, he or she could prevent further use of these items by bringing an action for the common law tort of passing off, provided he or she can demonstrate that he or she has goodwill or reputation attached to the goods or services and that damage was suffered as a result of the misrepresentation. When a sportsperson is photographed in circumstances

\begin{footnotesize}
\begin{tabular}{ll}
18 & TMA, Section 1. \\
19 & ibid., Section 3(1)(b) and Rugby Football Union and another v. Cotton Traders Ltd [2002] All ER (D) 417 (Mar). \\
20 & EU Trade Mark Regulation (207/2009/EC). \\
21 & Case-no. T 795/17. \\
22 & CDPA, Section 12. \\
23 & ibid., Section 14. \\
24 & ibid., Section 13A. \\
25 & ibid., Section 30(2). \\
26 & Football DataCo Ltd v. Yahoo, Brittens Pools and others [2010] EWHC 841 (Ch). \\
27 & Football Dataco Ltd and others v. Stan James plc and others; and Football Dataco and others v. Sportradar GmbH and another [2013] EWCA Civ 27, 6 February 2013. \\
28 & Copyright and Rights in Databases Regulations 1997, Regulation 13. \\
31 & Edmund Irvine & Tidswell Ltd v. Talksport Ltd [2002] 2 All ER 414. \\
32 & Robyn Rihanna Fenty and others v. Arcadia Group Brands Ltd (t/a Topshop) and another [2013] EWHC 2310 (Ch). \\
\end{tabular}
\end{footnotesize}

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that were obviously private\textsuperscript{33} and the photograph is offensive or is not being used lawfully and fairly,\textsuperscript{34} safeguards against its publication without consent can be obtained through actions for breach of confidence, misuse of private information (both when interpreted in accordance with the right to a private life)\textsuperscript{35} or infringements under the Data Protection Act 2018 (DPA).\textsuperscript{36}

iii Contractual provisions for exploitation of rights

There are no mandatory statutory provisions in sponsorship agreements, and the final form of the agreement will depend on the negotiating position of the parties. Much of the contract will encompass the provisions and boilerplate typically found in any commercial contract.

The agreement should be a clear reflection of the commercial deal (i.e., what the sponsor is acquiring and the rights holder is receiving in return), and in this regard it is important to clearly state the scope of rights to be granted. For example, what rights is the sponsor acquiring? Will they be in a particular category or brand sector? Are they exclusive, and in what territories? Are there any key exclusions or matters reserved for the rights holder or its other commercial partners? On what terms can the sponsor access and commercially exploit the team or individual athletes? Will the rights holder have approval rights over merchandise produced?

Particularly relevant in individual sponsorship agreements are provisions addressing the situation where a player’s conduct, while not necessarily being illegal, falls below the thresholds expected by the sponsor (morality clauses). The sponsor will want flexibility to suspend or even terminate the agreement should the player behave badly in their subjective view, whereas the player will push for a very limited termination right.

One other area that is generally heavily negotiated is the sponsor’s rights in and around expiry of the deal. It is common for the sponsor to insist on having both an exclusive period to negotiate a renewal at the end of the agreement, and a right to be notified of, and to match, any bona fide offer from a third party. The exact parameters of these matching rights clauses need to be carefully considered and drafted to avoid giving sponsors exclusivity or greater restrictive powers over third-party offers than originally intended by clubs.\textsuperscript{37}

V PROFESSIONAL SPORTS AND LABOUR LAW

i Mandatory provisions

Many sports, including major sports such as football, rugby and cricket, prescribe that standard form contracts are to be used to govern employment relationships between certain participants


\textsuperscript{34} Data Protection Act 2018, Section 2.

\textsuperscript{35} European Convention on Human Rights, Article 8.


\textsuperscript{37} The High Court’s imposition of a mandatory undoing injunction and prohibitive injunctions over Rangers FC following its attempt to contract with Elite Group (in spite of its existing agreement with SDI Retail), acts as a clear warning of the importance of considering the overall impacts of these matching rights clauses ([2018] EWHC 2772 (Comm) (24 October 2018) 33). At the time of writing, the courts have found in favour of Liverpool FC (and refused New Balance’s permission to appeal application) over the sponsor’s claim that their existing matching rights should prevent the club from signing a new shirt manufacturing deal with Nike ([2019] EWHC 2837 (Comm)). The case highlights the need to use clear and specific wording to maximise the prospects of the enforcement of matching rights.
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(most usually between clubs and players). These standard forms are set by the governing body following consultation with the relevant stakeholders (including the body that represents the players of that sport).

Most provisions are therefore not subject to negotiation on an individual basis. The standard contract will cover, inter alia, the primary obligations of the player and club, termination rights, grievance and dispute resolution procedures, and confidentiality.38

The standard terms must be used by the parties, but there is freedom to negotiate certain key terms – for example, remuneration (both as regards salary and image rights).

The parties are also free to negotiate duration. However, it should be noted that a contract of excessive duration may be held to be unenforceable. In Proactive Sports Management Ltd v. Rooney and Others,39 it was held that an eight-year image rights deal entered into by Wayne Rooney (then 17 years old) was void and unenforceable as it was in unreasonable restraint of his trade.

ii Free movement of athletes

This area is one that is likely to be affected by the decision by the UK to leave the EU; in that regard, the precise impact and changes to this area of law, will depend, inter alia, on the agreements arising from the Brexit negotiations. The position at the time of writing is set out in Section X.

This area is shaped by EU law and European jurisprudence, most notably the Bosman40 and Kolpak41 cases. In accordance with settled authority, any restriction on free movement within the EU must be justified on the basis of a legitimate objective and must be proportionate.

The English doctrine of restraint of trade has also been used in a Bosman-type case dating back to 1964. In Eastham v. Newcastle United Football Club and Football Association,42 the claimant (a footballer) successfully argued that the then rules of the EFL, which required a fee to be paid to release the player’s registration, notwithstanding that his contract had expired, were in restraint of trade.

As regards permission to work in the UK, the current position is that nationals of the EU, European Economic Area (EEA) or Switzerland do not require a visa, while those from outside the EEA, Switzerland and certain Commonwealth countries do require a visa. The visa process is administered by UK Visas and Immigration. Under the current system, applicants require a sponsor and governing body endorsement. The government delegates the responsibility for the detail as to the eligibility for sponsor and governing body endorsements to the relevant governing body. By way of example, the FA’s current system43 provides for automatic granting of visas if football players have participated in a minimum percentage of competitive matches for their home country’s senior international team where they were available for selection during the two years preceding the date of the application (or the preceding 12 months for

38 See, by way of example, the standard form contracts for both EFL and Premier League players, found at Forms 19 and 20 respectively of the Premier League Handbook 2017/18 (www.premierleague.com/publications).
42 [1964] Ch 413.
players aged 21 or under). The percentage of matches required is on a sliding scale depending on the relevant national team’s position in the FIFA World Rankings. If a player does not meet the automatic criteria, an applicant club can make an application to an ‘exceptions panel’, which will consider, inter alia, the value of the transfer fee, the wages to be paid to the player and the league from which the player is joining.

iii Application of employment rules of sports governing bodies

Subject to the requirement to use standard form contracts, and thereby the requirement to incorporate mandatory provisions, parties are free to agree the terms of employment contracts.

VI SPORTS AND ANTITRUST LAW

Aside from issues of free movement, the key European legislative principles in this area are Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). As with the rules regarding the free movement of persons, it is unclear at the time of writing the extent to which the EU competition law regime will apply to the UK on exiting the EU.

Article 101 TFEU prohibits agreements between undertakings, or decisions by associations of undertakings, which have as their object or effect the prevention, restriction or distortion of competition as between Member States. Article 101 is mirrored in domestic law by Chapter I of the Competition Act 1998 and, in essence, applies the Article 101 test to the UK market. Article 102 TFEU prohibits the abuse of a dominant position affecting trade between Member States. Article 102 is mirrored in domestic law by Chapter II of the Competition Act 1998, and, in essence, also applies the Article 102 test to the UK market.

The Meca-Medina case is authority for the fact that sporting rules are subject to competition law scrutiny.

Breaches of the competition rules in the sporting context can be enforced, inter alia, by the UK’s Competition and Markets Authority or privately by those affected. Drawing from Meca-Medina and the Commission’s analysis of the application of competition law to sport found in the White Paper on Sport and the accompanying staff working document, the test to be applied to breaches can, in basic terms, be stated as follows: is the sports association adopting a particular rule for an ‘undertaking’ or ‘association of undertakings’? And does the rule restrict competition (Article 101) or constitute an abuse of a dominant position (Article 102)?

Applying Wouters, this will depend on the context and objectives of the rule, whether the restrictions are inherent in the pursuit of those objectives, and whether the rule is proportionate in light of those objectives. Proportionality is considered in light of whether the rule goes any further than is reasonably necessary to secure the rule’s object, and whether it is applied in a transparent, objective and non-discriminatory manner.

44 The minimum percentage varies from 30 per cent (for national teams ranked in the top 10 in the FIFA rankings) to 75 per cent (for national teams ranked between 31 and 50 in the FIFA rankings).
46 See footnote 7.
The English common law doctrine of restraint of trade can also be used to challenge the rules of domestic sports governing bodies. In summary, the test⁵⁰ is as follows: the person bringing a challenge must show that the rule of a sports governing body prevents (or limits) his or her earning a living. Once established, the governing body must show that the restraint is reasonable and justified in the interests of the parties. ‘Reasonable’ in this context means that it is necessary and that it goes no further than reasonably necessary to achieve that aim. If this can be established, the third stage of the test is that the restraint must be reasonable in the interests of the public (not just the parties concerned). An action that restrains trade without justification is void and unenforceable.

VII  SPORTS AND TAXATION⁵¹

For non-resident internationally mobile sportspeople, the UK tax regime is complicated. As well as being taxed on prize money and appearance fees earned in the UK (as is the case in most jurisdictions), under the UK’s application of the provisions of Article 17 of the Organisation for Economic Co-operation and Development (OECD) Model Treaty, non-resident sportspeople are also taxed on a proportion of their global endorsement income. This is typically calculated by reference to their UK appearances as a proportion of global appearances during the tax year. The calculation typically has many variable factors to take into account (whether endorsements are ‘linked’ to the performance, whether training days should be included in the calculation, etc.) and, under the UK’s self-assessment tax system, it is the sportsperson’s responsibility to calculate the liability and submit his or her returns.

For team sports, where the competitors are usually ‘employees’, the position is clearer. It is assumed that players on teams from other countries are tax-resident in those jurisdictions, and subject to tax on their employment income in that territory. On that basis, the UK tax authorities would not typically seek to tax players employed by non-UK resident teams on their sporadic appearances in the UK, as this would not be deemed to be ‘employment exercised in the UK’ under Article 15 of the OECD Model Tax Treaty. The UK tax authorities have reserved the right to seek to tax a proportion of endorsement income of such players, in the same way as they seek to tax non-resident sportspeople. We understand, however, that no such enquiries have been raised to date.

Clubs competing in international events in the UK would not typically be subject to UK corporation tax as they would not create a tax presence (a permanent establishment) in the UK.⁵²

VIII  SPECIFIC SPORTS ISSUES

i  Doping

The World Anti-Doping Agency (WADA) implements a uniform, global code that regulates drug use in sport. Now in its third iteration, the latest version of the WADA Code came into force on 1 January 2015. The major (and many minor) sports in the UK are signatories.

⁵¹ The authors extend their thanks to Peter Hackleton, a tax partner at Saffery Champness, who contributed to this Section.
⁵² See footnote 50.
The national anti-doping organisation in the UK is UK Anti-Doping, a public body entrusted with results management and case presentation for most sports in the UK.

Doping, per se, is not a criminal offence in the UK. There are, however, a number of substances on the WADA Prohibited Substances list that are also criminalised in the UK by virtue of the Misuse of Drugs Act 1971, including stimulants such as cocaine, narcotics such as methadone and cannabinoids.

The government has previously suggested that it will investigate the possibility of criminalising doping, although it appears that any such developments are in their nascency.

ii Betting

Betting is governed by the Gambling Act 2005. The Gambling Act established the Gambling Commission as the domestic body with responsibility for licensing betting operators and ensuring their compliance with the Gambling Act.

The Gambling Act includes powers that provide for information sharing with sports governing bodies. Aside from the Gambling Act, a number of information sharing agreements between sports governing bodies and betting operators are in place.

Betting, per se, is not illegal in England and Wales, although there are often links between betting and integrity issues (such as match-fixing).

With a view to maintaining integrity, some domestic sports governing bodies have banned betting by those involved in their sport. The precise approach and scope of such prohibitions differ for each sport, but are often widely drafted (to include not just players, but also coaches, club officials and employees) with sanctions ranging from a warning to a fine and expulsion (see, e.g., the approach taken by the FA in football and the Rugby Football Union (RFU) in rugby union).

iii Manipulation

Match-fixing is not, per se, illegal under English law. Rather, a number of criminal offences may be applicable depending on the nature of the offence, including cheating or enabling others to cheat at gambling (Section 42 of the Gambling Act); bribing or being bribed (Sections 1 and 2 of the Bribery Act 2010); and conspiracy (Section 1 of the Criminal Law Act 1977).

There have been a number of high-profile criminal cases in this regard, particularly in relation to cricket. Successful convictions can lead to prison terms.

Outside the criminal framework, the primary responsibility in this area vests with the sports governing bodies, which, as part of their rules, prohibit manipulation. In monitoring and enforcing their rules, these governing bodies are aided by the information-sharing provisions contained in the Gambling Act and their agreements with betting operators.

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54 www.bbc.co.uk/sport/0/34653817.
55 See, for example, the Gambling Act, Sections 30 and 88.
56 Rules of the FA, Rule E8.
57 RFU Rules and Regulations, Regulation 17.
Governing bodies may provisionally suspend or ban a participant if he or she is linked to betting arrangements that may give rise to integrity issues (such as match-fixing and result manipulation). By way of example, the British Horseracing Authority (BHA) suspended jockey Kieren Fallon following the initiation of criminal proceedings by the Crown Prosecution Service and pending determination of those charges. Mr Fallon unsuccessfully challenged that provisional suspension in the High Court. Having regard to ‘the upholding of the perceptions of integrity of horse racing’, the High Court upheld the BHA’s suspension. Mr Fallon was not convicted in the criminal courts, and he returned to horse racing.

iv  Grey market sales

Aside from where event-specific legislation has been passed (as was the case with the London 2012 Olympics), football is the only sport in England where it is an offence to sell or otherwise dispose of a ticket unless you are expressly authorised to do so. In other sports, the rights holder in question must bring an action for breach of the non-transferability provisions in the ticket terms and conditions (see Section III.i) to prevent the secondary sale of tickets.

The Consumer Rights Act 2015 includes disclosure requirements for those reselling tickets and the marketplaces where such tickets are resold. Online secondary ticket platforms must, inter alia, ensure that a buyer is given information regarding the seat and row number or standing area, any restriction that limits use of the ticket to particular persons (such as a youth audience) and the ticket’s face value. A new requirement to provide a unique ticket number that may help the buyer to identify the seat or standing area or its location was introduced in 2018. These requirements give rights holders a means to identify the particular ticket being resold, which in turn assists in identifying those who are reselling tickets in breach of the ticket’s terms and conditions. Further, in July 2018, a new law was introduced banning ticket touts from using automated software to buy more tickets for events than permitted.

IX  THE YEAR IN REVIEW

i  Insolvency

This year has seen a focus on football club finances. To ensure the integrity and stability of the game and to prevent clubs from writing off large debts and benefiting from a competitive advantage, Premier League and EFL clubs are subject to specific regulations on entering into an ‘insolvency event’.

Volatility of finances in the EFL, which benefits from a comparatively low central fund, means EFL clubs are more likely to fall foul of these regulations and be subject to the corresponding sporting sanctions. An exacerbated breach of these rules led to Bury

60  ibid. at Paragraph 62.
63  Consumer Rights Act 2015, Section 90.
64  Digital Economy Act 2017, Section 105.
65  ibid., Section 106.
66  Three-quarters of EFL clubs recorded losses at a combined deficit of £388 million. In contrast, 12 of the Premier League’s 20 clubs reported profits in their latest accounts, with a combined surplus of £304 million. EFL sporting sanctions include: a 12-point deduction; fixture suspension; and the forfeit of their
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FC’s membership of the EFL being rescinded on 27 August 2019, making it the first club to be expelled from the league since Maidstone United in 1992. Bury, having already entered into a company voluntary agreement, had failed to subsequently provide the requisite EFL assurances or to secure the club’s sale (with a proposal collapsing over due diligence concerns). Another club, Bolton Wanderers, had faced the same deadline (themselves having appointed administrators), but managed to retain its league membership by providing sufficiently detailed financial plans for the 2019–20 season and completing the club’s sale.67

ii Profit and sustainability

Regulation of spending, in one form or another, is a feature of a number of sports both domestically and elsewhere.

In England and Wales, both the Premier League and the EFL have in place regulations that seek to ensure that football clubs can, in essence, operate on the basis of their own revenues. Clubs that wish to compete in European competition must also comply with UEFA’s financial fair play regime.

This year saw the EFL’s outcome of the proceedings against Birmingham City for breach of its profitability and sustainability rules (P&S Rules).68 Under the P&S Rules, the maximum seasonal loss that can be sustained by a Championship club is £13 million, with such losses assessed over a three-year period (i.e., with the maximum permitted loss therefore standing at £39 million). Birmingham City incurred losses of £48.787 million over that period, with the bulk of those losses sustained in the latest season under review; a season that had seen the club replace the manager three times. Incoming managers were given sizeable transfer budgets by the club, which also resulted in an increase in wage spending (wages as a percentage of turnover increased from 120 per cent in 2016–17 to 195 per cent in 2017–18). The Disciplinary Commission noted that this trend of spending demonstrated a ‘deliberate disregard of the rules’.69

Under the relevant rules,70 the Disciplinary Commission had a wide power to impose sanctions for breach, to include financial and sporting sanctions. Birmingham City was issued with a nine-point deduction in the 2018–19 season. The case is, therefore, notable as marking the first time domestic financial fair play rules have resulted in the application of a points deduction.

Following the charge being brought against Birmingham City, the EFL has promulgated sanction guidelines for breaches of P&S Rules. The guidelines provide for a 12-point deduction for breach of the P&S Rules, which can be increased or decreased depending on aggravating and mitigating factors such as the extent of overspend and trend of spending. As noted in the Birmingham City decision, such guidelines will serve to provide some measure of predictability for clubs moving forward.

67 Bolton had previously been referred to the EFL (in March 2019) by the players’ union for failing to meet players’ wages and had subsequently appeared in the High Court over a £1.2 million unpaid tax bill.
69 ibid. at Paragraph 36.
70 EFL Regulations, Regulation 92.
OUTLOOK AND CONCLUSIONS

On 29 March 2017, the United Kingdom gave notice to the European Council of its intention to withdraw from the European Union in accordance with Article 50 of the Lisbon Treaty. That notice triggered a two-year period for the UK and EU to negotiate and agree the terms of the UK’s exit. Subsequent deadline extensions mean that at the time of writing, the UK is set to leave the EU by 31 January 2020 unless the European Council, in agreement with the United Kingdom, unanimously decides to further extend the period. Despite lengthy and often heated negotiations between the UK government and the EU, at the time of writing many questions regarding the UK’s withdrawal from the EU remain unanswered. The UK government’s position is that the free movement of persons between the EU and the UK should end on Brexit. The most recent formal position from the UK government is to replace free movement with a ‘mobility framework’, which will allow UK and EU citizens to travel to each other’s territories, and apply for study and work.71 It is not envisaged that this will give sportspeople the same right of free movement as currently exists.

How Brexit will impact sport will very much depend on the terms of the UK’s withdrawal from the EU. If the UK government’s proposal is implemented and therefore EU nationals no longer have the right to freely move to the UK, this could leave open the possibility for the UK government to set specific entry criteria for all sportspeople (in a similar manner to the way in which non-EU nationals are currently treated – see Section V.ii). Negotiations are ongoing between the FA and the Home Office with the possible agreement of automatic visas to be issued to any players contracted to a Premier League club. Regardless, any new criteria are unlikely to restrict the ability of top professional clubs to attract elite, international stars with the impact more likely to be felt further down the sporting pyramid by those who have historically recruited less-established players from the EU.

Governing bodies could also consider introducing quotas based on nationality – thereby limiting the number of foreign players that can appear in matchday squads. Further, there are certain EU-specific provisions in sports rules and regulations. By way of example, UK football clubs currently benefit from an exemption in Article 19 of the FIFA Regulations on the Status and Transfer of Players, which permits them (subject to approval from FIFA) to sign players within the EU or EEA aged between 16 and 18. This has been a key recruitment strategy for many clubs in recent years. On withdrawing from the EU (and absent a change of these regulations), UK football clubs would lose the ability to sign these young players and instead would be subject to the general prohibition on the international transfer of players under 18.

Aside from free movement, clubs may be well advised to adopt an anticipatory approach in their transfer negotiations by considering currency and exchange mechanisms within receivable financing deals and player transfers. Any impact on the value of the British pound and on the sport itself is still too premature to predict, but any downward trend could increase pressure on club finances and risk greater exercise of those insolvency sanctions referenced in Section IX.72

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72 For example, as a result of weakened broadcasting agreement bids.
ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

Organisational form

There are some 20,000 registered non-profit associations in Finland whose purpose is to organise sports activities. As Finnish sport is based on the autonomy of non-profit associations, the sports clubs and federations decide autonomously on their administration and activities in accordance with their by-laws.

Generally, both non-professional and professional sports clubs are organised as non-profit associations. Hence, unpaid voluntary work is crucial for the organisation of sports in Finland. Only a few leagues, and teams participating in leagues at the highest national level, such as the ice hockey and football leagues, are organised as limited liability companies. Nevertheless, the leagues’ articles of association require that the companies are tied to non-profit associations, and it is the associations (sports clubs) that hold the participating licences.

Most of the sports clubs are members of a national sports federation, while the national sports federations are members of the international sports federation for their respective sports.

Virtually all national sports federations are members of an umbrella organisation for sports in Finland, the Finnish Olympic Committee. There used to be two umbrella organisations in Finland: the Finnish Sports Confederation Valo, focusing on youth sport and sport for all, and the Finnish Olympic Committee, focusing on elite sport. These entities merged on 1 January 2017. Valo and the Finnish Olympic Committee had already shared certain operative functions and positions prior to the merger, so the impacts of this merger have been more visible on the strategic side. Bringing both youth and elite sports under the same roof has also provided opportunities to further develop and accelerate the cooperation with both former entities’ interest groups.

The anti-doping activities and advocating of ethical principles in Finnish sport are centralised under the Finnish Centre for Integrity in Sports (FINCIS), established in 2016. FINCIS’s aim is to prevent, for example, match-fixing and spectator violence and it also conducts doping control and brings rule violators to justice.

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ii Corporate governance

As Finnish sport is organised on the principle of the autonomy of associations, there are no specific laws for good governance rules for sports organisations per se. However, the Associations Act (503/1989) provides for certain rules for decision-making and disqualifications.

The former Valo compiled principles for good governance as part of the European Commission’s Better Boards, Stronger Sport project. After the merger, the Finnish Olympic Committee adopted and further developed these principles in its ‘Social Responsibility Compass’ – a governance document accepted by the Finnish Olympic Committee’s board on 14 February 2017.

Given the strong autonomy of the associations, the common rules for good governance are self-regulatory by nature and are binding on the federations only if they have specifically committed to their use. However, most of the sports federations have acknowledged the good governance principles in their own regulations. The Finnish Olympic Committee’s agenda is to continue the governance dialogue with the federations, encourage them to adopt the Social Responsibility Compass in their activities and, in cooperation with the Federations, update the Social Responsibility Compass as necessary to reflect the reality in the field.

iii Corporate liability

The members of the board and officers of an association are liable for damage that they cause to the association wilfully or negligently. Board members or officers can only avoid liability by not participating in the decision-making; for example, by recusing themselves.

The members of the board and officers of an association are similarly liable for damage that they cause to a third party by violating the by-laws of the association or the Associations Act. The liability requires wilfulness or negligence.

An employee of an association is liable for damage that he or she causes because of a mistake or omission up to an amount that is deemed reasonable considering the amount of damage, the omission or mistake, the position of the employee and other relevant circumstances. The liability for damage is, thus, slightly different from the liability of a board member or an officer. Also, if the employee is found to have been only slightly negligent, he or she shall not be liable at all, even if the employer would be found liable towards the third party.

II THE DISPUTE RESOLUTION SYSTEM

i Access to courts

There are no established principles in Finland regarding when the courts can examine and decide on lawsuits in relation to disciplinary measures of associations. The rule of thumb is that there has to be a legitimate need for judicial relief. In most cases the threshold is exceeded and sports-related cases can be – and have been – tried in the civil courts in Finland. Most cases have involved athletes’ labour disputes or doping, and very few cases have been tried on the disciplinary measures of an association.

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3 The Associations Act (503/1989).
4 Halila and Tarasti 2011.
Sports arbitration

The Finnish Sports Arbitration Board was founded in 1991 by Finland’s sports governing bodies as an independent appellate body for sports-related decisions and disciplinary sanctions. Despite its designation as an arbitration panel, it has worked as a disciplinary committee. According to its rules, the Sports Arbitration Board can also act as an arbitration panel within its jurisdiction, should the parties in the dispute enter into an agreement on arbitration or the athlete so demand.

The rules of the Finnish Sports Arbitration Board provide that the Sports Arbitration Board may handle appeals based on decisions made by associations regarding the discharge of membership from an association; limitations to member rights or disciplinary measures; or whether a decision made by an association is contrary to the by-laws of the association or the rules and regulations pertaining to competitions, although not to the rules and regulations relating to the sports discipline itself. The arbitration board may, in addition, handle appeals of an athlete for not having been selected for elite competitions (e.g., Olympics, world championships, European championships and equivalent), provided that the selection criteria clearly set by the federation or the Olympic Committee have not been followed, or if the decision is, without any acceptable reason, discriminatory on the basis of sex, age, conviction (political or religious), opinion, origin or other reason related to the athlete's person. The Sports Arbitration Board also serves as the first instance of appeal for decisions made by the Finnish anti-doping agency, FINADA, based on the anti-doping code.

The rules provide that, if the parties so agree or the statutes of respective associations so rule, the Sport Arbitration Board may act as an arbitral tribunal in matters within its competence, and in sports-related contractual disputes and matters relating to sports organisations’ business affairs. This means that, in addition to all matters within the Board’s original competence, sport-related contractual disputes might also be tried in arbitration proceedings. In principle, the arbitral tribunal consists of three arbitrators, unless the parties have agreed that only one arbitrator will decide the matter. Otherwise the procedure is governed by the Arbitration Act (967/1992).

The Sports Arbitration Board cannot handle a matter that has been decided by or is pending in civil court or arbitration. If a matter pending before the Sports Arbitration Board is brought before a civil court, the case automatically lapses at the Sports Arbitration Board.

Enforceability

The Sports Arbitration Board is not nominated by the state or based on legislation. Thus, the enforceability of the decisions of the Sports Arbitration Board is based on the parties’ engagement. The sports federations and sports clubs are bound to the jurisdiction of the Arbitration Board through their by-laws or through chaining of rules through membership, from the federations to the individual sports clubs. However, as the decisions of the Arbitration Board are merely recommendations, an association may decide not to adhere to the decision of the Board. This has happened on a few occasions in the history of the Arbitration Board. Usually, the associations, especially sports federations, have complied with the Board’s decisions.

Despite the common use of the Sports Arbitration Board for resolving disputes in sports, a decision of the Sports Arbitration Board does not prevent the parties from bringing a suit in civil courts. If the Sports Arbitration Board acts as an arbitral tribunal, the enforcement of its arbitral award is decided by a competent court of first instance.
The Code of Judicial Procedure (4/1734) provides for interim relief, which can and has been applied to sports on a number of occasions.

As Finland is a party to the 1958 New York Convention, Finnish arbitral awards are internationally recognised and enforceable, and foreign arbitral awards are recognised and enforceable in Finland.

III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator

The relationship between organiser and spectator is a contractual relationship governed by the general principles of contract law and the Contracts Act (228/1929). Consumer protection legislation safeguards the spectators from misleading marketing and unfair contract terms. Though an organiser’s options to obligate spectators are limited, the organiser may, for example, try to prevent reselling of tickets in its ticket purchase conditions. The organiser’s main obligation is to organise the event in the manner in which it has been advertised, otherwise the organiser may be in breach of the contract.

The Assembly Act (530/1999) governs the organising of public events. The Law provides for certain security and other measures, such as sufficient liability insurance, which the organisers should comply with.

ii Relationship between organiser and athletes or clubs

Although the relationship between an organiser and athletes or clubs is primarily governed by the by-laws of the relevant sports association, the offset in the relationship between an organiser and an athlete or club is the freedom to contract. The athlete’s or team’s main obligation is usually to take part in the event and compete. Often the organiser sets certain conditions for the athlete’s right to participate, which the athlete accepts by entering the event. The Competition Act (948/2011) has been applied to the right to participate in a professional sports league and has relevance when sport is practised on a professional level.

iii Liability of the organiser

An organiser’s civil liability may be contractual or extra-contractual. First, the organiser has contractual liability towards the spectators. If the event is cancelled or otherwise substantially deviates from what the spectator had reason to assume, spectators may be entitled to compensation. Secondly, an organiser also has contractual liability towards the athletes and clubs, with whom it has made entry agreements, its sponsors, other partners and the owner of the event venue.

An organiser’s extra-contractual liability is partly governed by the Tort Liability Act (412/1974) and partly based on Finnish legal praxis. Organisers of events have a pronounced duty of care for the spectators’ and athletes’ safety.

Consumer Disputes Board decision No. 00/39/924, 28 August 2001. A certain amount of deviation and surprises goes with sports, but absence of an advertised athlete, for example, might lead to the contractual liability of the organiser.
Liability requires an organiser’s negligence and must be evaluated on a case-by-case basis by reviewing whether the organiser has fulfilled its obligations deriving from the legislation and safety guidelines of the sports governing bodies.\(^6\),\(^7\)

In principle, an organiser’s liability towards the athletes is similar to that towards the spectators. However, the athletes themselves bear the risk of certain damage characteristic of the sport.

The criminal liability of an organiser can mostly be characterised as that of white-collar offences, including, inter alia, bribery, accounting offences, tax fraud and bankruptcy-related offences.

### iv Liability of the athletes

The athletes’ contractual liability towards an organiser is usually based on the entry agreement. An athlete is liable for the damage incurred by an organiser because of the athlete’s absence from the event, unless the absence is caused by force majeure. The same basic contractual principle also applies when the participation obligation is provided by an agreement between the athlete and a club or a sports governing body.\(^8\)

The athletes’ extra-contractual liability is governed by the same sources of law as the organisers’ extra-contractual liability. Negligence is evaluated in the light of the athlete’s obligations resulting from legislation, club or sports governing body’s general rules and sport-specific rules.\(^9\)

The athletes’ criminal liability is usually based on the idea of non-acceptable risk-taking. By entering into a sports event, an athlete accepts the risk of sport offences at least as far as they are not in violation of the sport’s rules or the nature of the sport. These kinds of sport offences may normally fulfil the essential elements of an offence but are allowed in sport. However, any actions of an athlete that are in violation of the rules and characteristics of the sport in question, or actions that have no athletic function or temporal relation to the sport performance itself, can be considered prohibited risk-taking and fulfil the constituent elements of a criminal offence.\(^10\)

Sports-related assaults\(^11\) are subject to public prosecution along with most violent offences. Offences against personal reputation may also occur in sports in the form of slander. Defamation is a complainant offence that the injured party must report for charges to be

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\(^6\) Many sports governing bodies in Finland release their own safety guidelines. Breach of these guidelines does not immediately lead to civil liability, but inside the organisation the liability is usually strict and a breach leads to internal disciplinary actions regardless of negligence.

\(^7\) Compliance with the guidelines and special legislation does not always eliminate the organiser’s liability. The Court of Appeal of Rovaniemi held the organiser of an ice hockey game liable when a puck had flown over the rink and hit a spectator’s head causing him a brain injury. The rink complied with Finnish Ice Hockey Association’s safety guidelines, but the Court set the organiser’s duty of care even higher. See Court of Appeal of Rovaniemi 13 February 2004, S 03/306 and Hahto 2004.

\(^8\) In some cases the athlete’s liability is also governed by the Finnish Employment Contracts Act. These situations are covered in Section V.

\(^9\) Norros 2014.


brought. However, the investigation of an offence may begin without contribution by the victim, as according to the Criminal Investigation Act (805/2011), the authorities are obliged to start investigations whenever there is reason to suspect that an offence has been committed.

v Liability of the spectators

As spectators usually have a contractual relationship only with the event organiser, the most interesting legal issues relate to their extra-contractual liability and criminal liability. A spectator may be held liable under the Tort Liability Act for the damage he or she has caused to the event organiser, another spectator or an athlete wilfully or negligently. Criminal liability of a spectator is evaluated in accordance with the general principles of criminal law. The venue of the crime does not impact the liability.

vi Riot prevention

The Assembly Act governs the organisation of public events. A sports event organiser shall inform the police of the event beforehand and take sufficient safety measures. The police may give the organiser more specific orders; for example, requiring the event organiser to hire community service officers to supervise public order at the event. At their discretion, the police may give backup to the organiser. The self-regulation of sports governing bodies may also include conditions relating to riot prevention or the clubs’ liability for the actions of their fans.

IV COMMERCIALISATION OF SPORTS EVENTS

i Types of and ownership in rights

Commercialisation of sport events and athletes by sponsoring, branding, broadcasting and spin-off merchandising can all be effectively exploited in Finland. For teams and individual athletes, building up a strong individual personal brand is essential, since marketing increasingly uses well-known entertainment and sports individuals. Finland has a functioning trademark system overlapping with the international Madrid Protocol and European Union Trademark system. By registering the athlete’s name or other well-known icon, an athlete is able to maximise the possible profit from sponsorship deals and other cooperation agreements, and to license the mark for the sale of spin-off products as well.

The sale and amount of advertising space available is usually divided between the athlete’s sports federation, the organiser of an elite competition or sports event and the participating athlete or team. The organiser originally possesses most of the advertising space based on a lease agreement for the event location. Grant-back clauses are, however, commonly used in the organising and marketing of sports events, in which case the organising sports federation gives the exclusive right to the organiser to organise the event on the condition that the organiser grants back the advertising rights to the federation. The competition law compliance assessment of such a grant-back depends on, among other things, the amount of advertising space that the condition applies to. The individual athletes dispose of the

12 Defamation in sport has been handled by the Finnish Supreme Court in ruling KKO 2005:137, 19 December 2005. A driver had called another driver by derogatory names in a harness race. The Supreme Court found that a disciplinary sanction imposed on the offender by the sports governing body was not a sufficient reason to waive the punishment for defamation.
advertising space available on their sports equipment and sportswear in accordance with the rules of the relevant national or international association. A club or association usually disposes of advertising in team sports.

Marketing of certain products or services may be restricted under Finnish law, and some sports associations and clubs also have internal rules on acceptable marketing. The marketing of strong alcohol beverages and tobacco is completely prohibited in Finland and no direct or indirect marketing of such products is possible.

Among the most valuable assets related to organising sports events are the broadcasting rights. Broadcasting rights are not separately protected as an exclusive right in Finland, but they can be efficiently covered and protected by the Finnish copyright system, partially when harmonised by EU directives. Although the sports event in itself is not protected by copyright because of its lack of sufficient independence and originality as required by the Copyright Act (404/1961), the television broadcast and possible sports coverage are. As a general rule, the organising sports association usually owns the broadcasting rights to the specific events or leagues it organises.

ii Rights protection

Rights related to exploitation and commercialisation of sports-related rights can be efficiently protected by intellectual property legislation, such as the Trademarks Act (544/2019), the Business Name Act (128/1979) and the Copyright Act. Whereas intellectual property laws grant protection to certain exclusive rights defined by such laws, the Unfair Business Practices Act (1061/1978) provides a wider and parallel protection compared with IP laws because its clauses are more general and have a wider scope.

A trademark, which can be a figurative mark, a word mark, a unique product package or even a slogan, can be registered for a period of 10 years in the Trademark Register kept by the Patent and Registration Office. The registration is renewable without limitations. The Copyright Act provides protection for 70 years from the death of the creator for works exceeding the originality requirements for copyright protection. Shorter protection is provided for neighbouring rights, such as those of a producer of a video recording.

iii Contractual provisions for exploitation of rights

Finland is a civil law country with written laws, some governing specific legal fields and other more generally applicable rules that also apply to special areas of law. As a general rule, Finnish law does not require that statutory provisions are incorporated into agreements, especially in the case of business-to-business agreements. The case can be different for consumer agreements, as legislation aims to protect the consumer and such provisions might have to be incorporated for information purposes. Naturally it is always advisable to agree on the possibility of transferring (or not transferring) a licence and the geographical and temporal scope of any licence.

V PROFESSIONAL SPORTS AND LABOUR LAW

i Mandatory provisions

Essential labour regulations in Finland are the Employment Contracts Act (55/2001) and the Working Hours Act (605/1996). The new Working Hours Act (872/2019) passed on 5 July 2019 and will be applied from 1 January 2020. The characteristics of an employment agreement are that one person (the employee) carries out work for another (the employer)
under the supervision and management of the employer, from which work the direct benefit goes to the employer, and from which work the employee receives financial compensation. If these requirements are fulfilled, labour legislation sets the minimum level for the conditions of employment.

On the basis that the requirement for performing work under someone’s supervision is usually absent in their relationships with their clubs, coaches or sports associations, individual athletes are usually not considered to be employees. However, it has been well established through a number of court decisions that players of team sports, when they receive remuneration for their performance, are deemed employees of their respective clubs.

Fixed-term employment contracts are only allowed on special grounds relating to the nature of the employment. Athletes are required to constantly strive to their best performance and their career peaks only last for a relatively short time. Thus, using fixed terms tied to, for example, league seasons is considered justifiable.

The termination of a fixed-term sports employment contract requires extremely weighty causes. Such a cause is at hand if the employee substantially breaches or neglects his or her obligations under the employment contract or legislation. For example, doping is usually considered a substantial breach of an athlete’s or a coach’s obligations and enables the employer to terminate the contract. The employer has a tortious liability for unlawful terminations.

According to the Employment Contracts Act, an employee shall be paid reasonable, normal remuneration for the work performed. Salary protection is reserved for the trade unions in the form of collective bargaining. In Finland, this possibility has been utilised by one player association and the Federation of Professional Coaches.

### ii Free movement of athletes

Discrimination is banned by the Constitution (731/1999), the Non-discrimination Act (1325/2014) and Employment Contracts Act, and sports clubs or associations cannot overrule these fundamental legislative restrictions. However, operations that first seem discriminatory may sometimes be objectively justified. For example, limiting the participation right in Finnish championships to athletes representing Finland and tying the representation right to Finnish nationality is an objectively justifiable condition, but requiring the athlete to originate from Finland would most likely be deemed prohibited discrimination. In team sports, operations that restrict the number of players from EU Member States are prohibited, but the number of non-EU players may be limited to some extent.

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13 The Finnish Ice Hockey Players’ Association has negotiated a collective agreement to be applied in player contracts at the highest league levels in Finland.

14 The Trade Union for the Public and Welfare Sectors and Service Sector Employers, Palta, have negotiated a collective agreement that applies to employees of sports associations (e.g., managers, secretaries, etc., positions where the employees work under the association’s supervision). The Federation of Professional Coaches has joined this collective agreement and thus it is applicable to professional sports coaches.


16 European Court of Justice, *Bosman* C-415/93.
iii Application of employment rules of sports governing bodies

Athletes are often bound to the regulations of international sports governing bodies by agreement, and such an agreement can also be an employment agreement. Conditions that undermine the minimum working conditions of employees under the scope of application of Finnish labour law are nevertheless invalid.

VI SPORTS AND ANTITRUST LAW

The national antitrust rules are, in essence, based on EU antitrust laws. Antitrust laws apply to the business activities of sports event organisers and sports governing bodies in the same manner as to any other businesses in Finland. The rules on dominant market position have been evaluated in a few national cases. Sports governing bodies have been found to have a dominant position when it comes to granting player or competition licences to athletes, or granting rights to organise competitions to event organisers.

An event organiser or sports governing body must comply with the Finnish Competition Act. First, the participation or organising rights and licences shall be granted on equal conditions. An equitable condition is, for example, a certain result or experience-level requirement. Second, the participation or organising right or licence cannot be tied to supplementary obligations that have no connection with the participation right or the licence itself. An obligation to acquire a certain accident insurance with the competition licence, for example, has been considered prohibited tying by the Competition Authority in decision No. 1089/61/95 of 4 March 1998.

Third, unfair conditions shall not be imposed on the participation or organising right or the licence. The decision of the Finnish Basketball Association’s board to change the league rules with effect from the beginning of next season was considered an unfair condition by the Competition Authority in decision No. 511/61/94 of 5 September 1995. The transition phase was considered too short, as the change of league rules decreased the number of league games and thus had a negative impact on the income of the clubs.

VII SPORTS AND TAXATION

As stated, Finnish sports clubs are usually established as non-profit associations and, as such, their activities are tax-free. However, if sports associations are engaged in professional sports on a larger scale, their actions, at least in relation to professional sports, may not be considered a public utility, and such activities may become taxable as business income.17

Individual athletes are usually taxed under the Income Tax Act (1535/1992). Athletes may, however, consolidate part of their income from sports in special funds governed by sports associations. In such cases, the athletes may withdraw monies from the funds for the purposes of paying their sports-related expenses tax free, and only pay tax on the remaining monies later on when withdrawn as income.

The administration of an individual top athlete’s activities and contracts may be easier to arrange in the form of a limited liability company, but this involves the risk that income of

17 See the Finnish Tax Administration guide to non-profit foundations VH/3138/00.01.00/2018, 14 February 2019.
the athlete steered through such a company may still be taxed as if the company did not exist. If the business actions are large-scale enough and the activities include a real business risk, the income can be considered as income of the company and taxed accordingly.\textsuperscript{18}

Double taxation problems of athletes and taxable sports clubs when they participate in sports events abroad are acknowledged in Finnish tax legislation and in the taxation treaties that Finland has concluded. Double taxation is usually eliminated by deducting the tax paid abroad from the tax payable in Finland (the credit method). However, the fee is still taken into account when counting the annual gross income of an athlete or club, and affects its progression rate.\textsuperscript{19} Some of the tax treaties Finland has concluded follow the exemption method: income from a foreign sports event is not taken into account in the Finnish taxation at all.\textsuperscript{20}

VIII SPECIFIC SPORTS ISSUES

i Doping

A doping offence, an aggravated doping offence and a petty doping offence are criminalised in the Criminal Code (39/1889). The essential elements of a doping offence are that a person unlawfully prepares or attempts to prepare a doping substance, imports or attempts to import it or sells, conveys, gives to another or otherwise disseminates or attempts to disseminate it. A person who keeps in his or her possession a doping substance with the probable intent to disseminate it unlawfully can also be sentenced for a doping offence. The sentence for a doping offence is a fine or imprisonment for, at most, two years.

If the offence involves considerable amounts of doping substances, criminal organisation, considerable financial benefits are obtained or the substance is disseminated to minors, a doping offence may be considered as aggravated, with a sentence of imprisonment for at least four months and, at most, four years. If the offence is altogether petty, the sentence may simply be a fine.

ii Betting

The organising and advertising of betting on sporting events is strictly prohibited in Finland, except for by Veikkaus Oy under the Lotteries Act (1047/2001).\textsuperscript{21} Veikkaus Oy has a statutory obligation to prevent abuse or crimes as well as the harmful social and health effects of gambling and betting. The legitimacy of the Finnish monopoly system was assessed in judgment C-124/97 of the European Court of Justice, in which the Court found that the monopoly system can be justified, among others, by crime prevention and the prevention of the harmful effects related to gambling and betting.

\textsuperscript{18} Supreme Administrative Court ruling KHO 2010 T 103.

\textsuperscript{19} If Finland has not concluded a tax treaty with the country where the event is being held, the credit method is applied based on the Act on the Elimination of International Double Taxation (1552/1995, 18 December 1995).


\textsuperscript{21} The three organisations that were previously given a mandate to organise betting, Fintoto Oy, Veikkaus Oy and Finland’s Slot Machine Association, were merged into one new company, Veikkaus Oy, on 1 January 2017.
The prohibition of the organising and advertising of betting and gambling applies both to offline and online environments. Unauthorised organising and advertising is monitored by the National Police Board, which may issue an injunction and fine an organiser or advertiser who fails to observe such an injunction. Unauthorised organising and advertising are also punishable under the Criminal Code.

### iii Manipulation

Manipulation of game results and the criminalisation of such behaviour has been discussed in Finland, but no separate penal provision has been enacted. However, a penalty may be imposed for such behaviour based on fraud in accordance with the Criminal Code. It has been argued and assessed that the criminalisation of, inter alia, fraud protects sports-related interests fairly well without the need for any specific penal provision.

The essential element of fraud is the will to obtain unlawful financial benefit, or deceiving or taking advantage of someone’s error, to harm another. Causing economic loss is also one of the key elements of the provision, so for this reason the fraud provision may not be applicable in all cases; for example, in the case of match-fixing where no economical loss is caused. The sentence for fraud varies from fines to imprisonment for up to two years.

There have been a couple of match-fixing cases in Finland in recent years involving football and Finnish baseball, in which the offenders were sentenced for aggravated fraud. Offenders have also been sentenced for bribery and money laundering in connection with match-fixing.

### iv Grey market sales

Grey market sales of sports and other event tickets is still a relatively small-scale business in Finland, and it has not been seen as a major problem so far. Official ticket sellers have tried to prevent grey marketing by, for example, printing a prohibition against reselling the tickets on the tickets themselves. Thus, reselling the ticket would be considered a contractual breach. Ticket quotas per customer and designating tickets for specified customers have also been used to prevent grey market sales.

### IX THE YEAR IN REVIEW

During the past year, international sport federations have published many ethical codes relating to sexual harassment. National sport federations have taken these codes forward on national levels. Like everywhere else, sexual harassment has also been a big topic in Finland. FINCIS has raised concerns about sexual harassment and sexual abuse in sports. Accusations of sexual harassment have occurred in, for example, ice hockey, football, tennis and ice-skating. FINCIS has conducted research regarding unethical behaviour in the national teams for football and ice hockey during 2018 and 2019, and the results reveal that dozens of athletes have experienced sexual harassment. The reports propose measures to make it easier to communicate and address harassment in the future.

E-sports has been growing in popularity in the Nordic countries as part of the phenomenon of digitalisation. In Finland, the Finnish Esports Federation (SEUL) works as

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22 Helsinki Court of Appeal decision No. 333, 6 February 2003 (R01/2825).
23 Rovaniemi Court of Appeal decision No. 237, 22 March 2012 (R11/734).
the umbrella organisation for Finnish competitive electronic gaming. SEUL has successfully lobbied for e-sports and the Finnish Defence Forces have recognised e-sports as sports and allows e-sport athletes to have their military service at their Sports School. This year, SEUL started anti-doping control together with FINCIS to guarantee the players’ right to righteous and fair sports. The anti-doping control concerns all licensed players playing under SEUL. SEUL can perform random or targeted doping tests, and if the player is found to have violated the doping regulation the player might be disqualified from the tournament.

Another important topic is the balancing of efficient doping testing and the right to respect the athlete’s privacy. The decision of the European Court of Human Rights concerning the requirement for a targeted group of sports professionals to notify their whereabouts for the purposes of unannounced anti-doping tests has also been discussed in Finland. Since the requirement for notification is not found to be a violation of Article 8 of the European Convention on Human Rights (the right to respect for private and family life, and home), the case is of particular importance within the field of anti-doping and the need for unannounced testing as part of ensuring the health of sports professionals.24 Moreover, in the field of anti-doping, the FINCIS recently opened a new ILMO service that can be used to report suspected doping, competition manipulation and spectator safety violations. Anyone can report suspect behaviour. According to the FINCIS, reports help protect athletes and sports in general and ensure that all athletes are equal and safe.

X  OUTLOOK AND CONCLUSIONS

For about two decades now, there has been discussion about the increase in the regulatory burden of sports in Finland. Given the recent developments within Finnish sports, the awareness of laws affecting sports has increased significantly. Although the organisation of sports in Finland has evolved over the decades, the combining of sports for all and elites sport under one parent organisation has led to changes in the way that sports are administered. Finland, like so many other countries, is looking at new developments in the fight against match-fixing, spectator violence and unethical behaviour in sports.

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I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

The highest governing body of sport in France is the French Ministry of Sports, which is authorised to grant to the federation of any sport discipline the right to organise and regulate the sport, through a delegation of public service. This delegation of public service is granted to the federation for a period of four years and is indefinitely renewable. For instance, since 1985, the French Football Federation (FFF) has been granted such delegation by the Ministry of Sports.

A federation is authorised, but not required, to create a professional league to manage the professional tournaments, as well as non-professional leagues or committees to manage all the other tournaments at a local level.

Sports clubs willing to participate in competitions organised by the federation or its decentralised bodies must be affiliated to the federation overseeing these competitions.

The sports clubs, the federation and its decentralised bodies are required to be non-profit organisations governed by the French law of 1 July 1901 and its decree of 16 August 1901. That being said, clubs that participate in events generating revenues greater than €1.2 million annually, or that employ athletes receiving a total income exceeding €800,000, are required to create, in addition to the non-profit organisation, a commercial corporation, which will manage its commercial activities. In accordance with Article L.122-2 of the French Sports Code, a ‘sport corporation’ must take one of the following legal forms:

- a limited liability company with a sole member (a single-owner limited liability sport company (EUSRL));
- a limited liability company with a sports object (SAOS);
- a professional sports limited company (SASP);
- a limited liability company;
- a limited company; or
- a simplified joint-stock company.

The federation and the professional league must comply with standard by-laws imposed by the lawmaker. In particular, it requires the federation and the professional leagues to adopt a set of disciplinary and anti-doping regulations.

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1 Romain Soiron is a partner and Aude Benichou is an associate at Joffe & Associés.
2 Law of 1 July 1901 on the contract of association.
4 To our knowledge, the most common structure for sport companies used in 2017 and 2018 was the SAOS.
In addition, some sports corporations (i.e., SAOS, EUSRL and SASP) are under the obligation to comply with standard by-laws setting out various rules regarding shareholders and corporate governance.

In accordance with Article L.122-7 of the French Sports Code, an individual is prohibited from managing two sports companies participating in the same discipline, and controlling or having a major influence (within the meaning of the French Commercial Code) over two sports companies of the same discipline (male and female activities being construed as two different disciplines).

II THE DISPUTE RESOLUTION SYSTEM

i Access to courts

Appendix I-6 of Articles R.131-3 and R.132-7 of the French Sports Code set out the disciplinary proceedings to be implemented by sports federations to settle disputes involving clubs and players.

Disciplinary proceedings must comply with the principle of fair trial as set out in the French Constitution and in Article 6 of the European Convention on Human Rights. Consequently, all sports federations must respect the parties’ fundamental rights, and, in particular:

a the right to a decision in the first instance and to an appeal;
b the right to an impartial court (members of a disciplinary body who have a personal interest in a specific case may not take part in deliberations, and members of the disciplinary body may not try the same case in first instance and on appeal);
c the right to be judged within a reasonable period;
d the right to a public trial; and
e the respect of the rights of defence (providing for a reasonable amount of time to prepare the defence, right to be assisted by a lawyer, etc.).

The French Sports Code also provides for an alternative dispute resolution process before the French National Olympic and Sports Committee (CNOSF). This dispute resolution process is known as ‘conciliation’. The use of this proceeding depends on the common will of the parties involved (except if the conciliation before the CNOSF is mandatory prior to suing before civil or administrative courts).

French civil courts remain accessible to the litigants pursuant to the traditional rules of civil procedure, and administrative courts retain jurisdiction over disputes relating to sports federations or to the application of their by-laws and regulations.

At the international level, certain international federations prohibit the right to seek remedies through state courts in the context of international disputes.

ii Sports arbitration

The Arbitration Chamber for Sports (CAS) was created in 2007 within the CNOSF. Article 2.II.B.1 of CNOSF’s statutes provides that the CAS may resolve a dispute ‘through conciliation or through arbitration’.

5 Articles L.141-1 et seq. of the French Sports Code.
Article 19 of the internal regulation of the CNOSF sets out the conditions under which the parties can submit a case before the CAS. First, an arbitration clause may be included in the parties’ agreement whereby the parties expressly consent to the submission of their dispute to the CAS. In the alternative, and once the litigation arises, the parties may subsequently agree to submit the case to the CAS, even if no arbitration clause was included in the agreement.

The jurisdiction of the CAS is, however, limited, as all disputes relating to a regulated sport and involving the exercise of public service prerogatives have to be brought before the administrative courts. The CAS, therefore, mainly retains jurisdiction over purely economic disputes, such as sponsoring or broadcasting agreements disputes, transfer fee disputes or disputes among athletes, clubs and sports federations.

Unlike in a conciliation proceeding, the CAS makes a final, binding and unappealable ruling, which is enforceable by law.

There are also independent institutions, such as the Court of Arbitration for Sport (TAS), which is an international arbitration body based in Lausanne with jurisdiction over disputes involving arbitration clauses calling for the TAS’s jurisdiction, and over appeals of decisions issued by international sports federations.

### iii Enforceability

Decisions issued by French civil or administrative courts, or arbitral rulings issued by the CAS, are directly enforceable within the French jurisdiction. The parties are bound by those decisions with no need for additional formalities.

To enforce an international decision in France (i.e., a decision issued by a court from another country), the decision must be recognised by the exequatur proceeding. This proceeding includes a high-level review by the French judge who will examine whether the foreign judge had jurisdiction over the matter. To pass this test, the dispute must present a serious link with the foreign state or must have been validly chosen by the parties. Within the exequatur proceeding, the judge also examines whether the proceedings have been conducted ‘properly’ (i.e., that the respect of the right of defence was insured). Finally, the judge must verify whether the decision complies with the French international public policy rules. That said, some regulations of French federations specifically provide that international decisions with effects on national tournaments may be enforced directly without any exequatur proceedings before a French court.

### III ORGANISATION OF SPORTS EVENTS

#### i Relationship between organiser and spectator

The organiser and the spectator are bound by a contract through the sale of a ticket.

The general terms and conditions governing the sale of tickets must comply with French consumer rules and regulations – where the buyer is considered to be a ‘consumer’.

The General Direction for Fair Trading, Consumer Affairs and Fraud Control (DGCCRF) conducted a major investigation in 2019 to enforce the French consumer laws regarding online and in situ ticketing. The investigation revealed several significant breaches.

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6 French Supreme Court, 7 January 1964.
7 French Supreme Court, 6 February 1985.
Many organisers failed to provide the mandatory pre-contractual information to consumers; in particular, regarding the price of the ticket. French consumer laws consider that a contract shall only be validly concluded if the consumer has the possibility to verify the details of its order and its full price before placing the order.9 However, the DGCCRF investigation has shown that the ticket price displayed often fails to include the additional service charges fees and that those fees only appear during the order process.

In addition, the investigation revealed clauses relating to the non-reimbursement in case of postponement of a sports event. This type of clause may be considered unfair because of the absence of compensation for the damage suffered in the event of a change of date, schedule or place.

ii  Relationship between organiser and athletes or clubs

A club seeking to participate in a competition organised by the federation must be affiliated to the federation. This authorisation of affiliation granted by the federation allows the club to participate in competitions, but also imposes the obligation to comply with the federation’s rules and regulations.

These regulations contain sporting rules (e.g., the rules of the game, the format and functioning of the competition) and disciplinary rules (e.g., sanctions against players or clubs), as well as rules protecting the commercial interests of the competition (e.g., sponsors’ brands display obligations).

The French Sports Code also requires the subscription of an insurance policy by the federation,10 which covers damage suffered by the clubs and players taking part in the competition.

iii  Liability

According to French law, a person committing a ‘fault’ resulting in damage to another person may be held civilly liable.

With respect to an organiser, a fault may occur, for instance, in the event of:

a  failure to keep the sports facilities safe and secure (organisers being bound by a general safety obligation);
b  negligence of inspection or maintenance; or
c  inappropriate or excessive risk created by the organisation.

With respect to an athlete’s liability, a fault committed by a player against another player during the event is subject to a restrictive interpretation because of the inherent risk stemming from the exercise of the sport. According to this ‘risk acceptance’ theory, a player who wishes to be exonerated must demonstrate that the fault was committed in accordance with the spirit of the game, and that the potential injury was accepted by the injured player.

Regarding the liability to spectators, the organiser can be held liable for injuries caused during sports events owing to security and safety regulation breaches. It must also be stressed that the lawmaker created specific offences applicable to behaviour of spectators during sports events in a sports arena, such as:

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9  Article 1127-2 of the Civil Code.
10  Articles L.321-1 et seq. of the French Sports Code.
France

a forcible or illegal introduction of alcoholic beverages;\(^{11}\)

b encouragement of other spectators to hatred or to the commission of violence;\(^{12}\)

c display of insignia, signs or symbols promoting racial or xenophobic ideology;\(^{13}\)

d possession or use of rockets, artifices or projectiles;\(^{14}\) and

e disturbance of a competition or the endangerment of people’s safety, by penetrating the competition area of a sports arena.\(^{15}\)

iv Riot prevention

Under the purview of international and European bodies, French legislation has attempted to prevent riots during sports events. Sports events organisers have the duty to provide security services and obtain if necessary the support of the state police.\(^{16}\) To avoid the introduction of dangerous objects inside the sports arena, French public authorities and organisers may perform physical pat-downs with the spectator’s consent. If the spectator does not consent, the security services may deny access to the arena to the spectator.

French public authorities can also take several repressive measures against supporters, such as a temporary stadium ban or dissolution of supporters’ associations in case of a risk of serious disturbance to the public order.\(^{17}\)

Since 2007,\(^{18}\) persons prohibited from stadiums are listed in the National Stadium Bans Register. This register contains the identities of the persons banned by judicial or administrative decision. The data are retained for five years from the expiry of the most recent measure pronounced.

IV COMMERCIALISATION OF SPORTS EVENTS

The originality of the French system resides in Article L.333-1(1) of the French Sports Code, which states that ‘sports federations and organisers of sports events mentioned in Article L.331-5 are the owners of the exploitation right of the sports events or competitions that they organise.’ This ‘organiser’s right’ is a unique right that can be compared to a copyright as the underlying concept is similar: a person creating an original work holds the rights to its creation to be compensated and to prevent the unauthorised use of its creation.

The French Sports Code does not provide an exhaustive list of the ‘exploitation rights’ that are within the organiser’s portfolio. Some of the rights are specifically referred to in the Code (e.g., audiovisual rights, betting rights). The jurisprudence has then interpreted the notion of exploitation rights so as to include ticketing, photography of the competitions (including before the kick-off and after the end of the match – for example, during a moment

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\(^{11}\) Article L.332-3 of the French Sports Code.
\(^{12}\) Article L.332-6 of the French Sports Code.
\(^{13}\) Article L.332-7 of the French Sports Code.
\(^{14}\) Article L.332-8 of the French Sports Code.
\(^{15}\) Article L.332-10 of the French Sports Code.
\(^{16}\) Article L.331-4-1 of the French Sports Code.
\(^{17}\) Article L.332-11 to L332-18 of the French Sports Code.
\(^{18}\) Decree, 28 August 2007.
of silence before the kick-off), the date and reference to a competition and, in a very general statement, ‘any form of economic activity the aim of which is to generate a profit and that would not exist if the sports event referred to did not exist’.19

This organiser’s right set out by law is the most efficient legal weapon and the most commonly used before courts by organisers to protect their rights.

Commercialised rights by the federations are subject to limitations – mainly linked to competition law and right to information (news access), as set out in EU regulations. For instance, the French Sports Code20 provides that events of major importance listed by decree should be broadcast on national free television. In addition, radio broadcast rights cannot be marketed because of the right to information. Any radio journalist can make comments on a sports competition without having to get an approval from the organiser.

Federations may assign to clubs, free of charge, the audiovisual exploitation rights related to the competitions organised by the professional league; such rights being marketed on an exclusive basis by the professional league on behalf of the clubs. For now, this option is only used in the football field: in 2004, the FFF granted ownership of the audiovisual exploitation rights to clubs and the French Professional Football League (LFP).21 When audiovisual rights are assigned by the federation to the clubs (i.e., for now, only in football), certain rules apply. The Sports Code provides a legal framework to the marketing of audiovisual rights by the league that markets the rights (the LFP). For instance, the audiovisual rights must be marketed through a bidding process, which shall be non-discriminatory and transparent. The LFP must provide in its offer the qualitative (television exposure, audience, etc.) and quantitative (amount offered) criteria on which it relies. The agreement between the LFP and broadcasters cannot last more than four years.

V PROFESSIONAL SPORTS AND LABOUR LAW

i Mandatory provisions

French labour law combined with collective bargain agreements set forth the applicable rules to professional athletes’ employment contracts.

However, a law that came into force on 27 November 201522 sets out specific mandatory provisions for employment contracts of professional athletes, coaches, judges and referees. Those professionals are solely entitled to conclude a fixed-term contract with their sports federation for a term of no less than 12 months (duration of a sports season) and no more than five years.23 An exception is allowed for employment contracts for less than 12 months in the case of replacement during an ongoing season. The maximum duration includes the renewal of the contract or the conclusion of a new contract with the same employer.

Those fixed-term contracts also have to comply with other provisions. For instance, contracts must provide all the mandatory information listed in Article L.222-2-5 of the French Sports Code and the termination clause cannot be unilateral.24

19 French Supreme Court, 20 May 2014.
22 Law No. 2015-1541 (protecting high-level and professional athletes, and securing their judicial and social rights).
ii  **Free movement of athletes**

Freedom of movement and of residence is a fundamental right in EU primary law, as set out in the Treaty on European Union, the Treaty on the Functioning of the European Union (TFEU) and the EU Charter of Fundamental Rights. The EU legal system is incorporated into the Member State legal system, which means that EU laws apply and have a direct effect on Member States. Thus, Member States are not allowed to enact legislative measures restricting freedom of movement and of residence.

The EU Court of Justice applied the freedom of movement principle to an athlete in the important *Bosman* case. All regulations of sport federal entities trying to impose quotas on national teams or clubs are disputed because of this principle.

iii  **Employment rules of sports governing bodies**

Sports governing bodies have to apply French employment rules and regulations. Because of its protective role, French employment regulations are considered public policy rules, which means that they cannot be derogated from. As a consequence, a sport federation, association or corporation may not include in their employment contracts provisions that are inconsistent with French employment regulations, except if those provisions improve the employee’s rights.

Most sport federations make employment contracts templates available to their affiliates. Generally, employment contracts must be approved by the relevant governing body.

VI  **SPORTS AND ANTITRUST LAW**

Sport is not only a game, but is also a highly profitable economic activity, which implies the application of antitrust law. Moreover, given that each professional sport is governed by a federation, the latter is naturally in a position of monopoly. Hence, several antitrust law issues are applicable to sports organisations. French legal requirements regarding competition law are set out in the French Commercial Code and in the TFEU.

Two significant illustrations of application of competition law to sports are as follows. In the *Adidas* case, the LFP and Adidas were found liable for having entered into an exclusive agreement, owing, in particular, to the French league not marketing the rights through a call for tender and the duration of the agreement being excessively long (five years). The court decided it was contrary to competition laws.

A recent case also illustrated the complex issue of competition law in the commercialisation of broadcasting rights (in this case, the French Competition Authority decided that the practices of the Professional Rugby League were not contrary to competition laws because the audiovisual rights for rugby’s second division competition were not considered ‘premium rights’, likely to have effects on the audiovisual exploitation market). The process of sale of the rights and the duration of the broadcasting rights proposed must be analysed very carefully from an antitrust law perspective.

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27 Articles 101 and 102 of the TFEU.
28 Decision 97-D-71 of 7 October 1997 of the French Competition Authority.
29 Decision 16-D-04 of 23 March 2016 of the French Competition Authority relating to practices of Rugby Championship audiovisual rights marketing.
VII SPORTS AND TAXATION

For French individual residents, personal income tax is a general and progressive tax based on the tax household’s overall income. The rate of income tax currently ranges from zero per cent to 45 per cent, depending on the annual income.

For non-French individual residents, personal income tax may also potentially apply. Although French tax residents are taxed on their worldwide income, non-French residents are only taxed on their French sources of income, derived from professional activities, whether salaried or not, performed in France. Two types of income could be taxable in France as a result of a professional activity of a non-resident:

- professional profits: profits derived from non-commercial activities carried on in France by persons not domiciled in France are taxed according to the rules laid down for profits of the same kind received by persons domiciled in France; and
- wages and salaries paid in France to non-residents are subject to a 15 per cent withholding tax (increased to 75 per cent if paid to an athlete domiciled in a non-cooperative state or territory).

VIII SPECIFIC SPORTS ISSUES

i Doping

In 1965, France was one of the first countries to adopt an anti-doping legislation. Since then, French legislation has significantly increased and most of the applicable provisions are now codified in the French Sports Code.

Through its anti-doping regulations, France has always made prevention and medical follow-up of athletes a priority. Sports federations play a major role in the application of those rules and can impose disciplinary and administrative sanctions. The French Anti-Doping Agency was created in 2006, and was given many prerogatives, especially in the field of control, analysis and disciplinary proceedings.

Prohibited substances are listed by decree, which follows a list provided by the World Anti-Doping Agency. The use, offer, provision or administration of prohibited substances can lead to administrative, disciplinary and criminal sanctions (up to seven years of imprisonment and a €150,000 fine). An athlete’s refusal to submit to anti-doping control may also lead to criminal prosecution.

ii Betting

The French regulatory framework on betting varies depending on whether the betting is ‘online’ or ‘offline’.

Since 1933, the French public company La Française des Jeux has held a monopoly over the organisation and exploitation of sports betting and lotteries. This monopoly has been challenged multiple times, in particular by online betting operators.

Under the pressure of the European Commission, the French lawmaker amended its regulations with the law of 12 May 2010, which liberalised the online gambling market.

30 Law No. 65-412 of 1 June 1965 aiming to repress the use of stimulants during sports competitions.
33 Law No. 2010-476 of 12 May 2010 on the liberalisation of online gambling.
In accordance with this law, any operator offering online betting in France must be authorised by the French Online Gambling Regulatory Authority (ARJEL). The statute does not authorise all forms of bets; for instance, betting exchange or spread betting are prohibited. Moreover, sports bets are limited to the sports events set out in a limited list provided by ARJEL. \(^{34}\) Friendly national team events are excluded from this list, \(^{35}\) except in certain circumstances. \(^{36}\)

In addition, according to the French Sports Code, the above-mentioned organiser’s right on its competition includes the right to authorise bets on its competitions. \(^{37}\) Consequently, once certain online operators have been approved by ARJEL, they may enter into agreements with sports event organisers for the organisation of bets on this competition. These agreements generally include compensation provisions, in which the betting operator is compensated at approximately 1 per cent of the amount engaged in gambling. \(^{38}\) The agreement also provides for contractual obligations for the operator relating to anti-fraud detection and prevention. Further, to prevent conflicts of interest, the French Sports Code requires organisers to issue and impose regulations preventing players and related parties from betting on competitions in which they participate.

The French online betting sector is highly regulated.

### iii Manipulation

The French Sports Code and the French Criminal Code do not specifically address match-fixing. However, several provisions of the French Criminal Code incriminate acts of corruption committed by civil servants within their public office \(^{39}\) and by persons outside public functions. \(^{40}\)

Most importantly, the law of 1 February 2012, \(^{41}\) codified in French Criminal Code Articles 445-1-1 et seq., created the new offence of ‘betting fraud’, which criminalises the act of offering donations, gifts or other advantages to a person involved in a gambling activity to induce a positive act or omission modifying the normal course of the sports event. This illegal activity may lead to a sentence of up to five years’ imprisonment and a fine of €500,000 (or up to twice the profits generated). \(^{42}\)

### iv Grey market sales

The law of 12 March 2012 \(^{43}\) created the new offence of illegal resale of tickets to cultural or sports events. The new Article 313-6-2 of the French Criminal Code criminalises the regular and permanent resale of those tickets outside the channels usually established by the

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\(^{34}\) List on the website: www.arjel.fr.

\(^{35}\) Decision ARJEL No. 2015-043, 16 July 2015.

\(^{36}\) Decision ARJEL, No. 2010-050, 26 May 2011.


\(^{39}\) Article 432-11 of the French Criminal Code.

\(^{40}\) Article 445-1 of the French Criminal Code.

\(^{41}\) Law No. 2012-158 of 1 February 2012 aiming to reinforce sports ethics and sports people’s rights.

\(^{42}\) Article 445-2-1 of the French Criminal Code.

\(^{43}\) Law No. 2012-348 of 12 March 2012 aiming to facilitate the organisation of sport and cultural events.

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sports event organiser. Moreover, pursuant to Article L.333-1 of the French Sports Code, the organiser has the right to prohibit any resale of a ticket, which means that any resale of tickets without the prior approval of the organiser may also lead to civil sanctions.

For instance, in a dispute initiated by the FFF (other organisers such as the French Rugby Federation and the LFP did the same), French courts ordered the company Viagogo to cease the illegal resale of online tickets to sports events and held it liable to pay damages to the FFE.  

IX THE YEAR IN REVIEW

On 27 March 2018, the Parliament enacted a law regarding the organisation of the Olympic and Paralympic Games of 2024 in France. Among its provisions, this law extends the propriety of the Olympic symbols (emblem, flag, logo, etc.) to the National Olympic Committee (CNO) to reinforce the protection of these symbols and to ensure the protection of the rights and interests of the International Olympic Committee (CIO).

The CNO has entrusted the Organising Committee of the Olympic and Paralympic Games (COJO) with the organisation of the Olympic and Paralympic Games. The mission assigned to the COJO is very wide: in addition to, classically, ensuring the successful performance of the games and managing the needed infrastructure, the COJO will also be in charge of implementing a marketing programme during the Olympic and Paralympic Games, pursuant to the Host City Contract and the Joint Marketing Program Agreement signed by the CIO, the CNO and the COJO. From 1 January 2019 to 31 December 2024, the COJO is authorised to implement the marketing programme of the 2024 Olympic Games and has already published a call for tenders to choose an outfitter for all French Olympic teams during the games.

Recently, French lawmakers have also decided to review France’s anti-doping system in view of the 2024 Olympic and Paralympic Games. The government issued an act on 19 December 2018 that modifies the disciplinary proceeding as it, in particular, recognises the French Anti-Doping Agency as the unique competent body to issue disciplinary sanctions and allows international-level athletes to initiate action before the TAS.

X OUTLOOK AND CONCLUSIONS

French sports law is one of the most mature and well-established sports laws in Europe and worldwide. The legal protection accorded to the rights of organisers and its extensive application by the courts have contributed to a fast-growing and quality-oriented industry.

Some questions, in particular regarding new technologies, remain unanswered. The position of French courts is most certainly moving in the right direction, but with new technologies and, more generally, the digitalisation of the media, sports rights business models require improved legal protection.

44 Decision first instance court, 20 May 2014.
Chapter 8

GERMANY

Alexander Engelhard

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Organisational form

Sports clubs and sports governing bodies in Germany are traditionally organised in the form of (registered, non-profit) associations, according to Section 21 et seq. of the German Civil Code (BGB).

For an entity to qualify as an association, the following requirements must be fulfilled:

a at the time of its foundation, the entity must be a voluntary organisation of at least seven persons;

b it must have a certain purpose that is not only temporary and is independent from any change of members of the association;

c it must have a corporate structure and a name; and

d it must be registered in a register of associations at the local court.

If the above-mentioned requirements are met, an association has legal personality, meaning it can acquire rights and obligations under the law.

Entities involved in sports choose to be organised in the form of an association for various reasons, one being that an association is generally not dependent on a particular number of members. Financial risks for members are limited, since association members typically are not liable for debts accrued by an association. Moreover, association members are generally equal and have the same voting rights in an association's general assembly, which is its prime decision-making body.

1 Alexander Engelhard is a senior associate at Arnecke Sibeth Dabelstein. The author would like to thank Dr Dirk-Reiner Martens for his valuable contribution and guidance in co-authoring the original edition of this chapter.


3 Palandt, Bürgerliches Gesetzbuch: BGB, Section 21(1).

4 However, according to BGB, Section 73, the local court has to revoke the legal personality of an association if the number of members drops below three.

5 Exceptions apply in situations in which a member mixes association funds with his or her own funds and if the association is used in bad faith to escape personal liability. For more details, see Heermann, Haftung im Sport, Boorberg 2008, p. 95. See also Section I.iii.

6 According to BGB, Section 32, the affairs of an association, to the extent that they are not decided by the board or another organ of the association, are dealt with in a meeting of the members (i.e., the general assembly).
Under German law, associations enjoy a wide degree of autonomy to regulate their own affairs, including the right to draw up internal regulations and set up an internal dispute resolution mechanism. If organised as non-profit associations according to Section 51 of the German Internal Revenue Code (AO), associations enjoy certain tax benefits. To be recognised as non-profit associations, organisations can still engage in secondary commercial activities (renting a stadium, selling tickets to a sport event, etc.), the financial return from which must be used to fund their non-profit activities. However, if an association generates a profit through sponsorship and merchandising, it will regularly transfer its commercial activities to a separate (commercial) legal entity.

Because of this, since 1998, the German Football Association (DFB) has allowed clubs in the German Bundesliga to create commercial entities out of their professional football departments. Most of the clubs have taken advantage of this possibility and have transformed their professional football departments into stock corporations (e.g., FC Bayern Munich (not listed)), limited liability companies (e.g., Bayer 04 Leverkusen Fußball GmbH) or partnerships limited by shares with a limited liability company as general partner (e.g., Borussia Dortmund GmbH & Co KGaA (listed)).

ii Corporate governance

The corporate governance of sport organisations in Germany is not subject to any sport-specific national laws, but is upheld through the interaction of civil, public and criminal laws, and certain corporate governance guidelines of sport organisations such as the German Olympic Sports Confederation (DOSB).

The relevant civil laws include provisions on the internal structure of associations, their liability and that of their representatives. Public laws provide for rules demanding the selfless activity of associations, the use of funds only for statutory purposes and not for the benefit of an association’s officials, or that upon dissolution, the assets of an association may not be transferred to one of the association’s officials but will have to be used for a specified common public interest.

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8 Article 9 of the Basic Law for the Federal Republic of Germany provides for the freedom of association.
9 See Haas/Martens (footnote 2), p. 34.
10 For more details, see Lentze/Stopper, Handbuch Fußball-Recht, Erich Schmidt Verlag 2018, p. 971 et seq.
11 However, at the same time, provisions were put in place that required the majority of voting rights within such companies (i.e., more than 50 per cent) to be controlled by their parent member associations. For further information about the 50 + 1 rule, see Keidel/Engelhard, ‘Football club ownership in Germany – Less Romantic than You Might Think’, LawInSport.com, 20 July 2015 <www.lawinsport.com/articles/item/football-club-ownership-in-germany-less-romantic-than-you-might-think>; Rogers, ‘The Billionaires Are Coming for German Soccer’, Bloomberg, 22 March 2018 <www.bloomberg.com/news/articles/2018-03-22/billionaires-find-their-first-opening-to-german-soccer> (last visited on 28 October 2019).
12 For a recent assessment of the topic, see Punte, ‘Die Kapitalgesellschaft als (zwingernde) Rechtsform in deutschen Profifußball’, SpuRt 2/2017, p. 46.
13 The DOSB is a non-governmental umbrella organisation of German sport. It was founded in 2006 as a result of a merger of the German Sports Confederation and the National Olympic Committee for Germany. The DOSB has 98 member organisations, including 16 regional sports confederations, 63 national (sport-governing) federations and 20 sport associations with particular tasks. For more information, see www.dosb.de (last visited on 28 October 2019).

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Relevant criminal matters include:

a. insolvency offences (Section 283 et seq. of the Criminal Code (StGB) and Section 15a of the German Insolvency Code);
b. misrepresentation offences (e.g., Section 399 of the Stock Companies Act or Section 82 of the Limited Liability Company Act);
c. breach of fiduciary trust (Section 26, StG);
d. commercial bribery (Sections 299 and 300, StG);
e. public bribery (Section 331 et seq., StG);
f. tax fraud (Section 370, AO); and

g. illegal gambling (Section 284, StG) (see also Section VIII.ii).

Beyond the (general) legal framework set out above, the DOSB has passed the DOSB Good Governance Codex, the DOSB Code of Ethics and the DOSB Code of Conduct for Integrity in Federation Work. The DOSB Good Governance Codex contains binding rules on issues such as conflicts of interest and transparency, and is applicable to the DOSB organs. Compliance is supervised by the Good Governance Commissioner, who draws up an annual good governance report that is published on the DOSB website. The DOSB Code of Ethics claims to define the overall conduct and dealings within German sport and towards third parties. It is binding for volunteers, employees and members of the DOSB. Finally, the DOSB Code of Conduct for Integrity in Federation Work contains guidelines for the conduct of DOSB employees and volunteers in business dealings, including provisions on gifts, invitations, donations or the handling of public subsidies.

### iii Corporate liability

Associations are legally represented by their boards. If a board member, while acting for an association, causes damage to a third party, the association is liable for that damage according to Section 31 of the BGB. This liability towards third parties cannot be ruled out in the statutes of an association. Moreover, the Federal Supreme Court of Justice (BGH) has extended the liability of associations to acts committed by managers and officials who are not board members (or who are not authorised to act on behalf of an association) as long as they had a meaningful and independent role within an association.

The liability of an association does not supersede the liability of an individual committing an act that causes damage: the association and the individual will be jointly liable for that

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17 For more details, see Fritzweiler/Pfister/Summerer, Praxishandbuch Sportrecht, third edition 2014, p. 841 et seq.
18 The current editions of the DOSB governance regulations are available at <www.dosb.de/ueber-uns/good-governance> (last visited on 28 October 2019).
19 In the preamble to the Codex, the DOSB suggests that its member associations implement similar regulations concerning the good governance of their respective organisations.
20 When compared with other ethics regulations in sport (e.g., the FIFA Code of Ethics), it can be seen to contain hardly any concrete and enforceable rules of conduct, but rather touches mostly on soft issues such as tolerance, sustainability and participation.
21 For more details, see Heermann (footnote 6), p. 67.
22 ibid., at p. 77.
23 ibid., at p. 67; German Federal Supreme Court of Justice [BGH], judgment of 30 October 1967 – VII ZR82/65.
24 ibid., at p. 82.
Germany

II THE DISPUTE RESOLUTION SYSTEM

i Access to courts

As in many other legal systems, under German law, sports governing bodies are prohibited from preventing an athlete, club or other sports stakeholder from challenging a decision by a sports governing body before a state court or arbitral tribunal. However, the rules and regulations of a sports governing body may prevent direct appeals against first instance decisions before a state court or arbitral tribunal if the sports governing body has an internal appeals body that may rectify the first instance decision. In practice, internal challenges against first instance decisions by sport organisations are hugely important, not least because of the enormous number of first instance decisions produced by sports governing bodies each year.

As a result of this, an athlete or club intending to appeal a decision by a sports governing body before a state court or arbitral tribunal must in general exhaust all (internal) legal remedies available to it prior to the appeal. Sports governing bodies are allowed to set reasonable time limits regarding an internal appeal that, if not observed by the appellant, may lead to the appealed decision becoming final and binding. Only in rare circumstances may internal remedies be disregarded if an internal appeal would be unreasonable or a mere formality. This would be the case if the appeals body of a sports governing body declares that it will dismiss the appeal before the appeal proceedings have even started, if the appellant’s right to be heard is violated or if the appeal body is constituted in an improper way.

25 Regarding the internal relationship between an association and an individual who committed the act in question, the association will be able to recoup damages from the individual according to BGB, Section 840(2). However, BGB, Section 31a contains a liability privilege for an official towards the association and its members if an official earns less than €720 per year. In such a case, an official will only be liable if he or she acted intentionally or with gross negligence. See also Higher Regional Court [OLG] of Nuremberg, Order of 13 November 2015 – 12 W 1845/15.

26 For further examples, see Heermann (footnote 6), p. 83 et seq.

27 D&O liability insurance provides protection for managers and officials against claims that may arise from the decisions and actions they take within the scope of their regular duties. Intentional and grossly negligent (illegal) acts are typically not covered under D&O policies.

28 See Haas/Martens (footnote 2), p. 119. Any provision to the contrary in the rules and regulations of a sports governing body would be invalid.

29 Hilpert, Sportrecht und Sportrechtsprechung im In- und Ausland, De Gruyter 2007, p. 19. In German football alone, an estimated 400,000 first instance proceedings are conducted annually.

30 See Haas/Martens (footnote 2), p. 121.

31 ibid., at p. 121.
Once all (internal) legal remedies are exhausted, the question of whether a decision can be appealed before a state court depends on whether the parties have concluded a valid arbitration agreement. If an arbitration agreement does not exist or is invalid, or if a dispute is not arbitrable, an appeal may be brought before a state court.32

The scope of review conducted by a state court will typically encompass the following aspects:33

a. Was the athlete, club or other sports stakeholder covered by the scope of the governing body's jurisdiction and sanctioning regime?
b. Was there a sufficient legal basis for the decision contained in the rules and regulations of the sports governing body?34
c. Were the procedural rules of the sports governing body respected?
d. Were fundamental procedural rights observed?
e. Was the decision legal in view of higher-ranking legal principles?
f. Did the decision-making body establish accurately the facts that form the basis of the decision?
g. Was the decision legal in the sense that it was neither arbitrary nor unjust?

If the sports governing body in question can be considered a monopoly, the court will also assess whether the rules and regulations of the sports governing body itself are substantively adequate.35

Typical requests for relief brought before a state court include:
a. annulment of a disciplinary sanction;
b. annulment of a sporting result;
c. admission of an athlete or club into an association; and
d. (preliminary) admission of an athlete into a competition.36,37

ii. Sports arbitration

The legal framework applicable to arbitration proceedings conducted in Germany is set out in Section 1025 et seq. of the Code of Civil Procedure (ZPO).

32 Regarding the requirements for a valid arbitration agreement and the question of arbitrability, see Section II.ii.
33 See Fritzweiler/Pfister/Summerer (footnote 17), p. 276 et seq.
34 See, for instance, NJW-Aktuell 42/2016, p. 12. In 2016, the BGH held that the Regional Football Association of Northern Germany was not allowed to order the relegation of the club SV Wilhelmshaven, as there was no sufficient basis for such disciplinary sanction in the rules and regulations of the governing body, despite the fact that the club had violated the FIFA Regulations on the Status and Transfer of Players. For a critical analysis of the decision, see Orth, ‘Die Fußballwelt nach Wilhelmshaven’, SpuRt 2017, p. 9.
36 ibid., at p. 265.
37 A good example is the case of German triple jumper Charles Friedek, whose request for a (preliminary) nomination to participate in the 2008 Olympic Games was turned down by LG Frankfurt and OLG Frankfurt (OLG Frankfurt, judgment of 30 July 2008 – 4 W 58/08, NJW 2008, 2925). On 13 October 2015, the BGH held that Friedek was entitled to damages from the DOSB for not nominating him for the Games even though he had fulfilled the nomination criteria. The case was referred back to the previous instance for it to decide the amount of damages to be paid (BGH, judgment of 13 October 2015 – II ZR 23/14). In 2016, the parties concluded a settlement agreement.
Section 1031 of the ZPO provides that the parties need to agree to arbitration in writing, either in a document signed by both parties or by making reference in a contract to a document containing an arbitration clause. The arbitration agreement must be sufficiently clear as to the scope of disputes that shall be submitted to arbitration.

An arbitration clause may also be contained in the statutes of an association. One of the issues in this regard is that the arbitration agreement contained in the statutes of an association is usually not entered into voluntarily by the athletes or clubs affected by it. The argument was raised in the fiercely debated case of German speed skater Claudia Pechstein, who was seeking damages before a German state court against the International Skating Union (ISU) after she had been banned for doping by the governing body and had lost subsequent proceedings before the Court of Arbitration for Sport (CAS) in Lausanne and the Swiss Federal Tribunal. In 2016, the BGH confirmed that, in sports matters, the need for international uniformity of decisions trumps the requirement for a ‘voluntary’ arbitration agreement.

Sports disputes are arbitrable, according to Section 1030 of the ZPO, as long as they concern pecuniary matters. Labour law-related disputes, for instance between a player and his or her club, are generally not arbitrable under German law. Because the relationship between athletes in non-team sports and sports governing bodies rarely qualifies as an employment relationship, disputes between athletes and sports governing bodies are usually arbitrable.

A sports governing body is generally prohibited from excluding the right of an athlete or club to (also) seek preliminary measures before a state court. Only in those cases where the arbitral tribunal can provide the same degree of legal protection (with regard to preliminary measures) as a state court may the arbitral rules prohibit resort to a state court for preliminary measures. This is the case, for instance, with regard to the German Court of Arbitration for Sport (DIS-Sport), a division of the German Institution for Arbitration (DIS), which has a roster of arbitrators on call any day of the week.

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38 The ZPO provides in Section 1031 that an arbitration agreement in which a consumer is involved must be contained in a record or document signed by the parties. This is the case if the arbitration agreement relates to neither a commercial nor a self-employed activity of the athlete.

39 ZPO, Section 1066; see also Musielak/Voit, ZPO Zivilprozessordnung, 12th edition 2015, Paragraph 7. The arbitration clause must be contained in the statutes (and not in other (lower-ranking) regulations) of the association. Non-members are generally not bound by the arbitration clause in the statutes even if the association and the non-member conclude a contract that refers to the arbitration clause in the statutes.


41 The term ‘pecuniary matter’ must be interpreted in a wider sense, and includes claims for admission into a competition if the monetary interests of the athlete or club are also affected. Antitrust issues are also arbitrable.

42 Labour Court Act, Sections 4 and 101.

43 See Haas/Martens (footnote 2), p. 133.

44 ibid., p. 134.
The DIS-Sport,\textsuperscript{45} which is the most important sports arbitral tribunal in Germany, was founded in 2008. It is based on a joint initiative of the German National Anti-Doping Agency (NADA) and the DIS. Disputes before the DIS-Sport include:
\begin{enumerate}
\item breaches of anti-doping rules;
\item disputes arising in the context of sports events;
\item transfer disputes;
\item disputes regarding licensing and sponsoring agreements; and
\item membership disputes.
\end{enumerate} The DIS-Sport may decide cases as a first instance tribunal or on appeal against a previous decision by a sports governing body, provided that the association has implemented a corresponding arbitration clause in its statutes.\textsuperscript{46} In disputes regarding a breach of anti-doping rules, the DIS-Sport Arbitration Rules provide for a review of an arbitral award by the CAS.

\section*{iii Enforceability}
An arbitral award has the same effect as a final and binding judgment by a state court, and enforcement requires the arbitral award to be declared enforceable by a state court.\textsuperscript{47} The recognition and enforcement of foreign arbitral awards is governed by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Note that disciplinary (doping) decisions of an arbitral tribunal are generally ‘self-enforcing’, in that the sports governing body has the power to ensure that banned athletes are prevented from competing.

Arbitral awards may be challenged by means of an annulment claim.\textsuperscript{48} The reasons for annulment according to Section 1059 of the ZPO are limited primarily to procedural issues. An appeal that the award is ‘wrong’ will not be heard.

\section*{III ORGANISATION OF SPORTS EVENTS}
\subsection*{i Relationship between organiser and spectator}
The legal relationship between an organiser and a spectator is not subject to any sport-specific national laws, but rather to the law of the land, and is primarily defined by the ticketing contract concluded between the parties.\textsuperscript{49} Apart from the general rights and obligations of the parties (the ticket holder being entitled to enter the venue and to follow the sports event from his or her assigned seat; the event organiser being entitled to receive the purchase price for the ticket), the ticketing contract will contain certain terms and conditions. The exact content of

\begin{footnotesize}
\begin{enumerate}
\item The DIS-Sport is currently recognised by 50 German sports governing bodies, including the German Basketball Federation and the German Athletics Federation. For further information about the DIS-Sport, go to www.dis-arb.de/em/57/content/about-the-dis-id46 (last visited on 28 October 2019). The information provided by the National Anti-Doping Agency, go to <www.nada.de/fileadmin/user_upload/nada/Recht/Sportgerichtsbarkeit/Verbandsgerichtsbarkeit_und_Sportschiedsgerichtsbarkeit.pdf> (last visited on 28 October 2019).
\item DIS-Sport Arbitration Rules, Section 1.
\item ZPO, Sections 1055 and 1060.
\item See Haas/Martens (footnote 2), p. 123.
\item For further details regarding ticketing, see Lentze/Stopper (footnote 10), p. 1141 ff.
\end{enumerate}
\end{footnotesize}
the terms and conditions will depend on the type of ticket that is purchased (e.g., match-day or season ticket), but will usually include limitations on ticket transfers, liability and security, as well as filming and photography.

To validly include the organiser’s terms and conditions in the ticketing contract, they must be brought to the attention of the purchaser before the ticket is bought.\(^{50}\) Thus, printing the terms and conditions on the back of the ticket does not suffice if the ticket is handed out to the purchaser only after the ticketing contract is concluded. As a rule, a clearly visible notice about the terms and conditions at the place of purchase is required, or if the ticket is purchased online, the customer must agree to the terms and conditions prior to making the purchase.\(^{51}\)

For security reasons, to ensure a widespread supply of tickets, and to prevent black-market trading and ticket speculations, organisers will regularly include a clause in the ticketing terms and conditions that allows ticket purchases for private use only.\(^{52}\)

Regarding liability, the organiser will usually include a clause in the ticketing terms and conditions that will limit its liability, and that of its legal representatives or agents, to damage caused by intent or gross negligence.\(^{53}\) However, damage to life, physical integrity or health, and damage under product liability law or owing to fraudulent misrepresentation, will remain unaffected. Furthermore, the spectator will usually be prohibited from bringing fireworks, bottles, cans, intoxicants or pets into the stadium.\(^{54}\)

Finally, the organiser will also stipulate in the ticketing terms and conditions that the use of cameras and other picture and film recording devices (e.g., smartphones) for commercial purposes is prohibited. At the same time, a spectator will consent to the free use of his or her image and voice in any type of media (e.g., for photographs, live broadcasts or other recordings by the organiser (or its agent) created in connection with the event).

### ii Relationship between organiser and athletes or clubs

In Germany, the legal relationship between an organiser and an athlete or club is not subject to any sport-specific national laws. It can either be defined by membership (if the organiser is an association of which the athlete or club is a direct member) or through a licence or another private agreement between the parties.

Because professional athletes or clubs are often not direct members of the organiser (if indirect members, a mere reference to the rules and regulations of a higher ranking governing body can be problematic),\(^{55}\) the athlete or club must submit to the rules and regulations of the organiser either by applying for and receiving a licence to participate in a certain competition or by concluding a participation agreement with the organiser.\(^{56}\) The BGH has decided that Section 305 et seq. of the BGB (which regulate the inclusion of terms and conditions into

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50 BGB, Section 305.
51 See Lentze/Stopper (footnote 10), p. 1160.
52 For details, see Section VIII.iv.
53 In the case of a negligent breach of a principal obligation under the ticketing contract, liability will usually be limited to foreseeable damage, while in the case of a negligent breach of a secondary or collateral obligation, liability will be excluded entirely.
54 See also Section III.v.
55 Unlike Swiss law, German law generally prohibits ‘dynamic’ referencing to future editions of the rules and regulations of another (higher-ranking) sports governing body. See Haas/Martens (footnote 2), p. 70.
56 ibid., at p. 66 et seq.
private agreements) do not apply to agreements by which an athlete submits to the rules and regulations of a sports association. It is sufficient that the applicable rules and regulations are provided to the athlete upon request.

As an example, German Olympic athletes had to sign the DOSB Athletes Agreement ahead of the 2016 Rio Olympic Games, as well as the International Olympic Committee entry form, and eligibility conditions that, inter alia, also contained an arbitration agreement in favour of CAS.

Professional clubs usually submit to the regulations and the disciplinary powers of a sports governing body (e.g., a league) by concluding a licensing agreement with the governing body. Typical licensing criteria will include sporting, legal, personnel and administrative, infrastructure and security, and media and financial aspects.

iii Liability of the organiser

An organiser may be liable not only towards its contractual partners (including athletes and spectators) but also towards third parties under the general rules of German civil law. The relevant statutory provisions, the application of which may be influenced by disclaimers contained in athlete agreements, ticketing terms and conditions or other types of agreements, relate to, inter alia, Section 280 et seq. of the BGB (damages for breach of contract) and Section 823 et seq. of the BGB (damages for unlawful conduct).

Besides claiming damages (which are generally restricted to compensation without the possibility of claiming punitive damages), an injured person may also seek injunctive relief against a continued violation of his or her rights.

The most relevant criminal provisions applicable to organisers are set forth in the StGB and include Section 223 et seq. (causing bodily harm), Section 229 (involuntary or negligent bodily harm), Section 212 (manslaughter) and Section 222 (involuntary or negligent manslaughter). The criminal offences set forth in Sections 223 and 229 usually

58 If the rules are changed by the organiser during the term of the contract, the athlete has the right to withdraw from the contract if the change appears inappropriate and unacceptable. See Haas/Martens (footnote 2), p. 75.
59 The DOSB Athletes Agreement for the 2016 Rio Olympic Games contained, inter alia, the following obligations for athletes: (1) recognition of the World Anti-Doping Code, the National Anti-Doping Code, the Olympic Charter, and other regulations and fundamental documents; (2) acknowledgement of team orders and the DOSB’s sole responsibility to nominate athletes; (3) acceptance of the DOSB dress code and the obligation to wear sponsor-related attire without changing or blocking any of the sponsors’ logos, subject to a contractual penalty; and (4) acknowledgement of the rules on advertisements in the Olympic Charter and the prohibition of any form of advertising during the Games. The DOSB Athletes Agreement for the 2016 Rio Olympic Games is available at https://cdn.dosb.de/alter_Datenbestand/Bilder_allgemein/Veranstaltungen/Rio_2016/RIO_2016_Athletenvereinbarung_beschlossen_am_12.04.2016.pdf (last visited on 28 October 2019).
60 For more information on club licensing in the Bundesliga, see Lentze/Stopper (footnote 10), p. 863 et seq.
61 For more details on the civil liability of the organiser, see Heermann (footnote 6), p. 154 et seq.
63 BGB, Section 249.
64 See Heermann (footnote 6), p. 53.
65 District Court [AG] Garmisch-Partenkirchen, judgment of 1 December 2009 – 3 Cs 11 Js 24093/08 (Zugspitz-Lauf). In this case, the court found that the organiser of an extreme run up Germany’s highest
require a complaint by the victim for a prosecution to be initiated. However, the prosecution service may also initiate an investigation *ex officio* when there is sufficient public interest in the prosecution.

iv Liability of the athletes

The explanations and provisions set out in Section III.iii regarding the liability of the organiser also apply with regard to the liability of athletes, particularly Section 823(1) of the BGB (or Section 280 in the context of a contractual agreement) and Sections 223 and 229 of the StGB. From a civil and criminal law perspective, athletes must respect a general duty of care when practising their sport, be it in a competition or in training.

A definition of the duty of care to be observed in an individual case will be based on the rules of the game of the respective sport.66 Courts will use the rules of the game as a foundation when assessing whether a certain conduct was illegal and culpable. If an athlete complies with the rules of his or her sport but nevertheless injures another athlete, the athlete will usually not be liable for any damage caused. In addition, in cases of only a slight violation of the rules of the game, liability will most often be denied. Courts will assess whether, in that particular moment, the athlete could have reasonably avoided the danger created for another athlete or third party. With regard to high-risk sports, including boxing and other combat sports, liability is regularly denied not only in cases of compliance with the rules of the game but even in cases of slight negligence.67 This far-reaching exemption from liability is justified by the fact that the injured person in general agrees to the dangers and injuries inherent in that particular sport, or that the injured person acted at his or her own risk.

If an athlete is liable and has to pay compensation, he or she must restore the position that would have existed if the circumstance obliging him or her to pay damages had not occurred.68 This may include lost earnings and a moderate compensation for non-material damage (i.e., pain and suffering). When allocating the amount of compensation, any contributory negligence of the injured person will be taken into account.

v Liability of the spectators

The relevant statutory provisions concerning the liability of spectators can be found in Section 823(1) of the BGB (or in Section 280 if the spectator violates obligations under the ticketing contract), and Sections 223 and 229 of the StGB. If spectators invade the field of play, throw objects at athletes or physically assault athletes, they are generally liable and will have to pay compensation for damage caused according to Section 280 or 823(1) of the BGB, or both. A spectator cannot rely on the specific nature of sport in arguing that his or her conduct was not illegal or culpable, because spectators must behave in a way that does

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66 See Haas-Martens (footnote 2), p. 179. If the sport does not provide for rules regarding on-field conduct, the duty of care is defined by comparing the conduct in question with that applied by a conscientious and considerate athlete.

67 ibid., at p. 183.

68 BGB, Section 249.
not increase risks for athletes in addition to those inherent in the sport itself. The liability of spectators also extends to violations of property rights, personality rights and other rights protected under Section 823(1) of the BGB.

If a particular perpetrator cannot be identified from a specific group of spectators, Section 830(1) of the BGB provides that each of the persons involved will be liable for the damage caused. A form of joint liability can even be found in criminal law, in Section 231 of the StGB, which allows punishment of a person for taking part in a brawl, for or an attack committed against one person by more than one person if the death of a person or his or her grievous bodily harm (Section 226, StGB) is caused by that brawl or attack. Violations of Section 231 of the StGB will be prosecuted ex officio.

vi Riot prevention

German law does not provide for any sport-specific national laws to prevent riots. The topic is generally dealt with under German public law, in particular, police law. In this context, in 2016, ahead of a Bundesliga match between rival clubs SV Darmstadt 98 and Eintracht Frankfurt, an order by the public authorities in Darmstadt, an order by the public authorities in Darmstadt, which banned fans of the opposing team from entering certain parts of the city on match day, was annulled by the public court in Darmstadt for being too vague and disproportionate.

There has been a debate in Germany about whether professional football clubs or the football league should be held liable for the costs of police operations in connection with Bundesliga games. The debate was caused by a change in the state law of Bremen, according to which costs for police operations can be claimed from the person or entity (e.g., an event organiser) in whose interest the operation took place. The change in the law had been criticised for several legal and practical reasons. Eventually, in March 2019, the Federal Administrative Court confirmed the legality of the new law. Accordingly, the state may claim back costs for police operations from event organisers, provided the costs are reasonable and are not charged to the event organiser and individual perpetrators (e.g., rioting fans) at the same time.

In football, the rules and regulations of the DFB show a twofold approach: the DFB obliges Bundesliga clubs to employ fan commissioners and subsidises several fan projects. On the other hand, Section 9a of the DFB Legal and Procedural Rules provides for the strict

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70 ibid., at p. 225.
71 Local Administrative Court [VG] of Darmstadt, Order of 28 April 2016 – 3 L 642/16.
72 Section 4 Fees and Contributions Act (Bremen).
73 For more information, see Böhm, 'Polizeikosten bei Fußballspielen', NJW 2015, p. 3000; Klein, 'Fußballveranstaltungen und Polizeikosten – Die Verfassungsmäßigkeit einer kostenrechtlichen lex-Fußball in Bremen', DBO 5/2015, p. 275.
75 Section 5(1)(i) of the League Statute.
liability of clubs for the behaviour of their supporters and spectators. The rules go as far as to provide that both the home club and the away club are responsible for incidents of any kind in the stadium area before, during and after the game.

Under German law, clubs that are subject to a financial sanction on the basis of Section 9a of the DFB Disciplinary Code because of rioting spectators are able to take recourse against those spectators. The BGH held that spectators have a legal obligation not to interfere in the course of a sporting event. If, for example, a spectator violates that obligation by throwing a firecracker into the stands and injuring several people, that spectator is liable for the damage caused, including a foreseeable financial sanction imposed on the responsible club pursuant to the applicable disciplinary regulations. It must clearly be proven that a spectator is guilty of the alleged misconduct; more precisely, the club cannot take recourse against a spectator if it is not entirely clear that the spectator committed the offence in question.

Finally, the DFB also provides Guidelines for the Consistent Application of Stadium Bans. In this regard, the Federal Constitutional Court has confirmed that a club may impose a nationwide stadium ban against a rioting spectator on the basis of objective facts, if there is a risk that the person in question may engage in misconduct again in the future.

IV COMMERCIALISATION OF SPORTS EVENTS

i Types of and ownership in rights

German law does not recognise a specific sports organiser right per se. It also does not recognise genuine broadcasting, sponsorship or merchandising rights. The question of whether, in what form and to what extent such rights exist, and to whom they belong, let alone how they might be transferred, is extremely difficult to answer. In the end, an organiser will have to rely on several different laws and rights to protect its event and investments.

Of central importance is the ‘house right’ set forth in Sections 858 and 903 BGB. Usually, the organiser of a sporting event is able to exercise the house right regarding the venue where the event is held, either because it owns the venue (e.g., a stadium or an arena).

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76 For more information, see Haslinger, Zuschauerausschreitungen und Verbandsanleitungen im Fußball, Nomos 2010.
77 BGH, judgment of 22 September 2016 – VII ZR 14/16 overturning OLG Cologne, judgment of 17 December 2015 – 7 U 54/15. The case was referred back to the previous instance, which decided in 2017 that the damages to be paid by the spectator needed to correlate with his actual causal contribution to the financial sanction of the sports governing body against the club (OLG Cologne, judgment of 9 March 2017 – 7 U 54/15). For a detailed analysis, see Scheuch, ‘Regress gegen einzelne Störer nach Verurteilung zu einer Verbandsstrafstrafe’, SpuRt 4/2017, p. 137.
78 LG Karlsruhe, judgment of 29 May 2012 – 8 O 78/12.
79 See ‘Richtlinien zur einheitlichen Behandlung von Stadionverbote’ <www.dfb.de/verbandservice/pinnwand/stadionverbote-richtlinien> (last visited on 28 October 2019).
80 OLG Frankfurt am Main, judgment of 7 September 2017 – 1 U 175/16; for more information, see Staake, ‘Stadionverbote und Grundrechtsschutz’, SpuRt 2018, p. 138; Constitutional Court, judgment of 11 April 2018 – 1 – BvR 3080/09.
81 For more information, see the legal opinion of Hilty/Henning-Bodewig, Leistungsschutzrechte zugunsten von Sportveranstaltern?, Boorberg 2007. For a more recent assessment on the implementation of a sports organiser’s right, see Heermann, ‘Neues zum Leistungsschutzrecht für Sportveranstalter’, GRUR 2015, p. 232.
82 See also BGB, Sections 859, 862 and 1004.
or because the venue owner has transferred the house right to the organiser for the time of the event. The house right allows the organiser to exclude unauthorised persons or media from the venue or to allow entry subject to specific contractual conditions. Other important rights derive from copyright law, competition law, trademark law and tort law.

With regard to transfer rights in team sports, these mainly derive from an existing employment relationship between a player and his or her club, and the protection of this contractual relationship under the law and relevant regulations of sports governing bodies.83

ii Rights protection

The difficulty of the protection of rights of a sports organiser under German law can be explained using the example of broadcasting rights.84 In view of the absence of a genuine broadcasting right, the protection thereof derives from the house right, as well as copyright law, competition law and tort law principles.

House right

As has been mentioned, this right allows the organiser to regulate access to a venue in relation to spectators and third parties (including radio and television broadcasters).85 In a broadcasting deal, the organiser will waive its house right in relation to the broadcaster for the latter to produce a live feed from the sporting event in return for a fee paid by the broadcaster to the organiser. However, property rights cannot sufficiently prevent unauthorised filming of a sporting event from outside the venue (e.g., a high building next to the stadium or a drone).

Copyright law

Sporting events under German law are generally not protected by copyright law because they are not considered personal intellectual creations (Section 2(2) of the Copyright Act (UrhG)). In addition, organisers and athletes are not protected by copyright law (Sections 73 and 81 of the UrhG are not applicable). Athletes are not considered theatrical performers. Rarely are they protected by the right to control their own image, because they are public figures in the sense of Sections 22 and 23 of the Art Copyright Act. Section 94 of the UrhG protects at least the (host) broadcaster once it delivers or has delivered the pictures of a sporting event.86 Section 87(1) of the UrhG protects the television channel that is airing the broadcast.87

83 For example, FIFA Regulations on the Status and Transfer of Player, Article 13 et seq.
84 For more information on German law regarding broadcasting rights, see Lentze/Stopper (footnote 10), p. 51 et seq.
85 BGH, judgment of 8 November 2005 – KZR 37/03, NJW 2006, p. 377 (Hörfunkrechte). In 2017, OLG Munich held that the Bavarian Football Association was allowed to exclude third parties from filming amateur football matches, or admitting them subject to payment of a fee, based on the house right (OLG Munich, judgment of 23 March 2017 – U 3702/16 Kart). For an analysis of the decision, see Reinholz, ‘Münchner “Bewegtbildurteil”: Kein Fall Hartplatzhelden II’, Causa Sport, 2/2017, p. 138.
86 See Lentze/Stopper (footnote 10), p. 56.
87 ibid.
**Competition law**

The Act against Unfair Competition (UWG) prohibits certain trade practices that are considered unfair, such as exploiting or taking credit for somebody else’s work. The BGH has considered that Section 3 of the UWG could prevent third parties from unauthorised filming and broadcasting of a sporting event.88

**Tort law**

It has also been suggested that the organiser of a sporting event who has made a considerable investment to hold a sporting event, or an athlete who has invested a lot in training, enjoy protection under Section 823(1) of the BGB against the unpaid exploitation of their investment.89

**iii Contractual provisions for exploitation of rights**

Contracts in the field of sports rights are manifold. It is indispensable for a sports rights holder to stipulate the rights that are transferred to a licensee diligently. At the same time, it is essential also to properly structure and manage all rights contracts to avoid conflicting rights deals and tap the full commercial potential of the rights holder.

As to the content of sports rights contracts, parties are generally free to agree upon the relevant rights and obligations. Limits to the parties’ contractual freedom are merely provided by certain legal prohibitions (Section 134, BGB) or public policy (Section 138, BGB).

Taking broadcasting as an example, the main obligation of an organiser will be to grant complete access to the venue to the broadcaster for all contractual purposes. In return, the licensee (i.e., the broadcaster) will pay a licensing fee. Other relevant items in a broadcasting agreement will deal, inter alia, with:

- exclusivity;
- sub-licensing;
- territory;
- production;
- duty to broadcast;
- contract duration and termination; and
- warranty and indemnification.90

Statutory provisions that need to be observed in sports broadcasting contracts include those of German and European antitrust law, especially Article 101 of the Treaty on the Functioning of the European Union (TFEU). In today’s converged media landscape, broadcasting rights

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88 BGH, judgment of 28 October 2008 – I ZR 60/09, GRUR 2011, p. 426 (Hartplatzhelden.de).
89 See Lentze/Stopper (footnote 10, above), p. 68.
90 Schwartmann, *Praxishandbuch Medien-, IT- und Urheberrecht*, CF Müller 2011, p. 426 et seq.; see also Lentze/Stopper (footnote 10), p. 80 et seq. or Fritzweiler/Pfister/Summerer (footnote 17, above), p. 455 et seq.
and other media rights will usually be split up into different rights packages to meet antitrust obligations.\(^{91}\) Other relevant norms include the right to produce short news extracts\(^{92}\) in Section 5 of the Interstate Broadcasting Treaty or Section 4 thereof regarding ‘listed events’.\(^{93}\)

### V PROFESSIONAL SPORTS AND LABOUR LAW

#### i Mandatory provisions

Employment relationships in sport are subject to the general rules of German labour law, including the following noteworthy provisions.

\(a\) Section 611 of the BGB, Articles 1 and 2 of the Basic Law for the Federal Republic of Germany: an athlete has a right to play and train according to the terms of his or her employment contract. Degradation of a first-team player to the reserves or to a separate training group is most likely unlawful unless provided otherwise in the contract.\(^{94}\)

\(b\) Section 616 of the BGB: an athlete can claim his or her salary although temporarily unfit to play because of injury. Details are set out in the Continued Remuneration Act.

\(c\) Section 1 of the Federal Holiday Act: an athlete has a right to at least 24 business days of paid leave during the calendar year.\(^{95}\)

\(d\) Section 14 et seq. of the Act on Part-Time Work and Fixed-Term Employment Contracts (TzBfG): fixed-term contracts are only permissible if justified by an objective reason; otherwise, fixed-term contracts are only acceptable for up to two years. Moreover, a fixed-term contract may not be renewed more than three times. Nevertheless, athletes’ and coaches’ contracts can be for a fixed term because of the specificities of sport, including the necessity for clubs to restructure a team after each season. Accordingly, a controversial decision by the Labour Court of Mainz that a 36-year-old goalkeeper should be reinstated permanently with his former club, after the Court had found

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\(^{91}\) For more information, see ibid., at p. 414 et seq.; also the Federal Cartel Office, decision of 12 January 2012 – B 6-114/10. For an assessment of the latest Bundesliga TV rights deal, see Keidel/Engelhard, ‘How the Bundesliga’s new “no single buyer” rule has increased the broadcasting revenue for German football’, LawInSport.com, 14 October 2016 <www.lawinsport.com/articles/item/how-the-bundesliga-s-new-no-single-buyer-rule-has-increased-the-broadcasting-revenue-for-german-football> (last visited on 28 October 2019).


\(^{93}\) Listed events are major sport events that need to be broadcast on free television. In Germany, the list includes: (1) Summer and Winter Olympic Games; (2) the German national team’s games in the FIFA World Cup and the UEFA Euro; (3) the semi-finals and final of the FIFA World Cup and the UEFA Euro, irrespective of the participation of the German national team; (4) the semi-finals and final of the German Football Association [DFB] Cup; (5) home and away games involving the German national football team; and (6) the finals of the European club competitions (i.e., UEFA Champions League and UEFA Europa League) if a German team is playing.


\(^{95}\) Regarding the time when an athlete is able to take leave, the template DFB player contract provides that leave shall only be taken during the period in which no competitive matches are taking place, and shall always require the club’s prior express approval. An English version of the template employment contract for footballers provided by the DFB is at <www.dfb.de/fileadmin/_dfbdam/31698-Mustervertrag_Vertragsspieler_englisch__07.2014_.pdf> (last visited on 28 October 2019).
that the specificity of sport was insufficient to justify the fixed-term contract with the player, was overturned on appeal in 2016 and confirmed by the Federal Labour Court in 2018.  

96 Section 15 of the TzBfG: under German law, (justified) fixed-term contracts are valid for a duration of up to five years. This also applies to fixed-term contracts with unilateral extension options, which are generally legal under German law. While a labour court in Ulm held in 2008 that a unilateral extension option in a player contract was invalid because it would constitute an excessive commitment for the player, the Federal Labour Court in 2013 held that a youth player’s four-year fixed-term contract with a one-year unilateral extension option was valid under German law.

97 Section 626 of the BGB: a party to an employment contract (permanent or fixed-term) may terminate said contract unilaterally (without a required notice period) if there is a compelling reason, meaning that the party terminating the contract cannot reasonably be expected to continue the employment relationship.

98 ArbG Ulm, judgment of 14 November 2008 – 3 Ca 244/08.

99 BAG, judgment of 25 April 2013, 8 AZR 453/12.

100 Court of Justice of the European Union [CJEU], judgment of 15 December 1995 – C-415/93 (Bosman).  

101 See Fritzweiler/Pfister/Summerer (footnote 17), at p. 729.

102 Locally trained players are either trained ‘by the club’ or ‘by the federation’. A player trained by the club is a player who, in three seasons or years between the ages of 15 and 21, was eligible to play for the club. A player trained by the federation is a player who, in three seasons or years between the ages of 15 and 21, was eligible to play for a club affiliated to the DFB.

Other German league sports, including basketball and handball, have also dropped foreign player rules, while the clubs of the professional ice hockey league, DEL, have agreed not to register more than nine foreign players per season. The German Basketball League has introduced a domestic player rule that every team needs to have at least six German players on its squad.\textsuperscript{104}

iii Application of employment rules of sports governing bodies

German law generally allows that employment-related provisions in the statutes or regulations of (international) sports governing bodies be incorporated into employment agreements with athletes.

In football player contracts, for instance, the parties will make reference to the statutes, rules and regulations of the DFB, and will accept to submit to the decisions and the jurisdiction of the DFB and the league. Furthermore, players are also asked to acknowledge as binding the anti-doping regulations issued by the DFB, UEFA and FIFA as well as the World Anti-Doping Agency and NADA Codes.

It should be noted that in those sports in which a player must obtain a playing licence to participate in league competition, the revocation of said licence does not per se affect the validity of the employment contract.\textsuperscript{105}

VI SPORTS AND ANTITRUST LAW

Besides the relevance of antitrust law regarding broadcasting rights (see Section IV.iii), antitrust law plays an increasingly important role in sport in general.\textsuperscript{106}

The purpose of German and European antitrust law is to protect competition against market restrictions caused by undertakings or associations of undertakings (including sports governing bodies). It does so by prohibiting the abuse of a dominant market position (Section 18 et seq., Competition Act; Article 102, TFEU) and prohibiting restrictive behaviour between undertakings (Section 1, Competition Act; Article 101, TFEU). Infringements of antitrust laws can lead to fines and compensation claims. In addition, the Federal Cartel Office or the European Commission may prohibit the conclusion of a respective agreement altogether. Finally, agreements or statutes infringing antitrust law are also invalid according to Article 101(2) of the TFEU and Section 134 of the BGB.\textsuperscript{107}

The Higher Regional Court in Frankfurt (OLG Frankfurt) confirmed again in 2016 that the conduct of sports governing bodies falls within the scope of Article 101(1) of the TFEU if it does relate to an economic activity and not merely to the practice of sport. If such


\textsuperscript{105} See Fritzweiler/Pfister/Summerer (footnote 17), p. 302.

\textsuperscript{106} For an overview of antitrust law issues regarding sport in Germany, see Stancke, ‘Pechstein und der aktuelle Stand des Sportkartellrechts’, \textit{Spur} 2015, p. 46; Stopper, ‘Sportkartellrecht im Wirtschaftskartellrecht’, \textit{Spur} 5/2018, p. 190.

\textsuperscript{107} Stancke (footnote 106), p. 46.

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conduct has a restrictive effect in a specific market, the question is whether it is necessary and proportionate, and, in particular, whether it is appropriate for the purpose of protecting the integrity and functioning of the respective sporting competition.\textsuperscript{108}

In the much-debated decision of the OLG of Munich in the \textit{Pechstein} case,\textsuperscript{109} the judges had held that the arbitration agreement between Pechstein and the International Skating Union (ISU) was invalid because the ISU – having a monopoly on the market for speed skating competitions – had abused its market power by requiring the athlete to consent to an arbitration agreement in favour of the CAS, because the latter operated on a closed list of arbitrators appointed by the International Council of Arbitration for Sport (ICAS), a body dominated by representatives of sports associations.\textsuperscript{110} In 2016, the decision was ultimately overturned by the BGH, which found that the CAS was a ‘genuine’ court of arbitration and that the CAS Code contained sufficient guarantees for preserving the rights of athletes even if arbitrators had to be selected by the parties from a closed list prepared by the ICAS.\textsuperscript{111} According to the BGH, the influence of sports federations did not reach a degree that the federations had a controlling influence over the composition of the list of arbitrators.\textsuperscript{112}

Antitrust law has been applied increasingly in sports disputes in Germany, including a case between handball clubs and the International Handball Federation and the German Handball Federation regarding player release rules, or the dispute between basketball clubs and the International Basketball Federation (FIBA) and FIBA Europe regarding sanctions in connection with the participation of clubs in the Euroleague.\textsuperscript{113} In 2017, the Regional Court of Düsseldorf (LG Düsseldorf) found that sanctions imposed against two amateur bridge players by the World Bridge Federation and the German Bridge Federation were invalid because they violated German antitrust law.\textsuperscript{114} On appeal, OLG Düsseldorf upheld the ruling on the invalidity of the sanction but refrained from assessing the case based on antitrust law, circumventing the question of whether antitrust law was applicable in a case of amateur players.\textsuperscript{115}

\begin{footnotes}
\item[108] OLG Frankfurt, judgment of 2 February 2016 – 11 U 70/15 (Kart).
\item[110] ibid., at p 44. Regarding the criticism raised against the Court of Arbitration in Sport [CAS], see Duve/Troshchenovych, ‘Seven steps to reforming the Court of Arbitration for Sport’, \textit{World Sports Law Report}, Vol. 13, Issue 4, April 2015. The Court’s approach to assess the arbitration agreement in light of antitrust law had been criticised for different reasons. See, for instance, Duve/Rösch, ‘Ist das deutsche Kartellrecht mehr wert als alle Olympiasiege?’, \textit{SchiedsVZ} 2015, p. 69.
\item[112] Also, according to the BGH, the list of arbitrators did include a sufficient number of neutral persons who were independent. Finally, the BGH held that sports federations and athletes were generally not in opposing ‘camps’ guided by opposing interests in the fight against doping in sport. In 2017, the CAS was described as an ‘independent and neutral institution’ by OLG Frankfurt in its judgment of 21 December 2017 (11 U 26/17 (Kart)).
\item[113] See, for instance, LG Dortmund, judgment of 14 May 2014 – 8 O 46/13; OLG Düsseldorf, judgment of 15 July 2015 – VI-U (Kart) 13/14; LG Munich, 1 HK O 8126/16. Also, antitrust law was applied by OLG Frankfurt in a case concerning the DFB Player Agent Regulations, judgment of 2 June 2016, 11 U 70/15 (Kart).
\item[114] LG Düsseldorf, judgment of 28 March 2017, 31 O 448/14.
\item[115] OLG Düsseldorf, judgment of 15 November 2017, VI-U (Kart) 8/17; see also Lorenz, ‘Rückzug des Kartellechts aus dem Sport? Der Fall Hustenzeichen bei Bridge-Turnier’, \textit{SpuRt} 3/2018, p. 131.
\end{footnotes}
In 2017, the German Federal Cartel Office launched an administrative proceeding for the suspected abuse of a dominant position against the IOC and the DOSB regarding the application of Rule 40 No. 3 of the Olympic Charter, according to which no athlete participating in the Olympic Games may allow his or her person, name, image or sports performance to be used for advertising purposes during the Games or for several days before and after the Games. In 2019, the Federal Cartel Office announced that an opening of advertising opportunities for German athletes and their sponsors during the Olympic Games had been agreed with the IOC and the DOSB and that new guidelines would take priority over the IOC rules with regard to German athletes.116

VII SPORTS AND TAXATION

Athletes residing in Germany (Section 8, AO) and those who have a usual residence in Germany (i.e., more than six months in the year, with short-term interruptions not being considered) (Section 9, AO) are subject to pay income tax according to Section 1(1) of the Income Tax Code (EStG). The different categories of income mentioned in Section 2(1) and Sections 13 to 24 of the EStG are divided into different sources, including:

a commercial income (Section 15);
b self-employed income (Section 18);
c income from employment (Section 19); and
d other income (Section 22).

The taxable income from each of the above-mentioned sources is subject to different rules that will determine when, how and to what extent income tax is to be paid.117

Athletes residing in Germany and those who have a usual residence in Germany are subject to tax on their worldwide income. Double taxation of income earned abroad (e.g., by taking part in a competition in a foreign country) that is also subject to tax in the respective country is usually avoided on the basis of Section 34c of the EStG or a double taxation treaty.118

The taxation of sports governing bodies and sports clubs depends on their legal status and form (i.e., whether they are organised as registered, non-profit associations or as commercial companies).119

Foreign athletes and clubs who do not reside in Germany are subject to tax only with regard to income that has a special domestic connection to Germany (Section 49, EStG). In this context, entities making payments to foreign athletes or clubs may have to withhold tax according to Sections 50 and 50a of the EStG.120

116 See Bundeskartellamt.de, ‘German Athletes and their sponsors obtain further advertising opportunities during the Olympic Games following Bundeskartellamt action – IOC and DOSB undertake to change advertising guidelines’, press release dated 27 February 2019 (last visited on 28 October 2019).
117 For more information, see Fritzweiler/Pfister/Summerer (footnote 17), p. 916.
118 See Adolphsen/Nolte/Lehner/Gerlinger, Sportrecht in der Praxis, Kohlhammer 2011, p. 505 et seq.
119 ibid.; see also Section I.i. For a summary of recent decisions concerning the taxation of intermediaries and agents, see Nücken, ‘Leistungen von Spielervetmittlern (erneut) auf dem Prüfstand’, SpuRt 1/2017, p. 19.
120 See Adolphsen/Nolte/Lehner/Gerlinger (footnote 118), p. 517 et seq.
VIII SPECIFIC SPORTS ISSUES

i Doping

Until recently, Germany did not have any specific anti-doping criminal laws, with the exception of Sections 6a and 95 of the Medicinal Products Act, which prohibit the distribution, prescription or administering of medicinal products to others for the purpose of doping, and the purchase or possession of doping substances in quantities above a certain amount. Other criminal laws that apply to situations involving doping include Section 212 of the StGB (manslaughter), Sections 223 and 229 of the StGB (causing bodily harm, negligent bodily harm), Section 263 of the StGB (fraud) and Section 29 of the Narcotics Act (illegal handling of narcotics).

Because the above-mentioned legal framework supposedly failed to tackle the issue of doping in sport properly (mainly because the undertaking of doping as such was not subject to criminal liability), Germany implemented a new Anti-Doping Act (AntiDopG) in 2016.121 The law, which consolidates provisions from different codifications, provides for prison terms for elite athletes (amateur athletes will not be affected), 122 coaches, officials and doctors who are caught, inter alia, using, administering or being in possession of doping substances.123 Culprits could be imprisoned for up to three years. An offender who endangers a large number of people or who exposes someone to the risk of serious injury or death may face a prison term of up to 10 years.124

The new law was heavily criticised by legal scholars, athletes and anti-doping experts alike.125 Nevertheless, in 2017, the BGH confirmed a prison sentence of one year based on the new AntiDopG imposed against a bodybuilder for the unlawful possession of doping substances.126 Recent discussions have dealt with the question of whether the AntiDopG should be amended to include more comprehensive whistle-blower protection regulations.127

ii Betting

According to Section 284 of the StGB, providing unlicensed gambling and betting services is a criminal offence in Germany that can be sanctioned with a prison sentence of up to five years. Section 285 of the StGB provides that a person participating in unlicensed gambling shall be liable to imprisonment for up to six months or a fine.128

In the past, Germany had implemented a state monopoly on gambling through the Interstate Treaty on Gambling. However, in 2010, the Court of Justice of the European

122 AntiDopG, Section 4(7).
123 ibid., at Section 4(1) and (2).
124 ibid., at Section 4(4).
126 BGH, judgment of 5 December 2017 – 4 StR 389/17.
128 See AG Munich, judgment of 26 September 2014 – 1115 Cs 254 Js 176411/13, in which the Court held that participation in gambling licensed in another EU Member State (without being licensed in Germany) is illegal.
Union (CJEU) decided that this state monopoly on gambling violated European law and thus needed to be reformed. The shortcomings of the existing system should have been resolved by the First Amendment to the Interstate Treaty on Gambling in 2012, which abolished the old state monopoly and replaced it with a new licensing system for private gambling and betting providers. Licences should have been granted to a maximum of 20 private gambling and betting providers for an experimental phase of seven years. Under the amended Treaty, online gambling remains illegal in Germany. At the same time, in 2015, the Higher Administrative Court of Hessen (VGH Kassel) decided that the new licensing system was illegal for being non-transparent and undemocratic. In February 2016, the CJEU ruled that a sports betting operator in Germany could not be charged under Section 284 of the StGB for providing customers with the opportunity to use a betting machine or computer offering bets by an Austrian betting provider without a German betting licence. In April 2016, a local administrative court in Hessen decided that there was no justification for the limitation to merely 20 licences, ordering that a sports betting provider should be granted a licence irrespective of the fact that 20 licensees had already been selected at the time. In May 2017, the VGH Kassel decided that the state was not entitled to crack down on a Maltese sports betting provider for not having obtained a licence in Germany. On the contrary, the Court held that the Maltese company was allowed to offer its services in the state without having a German licence.

In 2019, the states agreed on a new amendment to the Interstate Treaty on Gambling to enter into force on 1 January 2020, by which the maximum of 20 sports betting licences will be abolished. Provided that the new treaty enters into force on time, sports betting providers that fulfil the minimum requirements under the treaty would be able to obtain a licence for the future.

iii Manipulation

In the past, German law did not provide for a sport-specific criminal provision outlawing match-fixing. It was punished under Section 263 of the StGB, which deals with fraud, according to which a person committing fraud shall be liable to imprisonment for up to 10 years.

Section 263 of the StGB was applied in the famous Höyzer case in 2005, relating to the German referee Robert Höyzer, who confessed to fixing and betting on matches in the

129 CJEU, judgments of 8 September 2010 – C-409/06, C-316/07, C-46/08.
130 The single-handed approach by the state, Schleswig-Holstein, which issued temporary licences to several private gambling and betting providers, was stopped in 2013. Those providers that were able to obtain a licence were allowed to use it for a grace period in Schleswig-Holstein only.
131 First Amendment to the Interstate Treaty on Gambling, Section 4(4).
132 OVG Hessen, judgment of 16 October 2015 – 8 B 1028/15.
133 CJEU, judgment of 4 February 2016, C-336/14.
134 VG Wiesbaden, judgment of 15 April 2016 – 5 K 1431/14 WI.
135 OVG Kassel, judgment of 29 May 2017 – 8 B 2744/16.
136 See the written report of the Head of the State Chancellery NRW, LT-NRW submission 17/1787, mentioned in OVG Munster, order of 7 May 2019 – 4A 909/15.
137 Criminal Code, Section 263(3) defines fraud as causing or maintaining an error or distorting or suppressing true facts with the intention to obtain for oneself or a third person an unlawful material benefit by damaging the assets of another person.
second Bundesliga, the DFB Cup (DFB Pokal) and the Regional League. The arguments used by the BGH in the Hoyzer case have been applied and developed further in subsequent match-fixing cases.

However, the previous legal framework did not address match-fixing if it was not related to betting (e.g., for sporting purposes only). This is why, after signing the Council of Europe Convention on the Manipulation of Sports Competitions, the German government implemented two new draft criminal provisions in 2017, specifically dealing with the manipulation of sports competitions. Section 265c of the StGB defines sports betting fraud as an agreement to manipulate a sporting competition on which bets have been placed. Section 265d of the StGB applies to the manipulation of ‘high-class’ professional sporting competitions, even if a connection to betting cannot be established. Both criminal provisions stipulate a prison sentence of up to three years or, in very serious cases, of up to five years.

iv Grey market sales
As mentioned in Section III.i, ticketing terms and conditions will usually contain a clause that allows a ticket purchase for private use only. As a result, the purchase of tickets for the purpose of commercial resale (i.e., with profit) is prohibited unless there is prior consent by the organiser. Likewise, organisers tend to prohibit the unauthorised commercial use of tickets for advertisement purposes, as giveaways or as a part of hospitality or travel packages. If the organiser establishes that a purchase or resale of tickets occurred for commercial purposes without the consent of the organiser, it may refuse the ticket holder entry to the sporting venue and may even claim a contractual penalty.

At the same time, sports governing bodies and clubs have created a secondary ticket market to allow ticket holders to transfer tickets they no longer need. OLG Hamburg decided in 2018 that clubs have to make sure that their justification to restrict ticket transfers

138 BGH, judgment of 15 December 2006 – 5 StR 181/06.
139 BGH, judgment of 20 December 2012 – 4 StR 55/12.
140 See Fritzweiler/Pfister/Summerer (footnote 17), p. 841.
141 More information is provided on the Council of Europe website <www.coe.int/en/web/conventions/full-list/-/conventions/treaty/215> (last visited on 28 October 2019).
142 For more information, see Stam, ‘Die Straftatbestände des Sportwettbetrugs (Section 265c StGB) und der Manipulation von berufssportlichen Wettbewerben (Section 265d StGB)’, NZWiSt 2018, 41; Keidel, ‘A Guide to Germany’s new criminal law against betting fraud and match-fixing in sports’, LawinSport.com <www.lawinsport.com/articles/item/a-guide-to-germany-s-new-criminal-law-against-betting-fraud-and-match-fixing-in-sports> (last visited on 28 October 2019). For an assessment of the potential liability of clubs, see Kubiciel, ‘Neue Haftungsrisiken für Vereine: die Straftatbestände gegen Sportwettbetrug und Spielmanipulation’, SpuRt 5/2017, p. 188.
(e.g., security reasons; guaranteeing a widespread supply of tickets; preserving a socially balanced pricing structure) must not be undermined by the clubs’ intention to earn money on the secondary ticket market by participating in the sale of tickets far above face value.145

IX THE YEAR IN REVIEW

It has been another exciting year for sports law in Germany, though not because of the ‘notorious’ Pechstein case, which has not made any progress in 2019. Ms Pechstein’s constitutional appeal is still pending before the Federal Constitutional Court.

A decision by the Federal Cartel Office modified the national guidelines through which the DOSB implements Rule 40 of the Olympic Charter. The decision was enforceable only as regards the marketing activities of German Olympic athletes in the German market. Nonetheless, it created an incentive for a change of the relevant rule at an international level too, with the IOC announcing in June 2019 that it had relaxed Rule 40 of the Olympic Charter for all athletes participating in the Olympic Games.146

The Federal Administrative Court has confirmed the legality of the new state law of Bremen, whereby the costs for police operations can be claimed from an event organiser (e.g., a club or a league) in whose interest the operation took place. Only the future will tell whether other states will follow the example of Bremen, and invite the displeasure of event organisers in Germany by enacting similar laws.

In an important development in November 2018, the Federal Chamber of Lawyers decided to introduce the title of ‘specialist lawyer in sports law’ as one of 24 legal fields, in which practising lawyers may earn the title of specialist lawyer (Fachanwalt) in a certain legal domain based on proven theoretical and practical expertise.147 This development is considered a milestone for the profession in German sports law as it elevates the sports legal field to the heights of more established legal domains, such as labour or corporate law, in which the title of specialist lawyer has existed for many years. The main argument for the reform was the complexity of legal questions in sports, which arise from the interaction of sporting regulations with state law. Furthermore, the need for legal advice is not limited to top athletes and professional sports, but a large number of legal issues must also be clarified in popular sports. The reform strengthens the sports legal field in Germany and will most likely be a catalyst for the further professionalisation of the sector.

X OUTLOOK AND CONCLUSIONS

In light of the foregoing, the coming year will undoubtedly be another interesting one for sports law in Germany, with a decision by the Federal Constitutional Court expected on the constitutional appeal by Ms Pechstein. The fact that Germany is a co-host of the UEFA Euro 2020, and has been awarded the UEFA Euro 2024, may also lead to important developments in the sports legal field.


147 For more information, see Summerer, ‘Der Fachanwalt für Sportrecht – Ausbildung und Anforderungen’, Spalt 1/2019, p. 22.
I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Organisational form

The Sports Act regulates in which legal forms sports may be performed and organised in Hungary. Non-professional clubs may be sports clubs, sports foundations or sports schools. Professional sports clubs may only be either limited liability companies or companies limited by non-publicly traded shares.

Similar to other European jurisdictions, sports in Hungary are organised on the basis of the ‘single place principle’ (i.e., there may only be one national sports federation for a given sport). The national sports federations govern the sport concerned. The Sports Act sets out the prerequisites for a federation to be qualified as a sports federation (such as the minimum number of members, organisation of competitions, and membership of the International Olympic Committee or the Global Association of International Sports Federations). Membership in sports federations is restricted to the above-mentioned sports entities only. If they acknowledge the statutes of the sports federation as binding, they are automatically admitted to the sports federation as members.

The Sports Act recognises spare-time sports federations, sports federations for disabled people, and sports federations of student and university sports as special types of sports governing bodies. The Hungarian Olympic Committee is the public body responsible for all matters related to the Olympic Movement in Hungary.

Furthermore, the Sports Act grants special status to international sports federations in sports recognised by the International Olympic Committee.

ii Corporate governance

The Sports Act sets forth in detail the requirements sports federations need to comply with. There are specific rules in relation to the organisation, powers and quorum of the sports federation’s general meetings or the local bodies. Each sports federation must adopt specific governing regulations (e.g., on organisation and safety of sporting events, disciplinary proceedings and anti-doping, as well as strategy and development).

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1 Péter Rippel-Szabó is an associate at Siegler Bird & Bird Ügyvédi Iroda.
2 Act I of 2004 on Sport.
3 In addition to the Hungarian Olympic Committee, there are three further public bodies: the Hungarian Paralympic Committee, the National Federation of Competitive Sports and the National Student and Free Time Federation.
The Department of Public Prosecution exercises statutory supervision over the operation of sports federations. In case of financial mismanagement, upon the request of the prosecution, the court may suspend the board of the sports federation and appoint an independent officer. If standard operations cannot be restored, the prosecution may initiate liquidation of the sports federation.

Under the Sports Act, a sports organisation may only be granted public funds if it does not have any overdue public debts, its financial operations comply with the law and it has properly accounted for the public funds it was granted earlier. There are further cases where a sports organisation may not be granted any public funds (e.g., in the case of liquidation or bankruptcy).

iii Corporate liability
The general rules of the Civil Code\(^4\) apply to the liability of managers and officers of sports organisations.

The sports organisation is liable for the damage caused to a third person by the executive officer acting in his or her capacity as the sports organisation's executive officer. The executive officer is liable jointly and severally with the company, if he or she caused damage deliberately.

If there is no contractual relationship between the sports organisation and the third party, the injured third party is entitled to full damages, if it is able to prove that:

- a. the other party unlawfully caused the damage;
- b. the injured party incurred damage;
- c. the other party's unlawful act or omission caused the damage incurred by the injured party; and
- d. the other party is not able to excuse itself by proving that it proceeded as generally expected under the given circumstances (i.e., acted according to the applicable standard of conduct in the particular situation).

If there is a contractual relationship between the sports organisation and the third party, the injured third party is entitled to damages if it is able to prove that:

- a. the sports organisation unlawfully caused the damage;
- b. as the injured party it incurred damage;
- c. the sports organisation's unlawful act or omission caused the damage incurred by it; and
- d. the sports organisation is not able to prove that:
  - the circumstances causing the damage were beyond its control;
  - the circumstances could not be foreseen by it upon the conclusion of the contract; and
  - it could not have been expected to prevent the circumstances or the damage.

In a deliberate case, the sports organisation is liable for the full amount of damage caused. In the case of negligence, the sports organisation is liable for the damage caused in the subject matter of the contract, and can only be liable for further losses and lost profit if the injured party proves that the further losses and lost profit were foreseeable by the other party upon the conclusion of the contract.

\(^4\) Act V of 2013 on the Civil Code.
If the executive officer has a service contract with the sports organisation, he or she can be liable towards the sports organisation, if the same conditions for damages are met as set out above in the case of the sports organisation’s liability. If the executive officer performs his or her tasks based on an employment contract, the Labour Code\(^5\) applies to his or her liability. The executive officer as an executive employee is liable for the full damage he or she caused by unlawfully breaching his or her obligations under the employment contract, provided that he or she did not proceed as was generally expected in the given situation. The sports organisation as employer must prove the breach of obligation, the damage and the causal link. The executive officer is not liable for the damage that:

\(a\) he or she could not foresee upon causing the damage;
\(b\) was caused by conduct attributable to the employer; or
\(c\) was caused by the employer not fulfilling its obligation concerning mitigation of the damage.

Finally, the Civil Code also provides certain rules on executive officers’ liability in the case of termination of clubs.

II THE DISPUTE RESOLUTION SYSTEM

i Access to courts

The Sports Act expressly mentions the following cases where decisions of sports federations may be challenged before court or arbitral tribunals:

\(a\) if the sports federation does not grant, or revokes, the competition licence of athletes (ineligibility decision);
\(b\) in the case of transfer disputes;
\(c\) in the case of certain disciplinary decisions rendered by the sports federations; and
\(d\) if the club is not granted a licence to the competition organised by the sports federation.

Clubs and sports federations may provide in their statutes that their members shall have recourse to arbitral tribunals in disputes among themselves. Professional sports clubs, which may only be either limited liability companies or companies limited by non-publicly traded shares, may also provide in their deed of foundation or articles of association that ‘corporate law-related disputes’ shall be decided by arbitral tribunals.\(^6\)

Under the general rules of the Civil Code, a member of the legal person may have recourse to the court to ask it to repeal the decision rendered by the members or organs of the legal person if the decision is unlawful or violates the deed of foundation. In each of the above cases, the person concerned may ask the court or arbitral tribunal to repeal the decision of the sports organisation within 30 days of obtaining knowledge of the decision, subject to a one-year preclusion term. Initiating court proceedings does not delay the enforcement of the decision; however, the court may decide on the suspension of the enforcement if there are justified grounds upon the plaintiff’s request. If the decision violates the law or the statutes or articles of association, the court repeals it and, if necessary, orders the rendering of a new decision.

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6 A corporate law-related dispute may be a dispute between the shareholders of the company, such as initiating court supervision of the decision rendered by the general meeting.
ii Sports arbitration

The Sports Act regulates the Permanent Court of Arbitration for Sport (PCAS), which operates within the Hungarian Olympic Committee.

Upon the parties’ mutual submission statement, the PCAS has jurisdiction in sports-related disputes between sports federations and members; sports federations and athletes and sports practitioners; sports organisations and athletes and sports practitioners; and the Hungarian Olympic Committee and its members. In these disputes the PCAS convenes a hearing within 30 days of the arbitral tribunal being set up, and issues its decision within 15 days of the hearing.

By force of the Sports Act (i.e., without a mutual submission statement), the party concerned may have recourse to the PCAS regarding ineligibility cases, transfer disputes, disciplinary decisions and licensing cases as mentioned in Section II.i. In these disputes, the chairperson of the PCAS appoints an arbitral tribunal within eight days of receipt of the statement of claim. The arbitral tribunal holds a hearing within 15 days of its appointment, and within 15 days of the hearing either repeals or reverses the sports federation’s decision or rejects the statement of claim. In these cases, unlike in proceedings before ordinary courts, the PCAS may not only repeal or uphold the sports federation’s decision, but may also reverse it. Further details of the PCAS proceedings are set out in its arbitration procedural rules. In these cases, only the PCAS had exclusive jurisdiction until 31 December 2016. Since 1 January 2017, however, the party concerned may also have recourse to any other court of arbitration. In practice, the court of arbitration should be the Permanent Court of Arbitration attached to the Hungarian Chamber of Commerce (PCA HCC). In cases of disputes between sports clubs, however, the PCAS has exclusive jurisdiction as of 31 July 2018 (i.e., the sports clubs concerned may not agree on the jurisdiction of any other court of arbitration).

If there is a dispute that is not covered by the Sports Act as described above, the parties may only have recourse to arbitration if:

a one of the parties is engaged in economic activity and the dispute is connected to this activity;

b the parties may freely dispose of the subject matter of the dispute; and

c the parties have contractually agreed on the arbitration.

It is unnecessary that the parties have expressly agreed on the arbitration clause in writing. It is also sufficient if one of the parties brings the dispute to a court of arbitration and the other party does not contest the jurisdiction of the court of arbitration.

Both the PCAS and the PCA HCC may render interim measures if their application is justified.

Employment-related disputes may not be brought to courts of arbitration (i.e., only the ordinary courts may decide any disputes of professional athletes with their clubs arising out of the employment relationship).

iii Enforceability

An award has the same power and may be enforced as the final and binding judgment of ordinary courts. Enforcement of awards may only be refused if the subject matter of the dispute may not be subject to arbitration or if the award violates the public policy of Hungary. Decisions of sports governing bodies are enforced internally or, if necessary, via the public enforcement system as judgments and awards.
III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator

Upon purchasing a ticket, the spectator enters into a contract with the organiser of the sporting event.

Pursuant to the Sports Act, the organiser is obliged to display the rules of attendance at the entrances of sports venues in a prominent location, which shall also be summarised as the terms and conditions (T&Cs) on the ticket. Upon its own discretion, the organiser can decide to implement a system verifying the spectator’s identity upon entry into the venue, in which case further specific rules apply.

ii Relationship between organiser and athletes or clubs

In the case of competitions organised by sports federations, the competition rules usually set out that participation in competitions is mandatory. The competition rules are binding on athletes and clubs. According to the Sports Act, clubs shall recognise the statutes and consequently any other internal regulations of the sports federation as binding upon admission to the relevant sports federation. In the case of athletes, the Sports Act provides that they shall adhere to the domestic and international regulations of the sport. Further, upon obtaining their first competition licence, athletes declare that they recognise the rules of the given sport as binding. In the case of competitions organised by persons other than sports federations, the provisions of the participation agreement prevail.

iii Liability of the organiser

The Sports Act expressly provides that the organiser is liable for the proper organisation of the sporting event. The liability of the organiser commences upon the arrival of the participants of the sporting event at the venue, and ends when they leave it. In the case of sports entailing increased risks, as well as martial arts sports, the Sports Act sets out further liability provisions. The organiser is obliged to initiate any measures with the competent authorities that may contribute to the safety of spectators and the prevention of violations. In certain cases, organisers need to have liability insurance.

If the organiser fails to comply with the above provisions, the sports federation may apply various legal measures, such as fines or decrease of funding. Anyone who suffers damage in contract or in tort because of the organiser’s conduct may claim damages from the organiser, based on the general rules of civil law.

In the case of a criminal offence by the organiser, either the injured person or the authorities ex officio, depending on the nature of the criminal offence, may initiate criminal proceedings and establish criminal liability. In specific cases, the police may impose administrative fines on the organiser.

iv Liability of the athletes

The Sports Act does not provide any specific provisions on the civil or criminal liability of athletes. Therefore, the general rules of civil and criminal law liability apply. If the damage has been caused upon the consent of the injured party, civil or criminal law liability of the aggrieving party may not be established. The application of these general legal principles can help to consider the specificity of sports in the case of accidents or injuries caused or suffered during sporting activity.
v Liability of the spectators
The Sports Act expressly states that spectators must obey the safety rules specified by the organiser. Spectators may not conduct themselves in a way that would disturb or frustrate the sporting event, or infringe the personal rights or property of other participants. If spectators fail to comply with these provisions, they may be held liable based on general rules of civil law. Spectators may be prohibited from attending sporting events owing to a criminal offence committed in connection with a sporting event.

vi Riot prevention
The Sports Act contains detailed provisions aimed at preventing riots at sporting events, such as travel and separation of spectators, involvement of police or classification of events from a safety and risk point of view. Further, Government Decree No. 54/2004 on the safety of sporting events, which applies to first division clubs and national matches of football, handball, basketball, water polo and ice hockey, sets out specific rules on riot prevention and collaboration of organisers and the police. With certain exceptions, the organiser shall pay the costs of police involvement.

IV COMMERCIALISATION OF SPORTS EVENTS

i Types of and ownership in rights
The Sports Act expressly sets out the sports-related rights that can be exploited, and defines who owns them. The rights can be divided into three main categories as set out in the following table:

<table>
<thead>
<tr>
<th>Sports-related right</th>
<th>Right holder</th>
</tr>
</thead>
<tbody>
<tr>
<td>Event right (i.e., announcement, organisation and conducting of sporting events (championships)), including the licensing of online betting rights, plus rights related to competitions (matches) of national teams</td>
<td>Sports federation (and clubs in special cases regarding the licensing of online betting rights)</td>
</tr>
<tr>
<td>Pecuniary rights related to the athlete's sporting activity (such as likeness, name, logo, goodwill and other intangible assets of athletes)</td>
<td>Athlete, or in the case of a membership or contract with a club, the club where the athlete's pecuniary rights are automatically transferred to the club</td>
</tr>
<tr>
<td>Commercial licensing, transmission, broadcasting and recording of sporting activity and sports competitions via TV, radio and other electronic means (e.g., internet)</td>
<td>Athlete, or in the case of a membership or contract with a club, the club where the athlete's pecuniary rights are automatically transferred to the club</td>
</tr>
</tbody>
</table>

No transfer of title to the above-mentioned rights is possible. Therefore, licensing is the common practice for concluding various agreements on the use of sports rights.

ii Rights protection
Rights holders may in practice rely on different forms of legal protections as follows.

Media rights
In terms of the broadcasting, recording and transmission of sporting events, the right holders can rely on copyright protection. The sports performance itself is not protected by copyright, but parts of its broadcast and the signal of a broadcast are. Remedies based on the ownership or exclusive use of the venue in combination with T&Cs when purchasing tickets could physically exclude access of infringers to the sporting venue. The event right is a unique and
enforceable proprietary right against any infringer. The significance of infringement of broadcasting rights has not been important in practice so far as the most popular Hungarian sports can be viewed on free TV or are freely available online.7

**Personal rights**

Athletes, clubs and federations can rely on trademark, copyright, passing off and personal rights protection if their images, logos or other pecuniary or personal rights are infringed.

**Online betting rights**

The licensing of online betting rights is part of the event right, and federations and clubs may likely invoke and enforce this right against online betting service providers if they offer bets online on matches of federations and clubs without their consent.8

The Sports Act and other laws do not provide specific sports-related enforcement procedures in the case of infringement. Therefore, stakeholders must enforce their rights before a court or an arbitral tribunal. If the rights holder concerned claims for damages in tort, it must prove that:

- it has incurred damage owing to the infringer’s activity;
- the infringer acted in bad faith; and
- there is a relation of cause and effect.

### iii Contractual provisions for exploitation of rights

The Sports Act provides an express definition for sponsorship and merchandising agreements. The use of the name or likeness of athletes by any sports organisation is subject to the athlete’s prior written consent. In practice, sponsorship and merchandising agreements deal with the scope of image transfer or logos to be licensed, meet and greets, and other obligations in relation to public conduct in addition to the usual exclusivity provisions.

The Sports Act expressly regulates the joint selling of media rights. Sports federations, on behalf of clubs and athletes, are entitled to commercially exploit the media rights to competitions organised by them for a definite period and to enter into an agreement or agreements on their exploitation. In return for authorising the sports federations to preserve the right to exploit the media rights, the Sports Act obliges the sports federations to pay athletes and clubs appropriate consideration. The amount of this consideration must be determined in advance and equal to the market value of broadcasting rights. Subsequent distribution of money generated through joint exploitation of media rights must be based on criteria set forth by the Sports Act. In practice, most relevant contractual issues of media rights agreements grant the following:

- exclusivity to the licensee (rights, term, platform and territory);
- access to venue;

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7 If there was an infringement of exclusive broadcasting rights, one possible solution to prevent it could be to obtain server blocking (as in the United Kingdom); however, this must still be tested under Hungarian law. Effectively targeting the advertising revenues of illegal streaming sites would make their business model untenable. The unique event right could prove effective in practice to combat any misuses, although it is yet to be tested before the courts.

8 No public court decision has been made so far as to whether any federation has invoked this right against online betting service providers.
quality, provision, distribution and ownership of the signal, content and related
copyright;

- dissemination and sublicensing of the created content;
- marketing of sporting venues;
- selection methods of the matches by the broadcaster; and
- consideration mechanisms for granting the rights.

In practice, it is important that all agreements on exploitation of rights properly consider
the internal relations of sports stakeholders within the sports pyramid to avoid any conflict
between the various licensing agreements.

V  PROFESSIONAL SPORTS AND LABOUR LAW

i  Mandatory provisions

The Sports Act sets out certain mandatory provisions that apply in the case of professional
athlete employment agreements. Professional athletes may conclude employment agreements
with professional clubs only unless the internal regulations of the sports federation concerned
provides otherwise.

Employment agreements will only be valid if they provide for the scope and
remuneration of work, manner of working, work and rest time, and the provision of annual
leave. There are further requirements in the Sports Act (e.g., employment agreements may
be concluded for a definite period only, probation is not allowed, and professional athletes
may only enter into other contracts upon the club’s prior consent). Any other agreements
concluded with athletes in addition to employment agreements that remunerate them for
their sporting activity are null and void. In terms of salary protection, the general provisions
of the Labour Code apply.

ii  Free movement of athletes

The Sports Act introduces the term of player right (i.e., the right to use the athlete’s physical
and psychical ability for sporting activity). Upon concluding an employment agreement with
a club, the player right of the athlete will automatically be transferred to the club for the
period of the term of the employment agreement. If the employment agreement is lawfully
terminated or expires, the athlete’s player right will automatically return to the athlete. The
player right may not be alienated or encumbered. Any arrangement violating these rules is
null and void.9

iii  Application of employment rules of sports governing bodies

The Labour Code does not exclude the possibility that employment-related provisions of
sports governing bodies may be incorporated into employment agreements with athletes.
For example, the Hungarian Football Federation expects clubs and players to apply a sample
agreement that is provided in the transfer regulations. Limits of these employment-related
rules are the mandatory provisions of the Labour Code. Compliance of the employment rules
of sports governing bodies may be established on a case-by-case basis.

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9  The same rules apply to amateur players.
VI SPORTS AND ANTITRUST LAW

Although market behaviour (e.g., the joint selling of media rights) of Hungarian sports federations has not been subject to any antitrust procedure to date, the Hungarian Competition Authority has constantly held in its relevant decisions that any association may be deemed to be an association of undertakings if it engages in economic activity. Consequently, this view can also be applied to sports federations when they engage in economic activity by jointly exploiting the media rights that result from the decision of their members (i.e., the clubs) as undertakings.

Because of the single place principle, as outlined in Section I.i, a sports federation is in a monopoly on the relevant product market of exploitation of (event, media or online betting) sports rights for there is no other undertaking from which these rights can be licensed. Therefore, sports federations might be able to abuse their dominance against content distributors, online betting service providers or other third parties.

Considering that antitrust law fully applies to the sport sector, especially in the case of joint exploitation of media rights, sports federations should consider the requirements of antitrust laws, including the relevant case law of the European Commission, and should endeavour that their practice does not qualify as infringement of antitrust law or is duly justified.

VII SPORTS AND TAXATION

In 2011, Hungary adopted a comprehensive and unique state funding scheme that operates to date. In essence, any organisation can freely decide to pay a certain percentage of its public tax to a sports organisation and it therefore will be entitled to a tax reduction. The funding scheme focuses on the five most popular team sports in Hungary, namely: football, handball, basketball, ice hockey and water polo. To receive funding under the scheme, clubs have to design an annual strategy that includes initiatives for the public, such as providing sports equipment to grassroots or developing sports infrastructures, or covering costs of participating at sports competitions. If the strategy is approved by the competent sports federation or public body, the club can receive the funding. The sports federations and public bodies have strong monitoring and control mechanisms to ensure the proper implementation of clubs’ programmes. Before implementation, the scheme was reported to and approved by the European Commission.10

Regarding the taxation of athletes, coaches and further sports professionals, they can pay their taxes according to the simplified contribution to public revenues if certain preconditions (e.g., thresholds concerning the salary) are met as set out in the Act on the simplified contribution to public revenues.11

11 Act CXX of 2005 on the simplified contribution to public revenues.
VIII SPECIFIC SPORTS ISSUES

i Doping
Doping is not a criminal offence in Hungary. However, according to the Criminal Code, the production, circulation and ordering of prohibited substances suitable for increasing sports performance are criminal offences. Further, it is also a criminal offence if a person over the age of 18 persuades or assists a person under the age of 18 to use prohibited substances suitable for increasing sports performance.

ii Betting
Betting on sports events is a common and permitted practice in Hungary.

As explained in Section IV.i, the Sports Act expressly provides that the licensing of online betting rights is a sports-related right. For example, both the Hungarian Football Federation and the Hungarian Handball Federation entered into an agreement with Szerencsejáték Zrt on the exploitation of the sports betting rights of matches organised by them.

The Sports Act sets out that 12 per cent of gaming tax from draw gambling games must be spent on supporting sport across all disciplines. Further, 50 per cent of the gaming tax from fixed-odds betting, as well as the gaming tax from TOTÓ and remote gambling, must be spent on supporting football via the Hungarian Football Federation.

Regarding cross-border online betting, under the Gambling Operations Act, remote (i.e., online) sports betting is a non-liberalised activity that may only be organised by a fully state-owned company, Szerencsejáték Zrt. The Hungarian tax authority, as the competent public body, may block any unauthorised online betting site. This legal framework is heavily challenged by online operators having their registered seat in other Member States of the European Union before the courts as being incompatible with the Treaty on the Functioning of the European Union.

iii Manipulation
Match-fixing is a criminal offence. Pursuant to the Criminal Code, whoever makes an arrangement as a result of which the result of a match or competition organised by a sports federation will not occur according to the competition rules and the principle of fair play, will be penalised by imprisonment for up to three years. A penalty of imprisonment for one to five years may be imposed if the match-fixing is committed in a criminal association or on a commercial basis.

iv Grey market sales
The sale of sports events tickets in the grey market is not explicitly illegal in Hungary. It is common practice that spectators may only buy tickets upon showing an identity card and their name will be printed on the ticket. Also, selling tickets at the venue is restricted and spectators usually buy a ticket online where the number of tickets available for one person is

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13 Szerencsejáték Zrt is a 100 per cent state-owned gambling operator in Hungary.
14 TOTÓ is a pari-mutuel sports betting in which the bettor bets on results of matches played by football clubs (Section 37(10) of the Gambling Operations Act).
15 Act XXXIV of 1991 on gambling operations.
limited. In these cases, the organisers may identify the spectators at the entrance and entry can be denied. Sold-out matches are rarities (except certain matches of the national teams and certain clubs); therefore, the significance of grey market sales is low.

IX THE YEAR IN REVIEW

This year, the Sports Act introduced international sports federations as special federations recognised by the International Olympic Committee, and it aims to create an appropriate legal framework for the establishment and relocation of international sports federations in or to Hungary. International sports federations also enjoy several tax benefits. Furthermore, the Sports Act was amended to regulate certain sports-related data protection activities of sporting organisation and state bodies. Interesting developments relate to where esports federations are now extensively regulating esports as a sport, as well as Hungary being awarded the organisation of major international sporting events such as the IAAF World Athletics Championship in 2023 and the FINA World Championships in 2027.

X OUTLOOK AND CONCLUSIONS

The legal framework for sporting activity is clear and straightforward in Hungary. The Sports Act regulates all the important aspects of sporting activity in a practical manner. It will be interesting to see whether international sports federations will make use of the special status granted to them by the Sports Act and tax laws. The launch of the new central database operated by the minister responsible for sports – which contains certain data on athletes, coaches, clubs and federations – could help the effective administration of sports in Hungary.
I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Organisational form

The Italian Olympic Committee is the highest authority of the Italian sports system, defined as the Confederation of National Sports Federations and Associated Sports Disciplines (CONI). CONI is committed to organising, overseeing and promoting national sport, representing the Italian sports movement during the Olympic Games.

National sports federations (FSNs) and the associated sports disciplines (DSAs) are non-profit associations with legal personality regulated under private laws with their own regulations and statutes in compliance with the provisions of the affiliated international sports federations, the Olympic Charter and the directives issued by the International Olympic Committee and CONI. FSNs and DSAs must obtain recognition by CONI to manage – on an exclusive basis – a sport in Italy and represent it abroad.

The main characters of the Italian sports industry are the associations and companies, both professional and amateur, in addition to the athletes, managers, coaches, athletic trainers and sporting doctors.

ii Corporate governance

After the enactment of Law No. 190 of 6 November 2012, in 2013, CONI introduced the Code of Sporting Conduct, setting out the fundamental, mandatory and binding duties of

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1 Edoardo Revello and Marco Vittorio Tieghi are managing directors and co-founders of SportsGeneration Srl, Antonio Rocca is managing director and founder of AR Sports & Law, and Federico Venturi Ferriolo is a lawyer and founder of Olympialex.

2 Established by Law No. 426 of 16 February 1942 as a private body. With the Melandri Decree (Legislative Decree No. 242 of 23 July 1999), CONI became a public entity, but is incorporated under private laws. With the issuing of the Pescante Decree (Legislative Decree No. 15/2004), CONI became a ‘confederation’. Following the enactment of the Budget Law 2019 (Law No. 145 of 30 December 2018), the Italian government established a public company, Sport e Salute SpA, with the main objective of providing general services in favour of sport, according to the directives and guidelines of the government and not of CONI. This new entity has been preliminarily considered by the IOC as a potential interference in sport politics, thus threatening the autonomy of CONI in breach of the Olympic Charter. Therefore, the IOC required the Italian authorities to take appropriate actions to guarantee CONI’s autonomy from any political influences.

3 Article 20 of the CONI Statute.
loyalty, fairness and probity that must be met by each operator in the Italian sports industry.⁴ To ensure the above duties, CONI introduced the figure of the ‘guarantor’ that reports any cases of suspected violation to the competent bodies for disciplinary matters. In 2014, CONI reformed the Italian sports justice system by modifying the Sports Justice Code,⁵ adopting a comprehensive regulation of sports procedures with the introduction of two new bodies: the General Public Prosecutor’s Office and the Sports Supreme Court.

iii Corporate liability

Sports companies and associations are liable for the offences committed by those who represent them, as their directors, unless they can prove they have taken all possible precautions to avoid the offences.⁶ For the purpose of setting up this responsibility, the highest body of sports justice stated the following: ‘The Sports Justice Code punishes . . . by way of strict liability, the company with which the author of the unlawful sporting conduct is registered, regardless of the fact that this offence is the result of behaviours involving the same company.’

The company’s strict liability shall be recognised ‘even when the unlawful conduct committed by one of its members is counterproductive to the fate of the company, such as when a member is held responsible for contributing to altering the outcome of a match to the detriment of their own team’.⁷

II THE DISPUTE RESOLUTION SYSTEM

i Access to courts

Italian access to sports justice takes place through the affiliation process: the act of affiliation allows the option to resort and subject a person or an entity to sports courts. In essence, the sporting justice obligation stems from the provision of Article 2 of Decree No. 220 of 19 August 2003,⁸ which governs the independence of the Italian sports legal system. Briefly, sports judges (under the CONI, federations and associations umbrella) are competent for the following issues: the observance and application of the regulatory, organisational and statutory provisions of the national sports system and its articulations to guarantee the correct performance of sports activities; and all matters related to disciplinary sporting sanctions.

Upon exhaustion of internal sports remedies – and without prejudice to the jurisdiction of the ordinary judge for economic disputes between companies, associations and athletes – any other matter relating to acts issued by CONI or any national federations that is not dedicated to the above-mentioned sports judges, shall be referred to the exclusive jurisdiction of the administrative judge. In the case of non-compliance (i.e., should an affiliate refer an issue to the ordinary courts), the affiliate might be seriously sanctioned, or banned, from the

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⁴ According to Legislative Decree No. 231 of 8 June 2001, sports clubs shall adopt an internal code of conduct that defines the rights, duties and responsibilities of each member.
⁵ Adopted by the National Council on 11 June 2014 with Resolution No. 1510-1511.
⁶ See Article 4 of the Justice Regulations of the Italian Federation of Equestrian Sports; see also Article 44 of the Sports Justice Code of the Italian Basketball Federation.
⁷ See CONI Sports Supreme Court, United Sections, Decision No. 58 of 24 November 2015.
⁸ Available at www.parlamento.it/parlam/leggi/decreti/03220d.htm.
The relationship between the ordinary and the sporting justice system has always been a vexed question and one that was questioned in a judicial order of the Regional Administrative Court of Lazio (TAR Lazio).

Nevertheless, the ability to resort to sports judicial proceedings is specifically regulated by CONI’s Sports Justice Code, which establishes sports judges in each federation, namely the national sports judge, the local sports judges, the Sport Court of Appeal, the Federal Tribunal and the Federal Court of Appeals.

ii Sports arbitration

In consideration of the constitutional principle of prohibition of special jurisdiction, arbitration is seen as an adequate vehicle to preserve the independence of the sports system and ensure compliance with the regulations and principles of the federations. Arbitration is generally applied to resolve disputes in connection with economic rights and labour relationships.

To this extent, it is explicitly mentioned in Article 4 of Law No. 91 of 2 March 1981 that an arbitration clause shall be inserted in employment contracts, requiring that the disputes shall be brought before a panel constituted according to the applicable collective bargaining agreement. The functioning of such arbitration before the football leagues is regulated by specific procedural rules that are attached to the relevant collective bargaining agreement. For the sake of clarity, all professional players, coaches or trainers have their own collective bargaining agreement of reference and relevant competent arbitration panel. The latter renders awards directly enforceable through the competent league and federation.

iii Enforceability

Arbitral awards have contractual power between the parties and can be directly enforced only within the federation; otherwise, they should be lodged with a special procedure before the ordinary court, pursuant to Articles 566 and 808 of the Italian Civil Procedural Code, to become final and binding.

10 TAR Lazio, Section 1 ter, 11 October 2017, No. 10171. On the one hand, the possibility to resort to a specialised judge may ensure a higher and more accurate degree of expertise in the resolution of the dispute; but, on the other hand, it clashes with the constitutional principle of the right of defence, pursuant to Article 24 of the Italian Constitution.
11 See www.coni.it/images/DEF_11.06.2014_CODICE_DELLA_GIUSTIZIA_SPORTIVA__.pdf.
12 Article 3 of the CONI Sports Justice Code.

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III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator
Italian law\textsuperscript{15} regulates a tripartite relationship in connection with sporting events, composed of the organiser, the athletes (amateur or professional) and the public. The organiser can be identified as a business entrepreneur, pursuant to Article 2195 of the Italian Civil Code. The organiser's main goal is the management of the entire event, which is legally considered an economic activity, and should entail the following features: a lease agreement or ownership of the premises in which the event is held; presence of a public performance with an uncertain outcome; and differences of juridical relationships depending on whether the event is indoor or outdoor.

ii Relationship between organiser and athletes or clubs
The leagues\textsuperscript{16} (i.e., the organisers) are associations that represent and protect the interests of the affiliated sports companies. The latter are assisted in the stipulation of the standard labour agreements between athletes and professional and amateur clubs. In addition, the leagues also advise on issues related to corporate organisation, communication and administrative management, as well as centralised marketing activities aimed at selling the sporting product.

iii Liability of the organiser
Organisers can be persons (rarely), entities (in the form of stock or limited companies), non-recognised associations or committees that 'assume all liabilities (civil, criminal and administrative) within the country's legal system and promote the gathering of one or more athletes with the aim of achieving a result in one or more sporting activities regardless of the public dimension of the show'. Generally, organisers are subject to a 'civil liability' pursuant to Article 2043 of the Italian Civil Code. This liability is connected to the main obligation of the organiser promoting the competition, ensuring the power of control and direction. The organiser's main obligation is to monitor the event, whether it is a single competition or a tournament. Further, the organiser has the obligation to guarantee the presence of the police at the event and ensure: the suitability and safety of the location and facilities, including the technical means in use, whether supplied by the organiser; and the athletes' aptitude to participate in the competition, in terms of both experience and psychophysical conditions.

iv Liability of the athletes
Each athlete assumes the conscious risk of exposing himself or herself to events that may cause him or her damage (i.e., the allowed risk). The Civil Supreme Court has ruled that compliance with the rules governing each sporting discipline is the fundamental principle


\textsuperscript{16} Taking into consideration the football panorama, the leagues expressly recognised by the Statute of the Italian Football Federation (FIGC) are the following: Serie A National Professional League, Serie B National Professional League, the Italian Professional Football League (Lega Pro) and the National Amateur League.
for sporting conduct not to be punished. Therefore, to be exempt from criminal sanctions, any detrimental sporting conduct must be committed in compliance with the sportsperson’s duty of loyalty.  

v Liability of the spectators

The Sports Supreme Court, in its decision No. 42 of 3 September 2015, established that clubs are also liable – by way of strict liability – for the conduct of their spectators. The Sports Supreme Court has specified that it is necessary to guarantee a broad interpretation of the concept of spectator, thus including all those who operate in a ‘supportive environment’ to the team. Clubs are also liable for the presence of discriminatory banners (even when banners discriminate between different regional traditions) within the stadium.

vi Riot prevention

Parliament began developing legislation to strengthen the fight against hooliganism in 1989 by enacting Law No. 401 of 13 December 1989. One of the most important implementations was the ‘prohibition of access to sporting events’ (DASPO), which is a measure of prevention, restrictive on personal freedom, to tackle the growing phenomenon of violence in football stadiums; subsequently, also extended to other sports. The DASPO measure can be issued to spectators found guilty of violent acts during, inter alia, sporting events, by the chief of police (the Commissioner) or by a judge at the end of proceedings. If issued by the Commissioner, it applies as an administrative measure entailing the prohibition of access to areas, or areas adjacent to, where sporting events are taking place, for a period of between one and five years. If issued by a judge, it has a stronger limitation on freedom of movement and has also recently been compared to the anti-mafia administrative orders.

IV COMMERCIALISATION OF SPORTS EVENTS

i Types of and ownership in rights

Broadcasting rights

The new law regulating the ownership of broadcasting rights on sports events and related marketing was passed in the form of dedicated legislation: Law No. 106 of 19 July 2007, which defines the aims, principles and criteria of the new discipline, directing the government to issue

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17 See Civil Supreme Court, Section V, 28 March 2017, No. 33275; Civil Supreme Court, Section III, 26 January 2016, No. 1322; Civil Supreme Court, Section III, 8 August 2002, No. 12012; Civil Supreme Court, Section III, 30 March 2011, No. 7247; Penal Supreme Court, Section V, 13 March 2017, No. 11991; Penal Supreme Court, Section IV, 26 November 2015, No. 9559; Penal Supreme Court, Section V, 21 September 2005, No. 45210; Penal Supreme Court, Section V, 20 January 2005, No. 19473; and Penal Supreme Court, Section V, 2 June 2000, No. 8910.

18 For example, the new Sports Justice Code of the FIGC, as of season 2019/2020, will introduce a new model to prevent and fight episodes of violence and racism – also thanks to new technologies available for clubs, such as facial recognition.

19 Available at www.scuoladellosport.coni.it/images/documenti/Normativa_Sport/GiustiziaSportiva/Legge_13_dicembre_1989_n.401.pdf.

20 Divieto di accesso alle manifestazioni sportive, established by Article 6(c)(1) of Law No. 401/89.

21 See decision of the Italian Criminal Supreme Court No. 24819/16.
a legislative decree defining and setting the new regulations.\textsuperscript{22} The government accomplished
the task with the Melandri Decree (Legislative Decree No. 9 of 9 January 2008), which has
introduced the concept of joint ownership of the right to broadcast the sports events by the
competition organiser (i.e., the league) and the event organiser (i.e., a club).\textsuperscript{23} In concrete
terms, the Melandri reform assigned to the league the leading role of exclusive licensor of the
audiovisual rights.\textsuperscript{24}

Pursuant to Article 25 of the Decree, the allocation of resources among the parties
in each competition is carried out in such a way as to guarantee the equal allocation of a
prevalent share insured by the assignment of broadcasting rights. In this regard, Law No. 205
of 27 December 2017 (the Budget Law 2017) changed the allocation of the resources,
ensuring greater economic stability.\textsuperscript{25}

ii Rights protection

The protection reserved for images is derived from the joint provisions of Article 10 of the
Italian Civil Code and from the Italian Copyright Law.\textsuperscript{26} The Civil Code establishes that
if an image is displayed or published except when consented by law (or the display causes
prejudice to the reputation of the person concerned), the judicial authorities may order the
abuse to cease and award compensation for damages. In addition, Article 96 of the Copyright
Law states that a person’s likeness shall not be displayed, sold or reproduced without the
individual’s consent, which can, however, be subsequently withdrawn at any time.\textsuperscript{27}

The Italian Copyright Law protects the streaming of audiovisual rights by also
sanctioning the final users with imprisonment and economic sanctions.\textsuperscript{28} In relation to
registered trademarks and club symbols, these are protected under Articles 2569 and 2574
of the Civil Code, and Article 23 of Legislative Decree No. 30/2005, to avoid unfair
competition. In the case of infringement, judicial authorities may injunct against further
infringements and award compensation for damages.

\textsuperscript{22} L Ferrari, ‘The Ownership of Broadcasting Rights: From Individual to Collective Selling’, in: Blackshaw,
Cornelius, Siekmann (editors), TV Rights and Sport: Legal Aspects, TMC Asser Press, 2009, p. 399 et seq.
\textsuperscript{23} The Decree deals with professional tournaments organised for team sports (e.g., football or basketball). In
cases of amateur team sports, the competition organiser may license the broadcasting rights.
\textsuperscript{24} The event organiser, however, maintains the exclusive ownership on ‘library rights’ (i.e., audiovisual
recordings of matches that took place at least eight days previously) (Articles 3 and 4 of the
Melandri Decree).
\textsuperscript{25} As regards football: 50 per cent of the sale of TV rights is divided in equal parts among all the participants
in the Serie A Championship; 30 per cent on the basis of the results achieved, and 20 per cent on the basis
of the number of supporters of each team.
\textsuperscript{26} Law No. 633 of 22 April 1941, available at www.interlex.it/testi/l41_633.htm.
\textsuperscript{27} Article 97 of the Italian Copyright Law lists exceptional circumstances from the consent, when the use is
justified by the fame of or the public office covered by the person, for judicial or police requirements or for
scientific, educational or cultural purposes.
\textsuperscript{28} Articles from 171 to 174 \textit{quinquies}. 

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iii Contractual provisions for exploitation of rights

Image rights

The consent to the use of an athlete’s image can be expressed in his or her contract, but remains, however, separate from it. In addition, the consent can be subsequently withdrawn at any time without incurring any contractual liability.29

The right to use an athlete’s image may be licensed and assigned. Some limitations may exist to the right, such as, for example, in football: outside of football activity, the exploitation of image rights is freely negotiable by each player (observing some limitations related to the club’s sponsorship agreements), while, with respect to football activity and related activities (as the club’s representation), clubs can sign promotional and advertising agreements with third parties. Part of the profits are allocated to the players according to minimum percentages under the Convention in force on the regulation of advertising and promotional activities, unless negotiated individually.30

Sponsorship agreements

The sponsorship agreement is not a typified contract, since it is not expressly regulated by the Italian Civil Code. Therefore, the related discipline is reconstructed using the general rules and principles on contracts. In the sports system, according to the specific relationship between the sponsor and the sponsee, there can be the following general categories: naming sponsor,31 official sponsor, official supplier32 and technical sponsor.33

Merchandising agreements

Merchandising agreements, given their specificity and structure, are protected in Italy by the Code of Industrial Property,34 the Italian Civil Code (with the provisions on counterfeiting and unfair competition)35 and the Italian Penal Code (with the provisions on counterfeiting crime and trademark usurpation).36 The Italian Financial Guard has enhanced its checks in cooperation with the sports institutions to limit the sale of counterfeited products to the public.37

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29 See Civil Supreme Court, Section I of 29 January 2016, No. 1748.
30 The Convention was executed, alongside the first collective bargaining agreement, between the players’ union and the Italian professional football leagues in 1981, subsequently amended in 1984 and 1987.
31 For example, as of season 2018/2019, the Italian football second division league, Serie B, has been named Serie BTK as result of a commercial partnership with Indian tyre manufacturing company BKT.
32 For example, the agreement between the Italian internet provider, Aruba.it, and Racing Ducati SuperBike Team has led to an immersive cooperation by providing marketing and communication activities further to a traditional title sponsorship.
33 For a list of the jersey kits of Serie A clubs for the 2019/2020 season see www.footyheadlines.com/2019/05/all-19-20-serie-kits-overview.html.
34 Legislative Decree No. 30 of 10 February 2005 and subsequent amendments.
35 Articles 2598, 2599 and 2600.
36 Articles 473, 474, 474 bis, 474 ter, 474 quater, 517, 517 ter and 517 quinquies.
37 On 5, 6 and 7 May 2018, Serie A and Serie B football clubs participated in the first edition of ‘Day of Legality’, aimed at drawing the public’s attention to the fight against counterfeiting products. This initiative has been promoted by the Italian Patent and Trademark Office of the Ministry of Economic Development. On 3 April 2019, they adopted a similar project named ‘Offside Counterfeiting 2’ in partnership with the Italian Financial Guard.
V  PROFESSIONAL SPORTS AND LABOUR LAW

i  Mandatory provisions

Under Italian law, the sports employment relationship between clubs and professional athletes is regulated by Law No. 91 of 23 March 1981. This mandatory labour law states the definition of professionals, which includes athletes, coaches, sporting directors and athletic trainers, who perform sporting activities under remuneration on an ongoing basis within the disciplines governed by CONI, as well as the qualifying intervention carried out by FSNs. Indeed, the federations that have obtained the qualification of a professional sporting federation are the following: the FIGC, the Italian Cycling Federation, the Italian Golf Federation and the Italian Basketball Federation.

Professional athletes’ performances are regulated by employment contracts through direct recruitment. These contracts must be drafted in writing in the standard form set out in the collective bargaining agreement and filed within the respective federation (Article 4 of Law No. 91/81). Any departure from the standard form will be deemed null and void. The term of employment in professional contracts can be up to a maximum of five years (Article 5 of Law No. 91/81). An arbitration clause must be included in the contract with respect to the interpretation, execution and any dispute resolution related to the employment agreements. Further, the employment contracts shall not include provisions that could in any manner limit the freedom of work and movement of professional athletes. It is also possible to have a self-employment contract, subject to the fulfilment of one of the following conditions: the sporting performance is related to only one sporting event; the athlete is not contractually bound concerning the frequency of training; or the sporting performance does not exceed eight hours a week, five days each month or 30 days each year.

Any professional player is covered by a mandatory retirement and disability insurance as per Law No. 366 of 14 June 1973. The social security contributions are calculated with regard to the player’s annual gross salary and distributed in the following proportions: two-thirds shall be payable by the registering club; and one-third shall be payable by the player. In any event, the contributions shall be payable in their entirety by the club, which may then withhold the corresponding amount from the player’s salary.

ii  Free movement of athletes

EU law applies to both professional and amateur athletes with respect to their right of free movement, by prohibiting any discrimination based on nationality, or any obstacle that may hinder this right.

With specific regard to football, the FIGC has adopted the ‘locally trained rule’, which imposes clubs to have a certain number of home-grown athletes, according to UEFA indications. Accordingly, the squad list of any first division club (National Professional League Serie A), must adhere to some specific criteria.

38 Within the FIGC, minors (i.e., those under the age of 18) can sign a professional contract for a maximum of three years.
39 Article 2 of Law No. 91/1981.
40 Available at www.legaseriea.it/uploads/default/attachments/documentazione/documentazione_m/639/files/allegati/649/cu_83_-_tetto_alle_rose.pdf. In addition, with respect to a cap on the number of foreign players (in particular, non-EU players) permitted, the FIGC provides, under its rules and regulations, procedures and restrictions that a non-EU player may face when transferring to Italy.
VI SPORTS AND ANTITRUST LAW

The operators of the Italian sports industry, such as clubs and consumers, must comply with antitrust rules. In this regard, the Italian Competition Authority has sanctioned Sky Italia Srl and Perform Group, better known as DAZN for misleading advertising, unfair commercial practices and therefore violations of consumer rights, provided for in Articles 21, 24 and 25 of the Consumer Code in connection with the commercialisation of football match packages for the 2018/2019 season.

In May 2019, the Competition Authority ordered the dismissal of the complaint coming from members registered with the Italian Federation of Sport Billiards (FIBS), since the Federation’s regulations placed bans on teams and athletes to participate in non-federal competitions. The Competition Authority has not identified any violation of the current legislation on free competition by FIBS. However, the Federation had to modify its regulations, providing for the obligation of the affiliated sports associations to communicate to the Federation the will to organise, or participate with their athletes in, non-federative sporting events.

Last, a sanction of over €3 million was imposed by the Competition Authority on the FIGC in proceeding No. I812 for the violation of Article 101 of the Treaty on the Functioning of the European Union, deriving from unjustified restrictions (not imposed by FIFA and UEFA) on access to certain qualified professionals within football clubs; in particular, to sports directors, scouts and match analysts, ‘in the absence of any specific legislation and, indeed, in a regulatory framework for the liberalisation of economic activities’.41

VII SPORTS AND TAXATION

i Professional athletes

Any remuneration paid by a club to a professional player (Italian or foreign) for his or her sporting performance is to be considered employment income and taxed accordingly under Article 49 of the Italian Tax Code (TUIR).42 The club acts as a withholding agent. The remuneration of a professional player can consist of both a fixed and a variable amount. According to Article 51.6 of the TUIR, the variable amount (a bonus) is also considered employment equivalent to 50 per cent of the relative amount. In addition, benefits (such as housing or a car) are also employment income (Article 51.3 TUIR).

ii Tax regime of income of professional athletes’ image rights

Income connected to the sale or assignment of professional athletes’ image rights, if the remuneration is due to the player who directly grants the use of his or her image to the club (in particular, whether it is related to a sporting performance or it refers to the exploitation of his or her personal image) is also considered as employment income.

Remuneration due to the player who grants the sponsor the use of his or her image is considered: self-employment income, if promotional activities are exercised on a permanent and professional basis,43 or ‘other income’, if promotional activities are not exercised on a permanent and professional basis.

41 See www.agcm.it/media/dettaglio?id=281793cd-85a7-4103-9747-c44957097229.
42 See Presidential Decree No. 917 of 22 December 1986.
43 Article 54.1 quater TUIR.
iii The substitute tax regime for newly Italian tax residents

Article 1.152-159 of the Budget Law 2017 introduced a special tax regime for individuals moving his or her tax residence to Italy, providing for a substitute tax on foreign-source income equal to €100,000. The regime applies on an optional basis and for its application it requires details of: the actual transfer of the tax residence in Italy, and the foreign fiscal residence prior to the transfer in at least nine of the 10 tax periods preceding the start of the option period. Particularly in relation to superstar players with significant amounts of foreign income, this substitute tax regime could become very attractive.

iv Tax regime of income of professional athletes when transferring to Italy

The government has introduced an attractive tax measure with the 'Decreto Crescita' for foreign workers coming to Italy. This Decree introduced a specific regime for foreign professional athletes transferring their tax residence to Italy from January 2020.

v Amateur athletes

The income of amateur athletes is subject to preferential income tax treatment. The Budget Law 2017 introduced important innovations in this respect: no imposition for income below €10,000 per year, increasing the previous annual threshold of €7,500. Any income above €10,000 is subject to a tax rate of 23 per cent.

VIII SPECIFIC SPORTS ISSUES

i Doping

Anti-doping in Italy runs on a double track: the disciplinary and the criminal. From a sporting perspective, doping conduct falls within the relevant sports association jurisdiction with the application of the specific association's anti-doping regulations and the World Anti-Doping Agency rules and principles at an international level. Moreover, under Italian law, doping is also considered a criminal offence and punished pursuant to Law No. 376 of 14 December 2000 with severe penalties, including imprisonment.

ii Betting

Law Decree No. 87 of 12 July 2018 (the Dignity Decree) was enacted recently to fight gambling addiction, including in sporting and cultural events, by banning: the advertising of gambling and betting related to services and products; and betting and gambling providers from advertising via the media (including TV, radio, the internet and social media platforms)
and on billboards.\(^49\) From 14 July 2019, unlawful sponsorship and advertising may give rise to fines to the advertising contractors, calculated as the higher of 20 per cent of the value of the deal or a lump-sum of €50,000.\(^50\) The Italian Communications Regulatory Authority (AGCOM) is in charge of monitoring compliance with the new legislation and has the power to sanction those in breach.\(^51\) All sums raised from administrative fines will be allocated to fund the expenses of the Italian Ministry of Health.

### iii  Manipulation

Match-fixing is considered a criminal offence and is regulated by Law No. 401/1989, specifying that it concerns match-fixing offering a benefit to the participant with the specific intention of manipulating the competition result even if the offer is not accepted (Article 1).\(^52\) The aim of this provision is to guarantee fair play while tackling illegal sports betting, which has often been linked to criminal organisations. In addition to the consideration of match-fixing as a criminal offence, match-fixing is regulated by the CONI Sports Justice Code as a disciplinary violation.

### iv  Grey market sales

One of the most relevant grey market sales issues in Italy concerns ‘secondary ticketing’. This phenomenon is punished by Law No. 232/2016, which empowers the Italian Communications Regulatory Authority to monitor the secondary market sale of events’ ticketing. Offenders may be sanctioned with fines of up to €180,000.

### IX  THE YEAR IN REVIEW

Law No. 86 of 8 August 2019 granted wide powers to the government to amend, within the following 12 months, sports governing bodies, CONI’s structure and the regulations on sports professions, sports agents, infrastructures and security.\(^53\)

In September 2019, the Italian Financial Guard carried out an anti-piracy investigation, which resulted in blocking 114 internet websites illegally streaming sporting events. The authorities submitted a pre-emptive seizure order to the respective internet service providers operating in Italy against all the domains involved.

The Schwazer doping ‘saga’ had an unexpected twist during the criminal proceedings before the Tribunal of Bolzano, with respect to the Olympic runner’s second doping violation (which already led to the eight-year suspension ordered by the Court of Arbitration for Sport of Lausanne). According to a new expert opinion ordered by the Court, the urine samples collected in 2016 now show suspicious results, which may have resulted from the tampering of the original.

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\(^49\) Article 9(1) Dignity Decree.

\(^50\) Article 9(5) of the Dignity Decree does not apply to existing sponsorship agreements, which are permitted to run until their contracted expiry or 14 July 2019.

\(^51\) To this extent, AGCOM has published a set of guidelines defining its implementation (see resolution No. 132/19/CONS of 18 April 2019 available at www.agcom.it).

\(^52\) Manipulation of results is punished with imprisonment of between one month and one year and a fine of between €238 and €1,032.

\(^53\) All the measures to be enacted by the government are available at www.sport.governo.it/it.
OUTLOOK AND CONCLUSIONS

The Italian sports industry shall face significant reforms in the following months considering, for example, the direct involvement of the government as regards the revision of the entire sports system and the appointment of a dedicated Ministry for Youth and Sports. Further, given the rapid growth of new forms of sports activities and entertainment, such as female football and e-sports, a new set of rules could be enacted to cover said ‘grey areas’ of the sports sector. Finally, the winning candidature jointly filed by Milan and Cortina for hosting the 2026 Winter Olympic Games will certainly provide a new momentum for the entire Italian industry (also in terms of investment and infrastructure).
Chapter 11

KENYA

John M Ohaga and Franklin Cheluget Kosgei

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Sports Kenya

The Sports Act establishes a body known as Sports Kenya. It is established as a body corporate with perpetual succession and a common seal. It is capable of suing and being sued; taking, purchasing or otherwise acquiring, holding and disposing of movable and immoveable property; borrowing money; and doing or performing any other things or acts for the proper performance of its functions under the Act that may be lawfully done or performed by a body corporate.

The Act gives it a number of functions but the main one is to promote, coordinate and implement grassroots, national and international sports programmes for Kenyans, in liaison with the relevant sports organisations, and facilitate the active participation of Kenyans in regional, continental and international sports, including in sports administration. The Act spells out a number of functions expected of it, so it is by no means limited to the main function alone.

1 John M Ohaga is managing partner at TripleOKlaw Advocates, LLP, and chair of the Kenya Sports Disputes Tribunal. Franklin Cheluget Kosgei is an associate at TripleOKlaw Advocates, LLP.
2 Section 3 of the Sports Act, No. 25 of 2013.
3 Section 4 of the Sports Act.
4 The Act spells out other functions. Those functions are to:
   (a) Promote, coordinate and implement grassroots, national and international sports programs for Kenyans, in liaison with the relevant sports organisations and facilitate the active participation of Kenyans in regional, continental and international sports, including in sports administration;
   (b) Manage and maintain the sports facilities specified in the First Schedule and any other facilities which the Cabinet Secretary may, by notice in the Gazette, declare to be sport facilities for the purposes of this Act;
   (c) Establish, manage, develop and maintain the sports facilities, including convention centers, indoor sporting and recreational facilities for the purposes of this Act;
   (d) Adopt, develop, plan, set stadia standards and licence and regularly inspect stadia for sporting and recreational use;
   (e) Establish and maintain a sports museum;
   (f) Participate in the promotion of sports tourism;
   (g) Provide the necessary amenities or facilities for persons using the services or facilities provided by Sports Kenya;
   (h) Operate sports facilities on public grounds in such manner as it deems necessary;
   (i) Collaborate with county governments, learning institutions and other stakeholders concerned with sports and recreation, in the search, identification and development of sporting talent, provision of sports equipment, facilities and technical training;
ii Powers of Sports Kenya
Apart from its functions, the Act confers powers on Sports Kenya. It is given the powers to:\(^5\)

- **a** erect buildings and structures and carry out works necessary or desirable for the purposes of Sports Kenya;
- **b** appoint agents and attorneys;
- **c** engage persons to perform services for Sports Kenya;
- **d** obtain commercial sponsorship for Sports Kenya and participate in marketing arrangements involving endorsement by Sports Kenya of products and services associated with sports;
- **e** provide, whether by sale or otherwise, any article or thing bearing a mark, symbol or writing that is associated with Sports Kenya;
- **f** regulate the provision of services and use of the facilities of Sports Kenya;
- **g** act as an agent for any person engaged, whether within Kenya or elsewhere, in the performance of services, or the provision of facilities, of a kind similar or complementary to those performed or provided by Sports Kenya;
- **h** undertake the construction or execution of any works on land vested in Sports Kenya; and
- **i** make regulations, as stipulated in the Act, with the approval of the Cabinet Secretary.

iii Requirements of constitutions of Kenyan sports organisations
In terms of corporate governance, the Second Schedule to the Sports Act provides for matters to be provided for in the constitution of sports organisations.

It requires that the constitution of a body seeking registration as a sports organisation shall provide that elections of officials and athletes representatives at the national, branch

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\(\text{(j)}\) Identify and recommend talents in sports to national sports organisations;
\(\text{(k)}\) Inculcate the sense of patriotism and national pride through sports and recreation, create awareness on matters of national interest through sporting events, create awareness on the benefits of regular participation in sports for healthy living and provide advisory and counselling services to athletes;
\(\text{(l)}\) Determine the national colours to be used in national and international competitions, in consultation with the relevant national sports organisations;
\(\text{(m)}\) Facilitate the preparation and participation of Kenyan teams in various international events and the hosting of similar events in the country and recommend members of steering committees for international sports competitions, in consultation with the relevant national sports organisations;
\(\text{(n)}\) Recommend to the relevant authorities issuance of work permits and visas to foreign athletes and technical sports personnel, in consultation with the relevant national sports organisations;
\(\text{(o)}\) Approve, at the request of the respective national sports organisations, the clearance of foreign sports technical personnel before engagement by national sports organisations and other sporting bodies;
\(\text{(p)}\) Organise and coordinate training, conduct research, maintain a resource centre and provide and engage consultancy services for sports development programmes, in consultation with the respective national sports organisations;
\(\text{(q)}\) With the approval of the Cabinet Secretary, prescribe charges or fees in respect of:
  - **i** Access to, or use of, any of the resources or facilities of Sports Kenya;
  - **ii** The provision of programmes, services, information or advice by Sports Kenya; and
  - **iii** The admission of persons to events and activities organised by Sports Kenya;
\(\text{(r)}\) Recommend, in liaison with the relevant sports organisations, tax exemption for sportspersons; and
\(\text{(s)}\) Perform such other functions related to the implementation of this act as may be directed by the cabinet secretary.

5 Section 5 of the Sports Act.
and sub-branch levels shall be done directly by club representatives or club members and that only citizens of Kenya shall be eligible for election as the chairperson, secretary or treasurer of a body at the national level. It further requires that contemplated elections shall be held at regular intervals of between two and four years, and persons elected as officials shall consequently hold office in such a manner that the chairperson holds office for a term not exceeding four years, but is eligible for re-election for one more term, while any other official shall hold office for a term not exceeding four years, but is eligible for re-election for one more term.

It also requires that the elections shall be held in accordance with the general principles for the electoral system as stipulated in Article 81 of the Constitution of Kenya, 2010. The constitution of such sports organisations should also provide for the subscription to anti-doping policies; rules that conform with the World Anti-Doping Agency Code; compliance with the requirements set out in the anti-doping policy and rules of the National Anti-Doping Organization; subscription to the Court of Arbitration for Sports policies; rules that conform with requirements set out in the Sports Disputes Tribunal policy; and rules for sports disputes resolution.

Officials at national, branch and sub-branch levels should be elected directly and only registered club members are entitled to vote at those elections. Constitutions should also provide that the selection of the Kenyan team and the technical personnel shall be done in good time and transparently using fair criteria, and that the criteria for authorisation and registration of sportspersons and sportspersons’ representatives shall be codified, transparent and fair.

iv Confederation of African Football


The objectives of CAF are the following.

a To promote and develop the game of football and increase its popularity in Africa; while considering its global, educational, cultural and humanitarian impact by implementing youth and development programmes.

b To promote the development of women’s football and ensure the full participation of women at all levels of football governance.

c To organise its own continental competitions and any other intercontinental and international competitions assigned by FIFA.

6 Article 81 of the Constitution of Kenya, 2010 spells out the general principles for the electoral system. Pursuant to Article 81, the electoral system shall comply with the following principles:

a freedom of citizens to exercise their political rights under Article 38;

b not more than two-thirds of the members of elective public bodies shall be of the same gender;

c fair representation of persons with disabilities;

d universal suffrage based on the aspiration for fair representation and equality of vote; and

e free and fair elections that are:

• by secret ballot;

• free from violence, intimidation, improper influence or corruption;

• conducted by an independent body;

• transparent; and

• administered in an impartial, neutral, efficient, accurate and accountable manner.

7 Article 2 of the Confederation of African Football Statute.
To draw up regulations and adopt provisions governing its activities, and to ensure those are respected.

To manage all forms of football by means of adopting and implementing the necessary or appropriate measures to prevent any infringements of the Statutes, Rules and Regulations as well as any decisions or directives of FIFA and CAF; inclusive of the provisions of the Laws of the Game.

To prevent practices or procedures that may jeopardise the integrity of the players, the game, or its competitions; or give rise to any form of abuse of the game of football.

To maintain relations with FIFA, the IOC, international sport organisations, as well as with other continental football confederations and zonal unions.

To promote football free from discrimination against any country, person or group of persons, be it the grounds of ethnicity, gender, language, religion, politics or any other reason.

To encourage national associations and public authorities to do their utmost to work towards the professional and social development of footballers.

To fight against doping, and to take the necessary measures to combat the use of prohibited substances to protect the health of footballers and the credibility of the competitions.

To promote friendly relations between national associations, zonal unions, clubs, officials and players.

To ensure the independence of the management of African football, and avoid any form of political interference.

To adhere to the fundamental principles of the Olympic Movement and to undertake:

- the promotion of peace, solidarity, fraternity and unity among footballers, officials and clubs; both in Africa and worldwide;
- to support the measures undertaken by the African Union and by other non-governmental organisations in favour of the youth, development of sport, culture and education; and
- to partake in the fight against scourges ravaging or posing a threat to the continent and humanity; in cooperation with the United Nations, the African Union, and other specialised organisations.

All football clubs are required to comply with the CAF licensing requirements before getting their certificates. According to CAF, licensing is a certificate confirming the fulfilment of all the mandatory minimum requirements by the licensee in order to activate the admission procedure for CAF inter-club licensed competitions.

Some of the requirements are that the clubs comply with before getting the certificate include, submitting their logo, official nickname, club motto, history of the club, samples of home and away kit and the physical address of the club. They should also have a postal address, website and official digital platforms.

Clubs’ home grounds must be all green grass or artificial turf with proper marking. The stadiums should also have an internal perimeter fence to prevent unauthorised people from accessing the pitch. The stadiums should have a seating arrangement to separate home and away fans, the same as separate changing rooms for home, away teams and match officials.

Financially, clubs must submit a budget for the whole season, the source of their funds and a bank statement for the past 12 months. The clubs will also be required to have youth teams and professional players who have written contracts, and all the players, including the
youth teams, must be registered with the local federation – in this case the Football Kenya Federation (FKF). The senior team members must have jersey numbers that should not be changed for the entire season.

The Kenyan Premier League Limited (KPL) and National Super League (NSL) clubs will have to employ a chief executive officer. The KPL sides should have a coach who has attained a CAF level B licence, while the FKF coach should have a CAF level C licence holder with well constructed contracts.

v Objectives of the licensing

The licensing seeks to achieve clearly outlined objectives towards a well-developed system of administration both at the club and federation level with a general target of raising the profile of the game:

a the promoting and improving of the quality and the level of all aspects of football in Africa;

b ensuring that the clubs have the appropriate infrastructure, knowledge and application in respect of management and organisation;

c adapting and improving the clubs sporting infrastructure;

d improving the economic and financial capacity of the clubs, through proper corporate governance and control;

e ensuring and guaranteeing the continuity of the international competitions of clubs during the season; and

f allowing the parallel development and comparison between clubs by ensuring the necessary compliance in terms of financial, sporting, legal, administrative and infrastructure criteria.

vi Office of the Registrar of Sports

The Act also establishes the Office of the Sports Registrar, which is established as an office within the Public Service. It mandates the Public Service Commissions to appoint the Registrar who should be responsible for the Office of the Sports Registrar; matters relating to the licensing of professional sports and professional sports persons in accordance with the provisions of the Sports Act; and the arbitration of registration disputes between sports organisations.

The Registrar is also responsible for the registration and regulation of sports organisations and multi-sports bodies representing sports organisations at national level, in accordance with the provisions of the Act. He or she is also charged with issuing licences for professional sports in accordance with the regulations and the requirements that the Cabinet Secretary may prescribe and any other relevant law.

vii Registration of sports organisations

The Act prohibits any body or organisation to operate as a sports organisation unless it is registered under the Act. The Registrar registers sports organisations as either a sports club, a county sports association or a national sports organisation.

All national sports organisations registered under the Act are to be open to the public in their leadership, activities and membership. The certificate of registration issued under the

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8 Section 45 of the Sports Act.
section are deemed conclusive evidence of authority to operate throughout the country as may be specified in the certificate of registration; and may contain such terms and conditions as the Registrar may prescribe.

II THE DISPUTE RESOLUTION SYSTEM

i Sports Dispute Tribunal

The Sports Act establishes the Sports Dispute Tribunal (Tribunal).\(^9\) It stipulates that the Tribunal shall consist of members appointed by the Judicial Service Commission in consultation with the national sports organisations. The members will include a chairperson who shall be a person who is qualified to be appointed as a judge of the High Court;\(^10\) at least two advocates of the High Court of Kenya with at least seven years’ experience and either experience in legal matters relating to sports or an involvement in sport in any capacity; and at least two and not more than six other persons with at least 10 years experience in sport, in any capacity.

The Act also spells out the Tribunal’s jurisdiction,\(^11\) namely that it shall determine appeals against decisions made by national sports organisations or umbrella national sports organisations, whose rules specifically allow for appeals to be made to the Tribunal in relation to that issue.\(^12\) The Tribunal further has the jurisdiction to hear appeals from decisions of the Registrar under the Act.

The Anti-Doping Act also lays down the jurisdiction of the Tribunal over anti-doping matters referred to it.\(^13\) It confers on the Tribunal jurisdiction to hear and determine all cases on anti-doping rule violations on the part of athletes and athlete support personnel and matters of compliance of sports organisations. It stipulates that the Tribunal shall be guided by the Code, the various international standards established under the Code, the 2005 UNESCO Convention Against Doping in Sports, the Sports Act and the Anti-Doping Agency of Kenya’s Anti-Doping Rules, among other legal sources.

The Tribunal is to establish its own procedures.\(^14\)

Disputes involving national and county level athletes, athlete support personnel, sports federations, sports organisations, professional athletes and professional sports persons are resolved by the Tribunal both at the first instance and at appeal, each consisting of three members appointed by the chairperson of the Tribunal.\(^15\)

Save as otherwise provided for under Article 4.4.7 of the Code on Therapeutic Use Exemptions,\(^16\) disputes involving international-level athletes are resolved by the Tribunal at the first instance with an appeal to the Court of Arbitration for Sport. In all disputes, there

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9 Section 55 of the Sports Act.
10 The author of this chapter, John Morris Ohaga, currently sits as the chair of the Tribunal.
11 Section 58 of the Sports Act.
12 Such appeals would include appeals against disciplinary decisions; appeals against not being selected for a Kenyan team or squad; other sports-related disputes that all parties to the dispute agree to refer to the Tribunal and that the Tribunal agrees to hear.
13 Section 31 of the Anti-Doping Act, No. 5 of 2016.
14 Section 31(3) of the Anti-Doping Act.
15 Section 31(4) of the Anti-Doping Act.
16 If the medication an athlete is required to take to treat an illness or condition happens to fall under the Prohibited List, a therapeutic use exemption may give that athlete the authorisation to take the necessary medicine.
is a right of appeal within 30 working days of the date of communication of the Tribunal's decision by the accused, the Anti-Doping Agency of Kenya, the national anti-doping organisation of the person's country of residence, the World Anti-Doping Agency, the International Paralympic Committee International Sports Federation, the International Olympic Committee and any other international sports body.

For the avoidance of doubt, the Act clearly spells out that the Tribunal shall not have jurisdiction over national crimes related to doping as they relate to recreational athletes and other persons, entities or organisations.17

The law provides an avenue of appeal from the Tribunal to the Court of Arbitration for Sport.18 The Anti-Doping Agency of Kenya may lodge an appeal against a decision of the World Anti-Doping Agency or an International Federation to the Court of Arbitration for Sport in accordance with Article 4.4 of the Code.19 It also provides that an international-level athlete, an athlete's support personnel, the Anti-Doping Agency of Kenya, an international federation or the World Anti-Doping Agency may appeal against a decision of the Tribunal to the Court of Arbitration for Sport in accordance with Article 13 of the Code.

ii Specific internal dispute resolution mechanisms: Kenya Premier League

The Kenyan Premier League has a disciplinary body called the Independent Disciplinary and Complaints Committee (IDCC). The IDCC is the tribunal for resolving disputes in the game of football managed under the auspices of the KPL. The IDCC is guided by Article 1.1 of the Rules of Kenyan Football Rules, which states that the Kenyan Football Federation consists of branches and clubs approved by the executive committee.

All branches and clubs must apply and adhere to the Laws of the Game and Rules approved by the FKF and international football authorities such as CECAFA, CAF and FIFA. Consequently, the rules of law applied in deliberations of the IDCC consist of Laws of the Game as approved by FIFA, the Rules of Kenyan Football, the policy decisions made by the KPL, the FIFA Disciplinary Code, other FIFA Rules and Regulations, the decisions of the Court of Arbitration for Sports (CAS) case law from IDCC and other jurisdictions, the Laws of Kenya, the rules of natural justice and other documentation in so far as such documentation adds relevant value to the particular circumstances of a given case.

Where there is a discrepancy or conflict in any of the above, the FIFA Disciplinary Code, other FIFA rules and regulations and decisions of the CAS have precedence.

17 Section 31(7) of the Anti-Doping Act.
18 Section 32 of the Anti-Doping Act.
19 Pursuant to Section 2 on Interpretation, the Code means the World Anti-Doping Code that has been adopted by sports organisations, international sports federations and national anti-doping organisations to regulate doping in sports.
III  PROFESSIONAL SPORTS AND LABOUR LAW

An employee is defined to mean a person employed for wages or a salary.20 Athletes and sportspersons who fit this criterion are employed for wages or salary.21 The Act also applies to all persons employed by any employer under a contract of service.22 Persons who would fall under this category include persons employed by sports clubs.

The Act lays down general principles of mandatory application, including in the employment of athletes.23 These principles include prohibition against forced labour, discrimination in employment and sexual harassment.24 The law also requires that all contracts of service be in accordance with the Act.25 It recognises both oral and written contracts as valid contracts of service.26 It requires, however, that a contract of service for a period or a number of working days that amount in the aggregate to the equivalent of three months or more, or that provide for the performance of any specified work that could not reasonably be expected to be completed within a period or a number of working days amounting in the aggregate to the equivalent of three months, shall be in writing.27

It lays strict requirements as to the contents of the contracts. In particular, it demands that a written contract of service shall state the name, age, permanent address and sex of the employee. The contract should also state the name of the employer; the job description; the date of commencement of the employment; and the form and duration of the contract.28

Contracts should spell out the place of work; the hours of work; the remuneration, scale or rate of remuneration; the method of calculating remuneration and details of any other benefits; the intervals at which remuneration is paid; the date on which the employee’s period of continuous employment began, taking into account any employment with a previous employer that counts towards that period; and any other prescribed matter.29

The Act lays down strict requirements as to the payment, disposal and recovery of wages and allowances to employees.30 An employer is obliged to pay the entire amount of the wages earned by or payable to an employee in respect of work done by the employee in pursuance of a contract of service directly, in the currency of Kenya in cash; into an account at a bank or building society, designated by the employee; by cheque, postal order or money order in favour of the employee; or in the absence of an employee, to a person other than the employee, if the person is duly authorised by the employee in writing to receive the wages on the employee’s behalf.31

As to when wages or salaries are due, the Act stipulates that where a contract of service entered into under which a task or piece-work is to be performed by an employee, the employee shall be entitled when the task has not been completed, at the option of his or her

20 The law in Kenya defines an employee to mean and include an apprentice and indentured learner.
21 Section 2 of the Employment Act Cap No. 226.
23 Part II of the Employment Act.
24 Section 4, 5 and 6 of the Employment Act.
25 Section 7 of the Employment Act.
26 Section 8 of the Employment Act.
27 Section 9 of the Employment Act.
28 Section 10 of the Employment Act.
29 Section 10 of the Employment Act.
30 Section 17 of the Employment Act.
31 Section 17 (1)(a), (b), (c) and (d).
employer, to be paid by his or her employer at the end of the day in proportion to the amount of the task that has been performed, or to complete the task on the following day, in which case he or she shall be entitled to be paid on completion of the task.\textsuperscript{32}

In the alternative, the employee is entitled in the case of piece-work, to be paid by his or her employer at the end of each month in proportion to the amount of work that he or she has performed during the month, or on completion of the work, whichever date is the earlier.\textsuperscript{33}

Subject to the above, however, wages or salaries shall be deemed to be due in the case of a casual employee, at the end of the day; in the case of an employee employed for a period of more than a day but not exceeding one month, at the end of that period; in the case of an employee employed for a period exceeding one month, at the end of each month or part thereof; in the case of an employee employed for an indefinite period or on a journey, at the expiration of each month or of the period, whichever date is the earlier, and on the completion of the journey, respectively.\textsuperscript{34}

Termination has proven to be most contentious in terms of the relationship between employees and employers in sports. Alive to this, the Act has very elaborate provisions to govern termination and dismissal. Very relevant are its provisions on the requirement of a termination notice prior to termination of the employment, or in the alternative payment in lieu of notice.\textsuperscript{35} Where an employee gives notice of termination of employment and the employer waives the whole or any part of the notice, the employer shall pay the employee remuneration equivalent to the period of notice not served by the employee, as the case may be, unless the employer and the employee agree otherwise.\textsuperscript{36}

The Act further makes guidelines prohibiting termination of employment on account of redundancy unless certain specific grounds spelled out in the Act are met.\textsuperscript{37} It also places an obligation on employers to issue a notification and hold a hearing before termination on grounds of misconduct.\textsuperscript{38}

The Act also makes extensive provision on summary dismissal and unfair termination since they form the bulk of the employment disputes that end up in court and the Sports Dispute Tribunal. On summary dismissal, the Act anticipates that it takes place when an employer terminates the employment of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term. As a general rule, no employer has the right to terminate a contract of service without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.\textsuperscript{39} Nevertheless, subject to the provisions of the Act, it allows an employer to dismiss an employee summarily when the employee has by his or her conduct indicated that he or she has fundamentally breached his or her obligations arising under the contract of service.

\textsuperscript{32} Section 18 (1)(a) of the Employment Act.
\textsuperscript{33} Section 18(1)(b) of the Employment Act.
\textsuperscript{34} Section 18(2) of the Employment Act.
\textsuperscript{35} Section 35 and 36 of the Employment Act.
\textsuperscript{36} Section 38 of the Employment Act.
\textsuperscript{37} Section 40 of the Employment Act.
\textsuperscript{38} Section 41 of the Employment Act.
\textsuperscript{39} Section 44(1) of the Employment Act.
In an attempt to provide clarification, it lays down matters that may amount to gross misconduct so as to justify the summary dismissal of an employee for lawful cause. Some of these matters include:

- **a** without leave or other lawful cause, an employee absents him or herself from the place appointed for the performance of his or her work;
- **b** during working hours, by becoming or being intoxicated, an employee renders him or herself unwilling or incapable to perform his or her work properly;
- **c** an employee wilfully neglects to perform any work that it was his or her duty to perform, or if he carelessly and improperly performs any work that from its nature it was his or her duty, under his or her contract, to have performed carefully and properly;
- **d** an employee uses abusive or insulting language, or behaves in a manner insulting, to his or her employer or to a person placed in authority over him or her by the employer;
- **e** an employee knowingly fails or refuses to obey a lawful and proper command that it was within the scope of his or her duty to obey, issued by his or her employer or a person placed in authority over him or her by the employer;
- **f** in the lawful exercise of any power of arrest given by or under any written law, an employee is arrested for a cognisable offence punishable by imprisonment and is not within 14 days either released on bail or on bond or otherwise lawfully set at liberty; or
- **g** an employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of his or her employer or the employer's property.

On unfair termination, the Act is explicit that no employer shall terminate the employment of an employee unfairly. It spells out a criterion of what the employer must prove to satisfy that the termination effected was not unfair. It requires the employer to prove that:

- **a** the reason for the termination is valid;
- **b** that the reason for the termination is a fair reason related to the employee's conduct, capacity or compatibility, or based on the operational requirements of the employer; and
- **c** that the employment was terminated in accordance with fair procedure.

The Act further codifies what cannot be a ground for dismissal or for the imposition of a disciplinary penalty. These include a female employee's pregnancy, or any reason connected with her pregnancy; the going on leave of an employee, or the proposal of an employee to take any leave to which he or she was entitled under the law or a contract; an employee's membership or proposed membership of a trade union; the participation or proposed participation of an employee in the activities of a trade union outside working hours or, with the consent of the employer, within working hours; an employee's seeking office as, or acting or having acted in the capacity of, an officer of a trade union or a workers' representative; an employee's refusal or proposed refusal to join or withdraw from a trade union; an employee's race, colour, tribe, sex, religion, political opinion or affiliation, national extraction, nationality, social origin, marital status, HIV status or disability; an employee's

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40 Section 44(4) of the Employment Act.
41 Section 45 (1) of the Employment Act.
42 Section 45 (2) of the Employment Act.
43 Section 46 of the Employment Act.
initiation or proposed initiation of a complaint or other legal proceedings against his or her employer, except where the complaint is shown to be irresponsible and without foundation; or an employee’s participation in a lawful strike.

The Act also makes provision for foreign contracts of services. It lays down requirements of the contract before it is attested to by the parties. It requires that a foreign contract of service shall not be attested unless the labour officer is satisfied that:

a. the consent of the employee to the contract has been obtained;

b. that the contract is free of any fraud, coercion or undue influence, and any mistake of fact or misrepresentation that might have induced the employee to enter into the contract;

c. that the contract is in the prescribed form, so that the the terms and conditions of employment contained in the contract comply with the provisions of the Act and have been understood by the employee;

d. that the employee is medically fit for the performance of his or her duties under the contract; and

e. that the employee is not bound to serve under any other contract of service during the period provided in the foreign contract.

IV SPORTS AND TAXATION

Sportspersons are not exempt from paying taxes in Kenya. Subject to, and in accordance with the Income Tax Act, income tax is charged for each year of income upon all the income of a person, whether resident or non-resident, accrued in or derived from Kenya. However, one of the functions of Sports Kenya under the Sports Act is to recommend, in liaison with the relevant sports organisations, tax exemptions for sportspersons.

Where sports income is earned overseas by a sportsperson who is a resident of Kenya for tax purposes, the income is considered to have accrued in or to have been derived from Kenya and is therefore taxable in Kenya. However, the tax paid overseas is offset against the tax computed locally on the income earned overseas as provided under Section 39(2) of the Income Tax Act. The sportsperson is, however, required to furnish evidence of tax paid overseas to be allowed to offset it against tax computed locally.

Where the sportspersons use their earnings to pay sports managers and agents who are non-residents, they should deduct withholding tax at the rate of 20 per cent of the gross amount payable and pay the balance to the manager or agent. That withholding tax is payable to the Commissioner of Domestic Taxes Department by the 20th of the month following the month of payment.

Local organisers of sporting events are also required to deduct 20 per cent withholding tax on any payment made to non-resident sportspersons and sports managers and agents.

It is instructive to underline that the tax only applies to those resident in Kenya for tax purposes. The Income Tax Act defines an individual who is a resident in Kenya for tax purposes as a person with a permanent home in Kenya who was present in Kenya for any period in a particular year of income under consideration; or a person who has no permanent home in Kenya but was present in Kenya for a period or periods amounting in the aggregate

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45 Section 84 of the Employment Act.
46 Section 4(r) of the Sports Act.
to 183 days or more in that year of income; or present in Kenya in that year of income and in each of the two preceding years of income for periods averaging more than 122 days in each year of income.\(^{47}\)

On the issue of double taxation, Kenya has double taxation agreements (DTAs) with several countries, which protect residents earning income from these countries from double taxation. The Kenyan government has concluded DTAs with a number of countries and is currently expanding its treaty network. DTAs are important since they help in alleviating double taxation where business is conducted in different tax jurisdictions and also assist tax administrations in preventing fiscal evasion.\(^{48}\)

Under the Act, the Minister may from time to time by notice declare that arrangements, specified in the notice, are arrangements that have been made with the government of any country with a view to affording relief from double taxation in relation to income tax and other taxes of a similar character imposed by the laws of the country.\(^{49}\)

For countries with which Kenya does not have double taxation treaties, the law provides for special relief by the Minister of Finance, which allows the residents to offset taxes paid in other countries.\(^{50}\)

### DTAs in Kenya

#### Ratified and in force

The following DTAs that have been ratified and are therefore in force. The Legal Notices contain the full text of the conventions.

<table>
<thead>
<tr>
<th>Double taxation agreements</th>
<th>Legal Notices</th>
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<tbody>
<tr>
<td>Germany – 17.5.1977</td>
<td>Legal Notice No. 20/1980</td>
</tr>
<tr>
<td>Canada – 27.4.1983</td>
<td>Legal Notice No. 111/1987</td>
</tr>
<tr>
<td>India – 12.4.1985</td>
<td>Legal Notice No. 61/1989</td>
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#### Signed but not in force

The following DTAs have been signed but have not been ratified by all the contracting states and are therefore in not in force:

a. Italy – 15 October 1979; and


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\(^{47}\) Section 2 of the Income Tax Act.

\(^{48}\) This list found on the Kenya Revenue Authority website at: www.revenue.go.ke/lto/ltodta.html.

\(^{49}\) Section 41 (1) of the Income Tax Act.

\(^{50}\) Section 42 of the Income Tax Act.
Draft agreements under negotiation

The following DTAs are at different stages of negotiation. For those that are in force, but under review, the existing DTAs continue to operate until the review is complete. This will be intimated through a Legal Notice revoking the existing one.

a. Tanzania and Uganda (renegotiated 23 November 2005);
b. France (second round negotiations, Nairobi, 3 February 2006);
c. Thailand (first round negotiations, Bangkok, 7 July 2006); and
d. India (review first round, New Delhi, 14 July 2006).

Draft agreements for negotiation

The following draft DTAs are under discussions by the Task Force on Double Taxation and Investment Agreements under the chair of the Ministry of Finance:

a. Seychelles;
b. Nigeria;
c. South Africa;
d. Mauritius;
e. Finland;
f. Russia;
g. the United Arab Emirates; and
h. Iran.

V SPECIFIC SPORTS ISSUES

i. Doping

The Anti-Doping Act establishes a body known as the Anti-Doping Agency of Kenya. The Agency is a body corporate with perpetual succession and a common seal, which is capable, in its corporate name, of suing and being sued; and owning, taking, purchasing or otherwise acquiring, holding, charging and disposing of moveable or immoveable property. It is also granted the authority of receiving and borrowing money, entering into contracts and doing or performing all such other acts that may lawfully be done or performed by a body corporate.

The Agency is the only organisation permitted to carry out anti-doping activities in Kenya and its authority is recognised by all national federations in Kenya. The Agency is the successor in title to the Anti-doping Agency established under the Anti-doping Agency of Kenya Order 2015, which ceased to have effect immediately upon the commencement of the Act. The headquarters of the Agency are in Nairobi.

The main function of the Agency is to promote participation in sport, free from doping to protect the health and well-being of competitors and the rights of all persons who take part in sport. Its function is also to create awareness to discourage the practice of doping in sport among the public and the sporting community in particular. It also develops a national strategy to address doping in sport in collaboration with the Ministry of Sports, implement
the World Anti-Doping Code and associated international standards, periodically gazette international standards and use World Anti-Doping Agency accredited laboratories for the analysis of samples and other required specimens.55

It also implements anti-doping activities in the country including the testing of collected samples in all sports, sport federations and sport organisations; and undertakes, coordinates or arranges for research to be undertaken in the field of performance-enhancing substances, and methods and doping practices in sport. As its mandate, it also promotes and implements the application of various guidelines and international standards in matters related to anti-doping.

In the performance of its functions, the Agency is required to address the needs of minors, take into account the needs of persons with disabilities or other persons with special needs, and ensure that the rights of everyone involved in the doping control procedures are respected.

The Agency is granted all the powers necessary for the proper performance of its functions under Section 8 of the Act.

ii Betting

Betting in Kenya is regulated by the Betting, Lotteries and Gaming Act,56 which provides for the control and licensing of betting and gaming premises; the imposition and recovery of a tax on betting and gaming; and the authorising of public lotteries.

The Act establishes the body to be known as the Betting Control and Licensing Board.57 The Act stipulates that the Board shall have power to issue licences and permits in accordance with the Act and any regulations made thereunder; during the subsistence of a licence or permit, to vary, or for good cause to suspend or cancel it and to inquire into complaints against licensees or permit-holders.58

Part 3 of the Act governs the control and licensing of betting and provides for offences in betting and gaming. Some of the offences it creates include unlicensed bookmaking,59

55 Section 7(b) to (v) lays out the functions of the Agency. The Act does not specifically state that the first function is the main function, however. It only lists them all out without giving any preference as to priority. The first function is, however, arguably the main function since it seems to summarise the overall role of the Agency.

56 Betting, Lotteries and Gaming Act Cap 131 Laws of Kenya.

57 Section 3 of the Betting, Lotteries and Gaming Act.

58 Section 4 of the Betting, Lotteries and Gaming Act.

59 Section 15 of the Betting, Lotteries and Gaming Act.
betting by means of unlicensed totalisator,\textsuperscript{60} pool-betting schemes,\textsuperscript{61} touting,\textsuperscript{62} advertising betting,\textsuperscript{63} liquor on licensed premises,\textsuperscript{64} playing games of chance on licensed premises,\textsuperscript{65} betting with young persons\textsuperscript{66} and betting in public places.

\section*{VI OUTLOOK AND CONCLUSION}

Kenya has a worldwide reputation in athletics, especially long-distance running. Paula Radcliffe had her 16-year women’s marathon world record broken by a Kenyan, Brigid Kosgei, who ran the Chicago Marathon in 2:14:04 on 13 October 2019. This came just a day after Eliud Kipchoge, also a Kenyan, became the first person to run a marathon in under two hours, making it a historic weekend for marathon running in the world and Kenya. This demonstrates how important sports are to Kenya, and reflects the importance of the laws and administrative arrangements relating to sport in Kenya.

\textsuperscript{60} Section 16 of the Betting, Lotteries and Gaming Act.
\textsuperscript{61} Section 21 of the Betting, Lotteries and Gaming Act.
\textsuperscript{62} Section 24 of the Betting, Lotteries and Gaming Act.
\textsuperscript{63} Section 25 of the Betting, Lotteries and Gaming Act. This prohibition is, however, qualified, and limited to circumstances that the Act spells out. It states:

\begin{quote}
A person who, in connection with any licensed betting premises, licensed bookmaking or licensed pool betting scheme, without the approval of the Board –
\begin{enumerate}
\item holds himself out by advertisement or notice or public placard as willing to bet with members of the public;
\item displays any written or printed placard or notice relating to betting in any shape or form, so as to be visible in a public street or place; or
\item prints or publishes, or causes to be printed or published, any advertisement or other notice, shall be guilty of an offence and liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both; but nothing in this section shall prohibit the printing, reproduction and publication of circulars giving information relating to betting on an intended horse race or other race in Kenya or elsewhere, if the circulars are issued by a person granted a licence under this Part.
\end{enumerate}
\end{quote}

\textsuperscript{64} Section 26 of the Betting, Lotteries and Gaming Act.
\textsuperscript{65} Section 27 of the Betting, Lotteries and Gaming Act.
\textsuperscript{66} Section 28 of the Betting, Lotteries and Gaming Act.
Chapter 12

NEW ZEALAND

Aaron Lloyd

I OVERVIEW

New Zealand competes on the international sporting stage, belying its modest population of approximately 4.9 million. Rugby Union plays a strong part in New Zealand’s sporting identity. The All Blacks were inaugural winners of the Rugby World Cup in 1987, and following victory in 2015, became the first team to win three world championships, and to defend back-to-back titles. New Zealand’s national men’s and women’s Rugby Sevens teams have won multiple world championships, and the Black Ferns (the women’s national 15-a-side team) won its fifth World Cup at the 2017 Rugby Women’s World Cup held in Ireland.

Rugby Union is not the only sport in which New Zealand excels. At the 2016 Rio Olympics New Zealand finished 14th overall in terms of total medals, and 19th in terms of medal type. New Zealand has also enjoyed success belying its modest size in yachting (particularly the America’s Cup, which it most recently won in 2017), rowing, cycling and athletics. The national women’s netball team and national men’s rugby league team have been crowned world champions, and its national men’s cricket team, the Black Caps, has recently returned toward the top of world rankings, finishing runners-up to Australia in the 2015 Cricket World Cup, and to England in the 2019 edition of the same tournament. NBA star Stephen Adams, and Premiership Football players Winston Reid (formerly of West Ham United) and Chris Wood (of Burnley) sit alongside Major-winning golfers Bob Charles, Michael Campbell and Lydia Ko as successful ‘Kiwis’ on the international sporting stage. Brendon Hartley’s drive at the Torro Rosso Formula 1 team in 2016-17 echoes not only historical success in that sport (past drivers include Bruce McLaren, Chris Amon, Jack Brabham and Denny Hulme), but also contemporaries of Hartley (such as Earl Bamber with whom Hartley won the Le Mans 24 Hour in 2017, Scott Dixon (IndyCar) and Hayden Paddon (WRC)).

In sports administration, New Zealand also contributes significantly on the international stage. A number of leading officials and administrators in rugby, cricket, netball, athletics, sailing and rowing come from New Zealand. In addition, pioneering sports lawyer David Howman, the founding director-general of the World Anti-Doping Agency (WADA), and Maria Clarke (a key participant in the recent overhaul of governance at the IAAF) are both ‘Kiwis’.

1 Aaron Lloyd is a partner at MinterEllisonRuddWatts. The author acknowledges the assistance of colleagues Sacha Oudyn and Charlene Cooper in preparing this chapter.
As sport has become more commercial, the law across the globe has developed accordingly. New Zealand law is no different. In this chapter, we look at the sports law landscape in New Zealand, and how sports administrators and legal practitioners might engage with the legal system in the sporting environment.

II ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Organisational form

A range of legal entities are used by sports clubs, national sporting organisations (NSOs), and professional sports organisations and teams in New Zealand.

The most common legal entity in sport in New Zealand is the incorporated society. An incorporated society is a membership-based organisation provided for under the Incorporated Societies Act 1908. An incorporated society has its own legal identity, separate from its members, and the group must exist for some lawful purpose other than making a profit. The incorporated society must have in place rules that govern the operation of the entity. Decisions of an incorporated society may be amenable to judicial review in the court system, given that the actions of an incorporated society are undertaken pursuant to statutory powers provided for in the Incorporated Societies Act. Examples of sporting organisations incorporated in this manner include New Zealand Cricket, New Zealand Rugby and its member unions,4 and New Zealand Netball. In addition, players’ associations have also traditionally been formed as incorporated societies in New Zealand, often registering as a union under New Zealand employment law. Examples of this include the New Zealand Rugby Players Association (NZRPA),5 the New Zealand Cricket Players Association6 and the New Zealand Netball Players Association.7

Historically, many sporting organisations have, in addition to being formed as an incorporated society, sought registration as a charity (currently under the Charities Act 2005). However, to obtain charitable status certain requirements need to be met, including the requirement that the organisation benefit the community as a whole (thereby excluding sporting organisations that are focused on elite level sport).8 Reform of this area of the law has been under discussion for some time, although concrete legal reform has failed to materialise. A change in government in late 2017 means the scope of future reform is now unclear. However, change is likely at some stage, and care should be taken to ensure compliance with current and future legal requirements in this area.

The limited liability company is a commonly used legal entity under New Zealand law (currently provided for by the Companies Act 1993). Less common in sport than the incorporated society (particularly with community or amateur sports organisations), the company nevertheless has significant benefits as a legal entity, particularly for sporting entities wishing to engage in trade with any desire to make a profit. The use of the company is often combined with partnership (or limited partnership) arrangements, particularly in the

5 www.nzrpa.co.nz.
6 www.nzcpa.co.nz.
7 www.nznpa.co.nz.
‘franchise’ sporting sector. Examples of such an approach can be seen in professional rugby, where the Super Rugby franchises in New Zealand (Blues, Chiefs, Hurricanes, Crusaders and Highlanders) are all structured utilising company or partnership structures, or both.

ii Corporate governance
The Incorporated Societies Act and the Companies Act both prescribe procedural and organisational requirements for incorporated societies and companies, although New Zealand law is not particularly prescriptive regarding its governance requirements. For example, New Zealand registered companies can, as a matter of law, have sole directors. While some sectors have in place additional governance and regulatory requirements (most notably the finance sector), there is no law in New Zealand providing for mandatory governance arrangements in the sporting context.

There is, however, a push in New Zealand to see ‘best practice’ and ‘good governance’ models put in place in sporting organisations. This is driven largely by government policy and funding organisations, such as Sport New Zealand.9 Sport New Zealand has worked extensively to produce a range of resources for sports organisations in relation to matters of governance. Some resources, such as its Nine Steps to Effective Corporate Governance, provide broad guidance as to best practice for sports organisations’ governance and management.10 In addition, specialist resources focus on areas such as health and safety,11 event risk management12 and sports integrity topics such as match-fixing.13 Sport New Zealand has also produced a template set of rules to establish a framework for sporting organisations set up as incorporated societies. In some cases, Sport New Zealand insist on sports organisations adopting best practices before government funding or assistance will be provided, at both the community and elite or high-performance levels (through Sport New Zealand’s related organisation, High Performance Sport New Zealand).

iii Corporate liability
Directors and officers of sports organisations carry potential liability under general New Zealand law such as the Companies Act and the Crimes Act 1963. With the exception of recent amendments to the Crimes Act to confirm match-fixing or manipulation as a criminal offence, there are very few, if any, sporting-related offences under the general law. As a rule, sporting rules and regulations are a matter of private law rather than public law.

The area of health and safety is, however, an area worthy of specific mention. 2015 saw the passage through Parliament of the Health and Safety at Work Act 2015. This was the biggest reform of health and safety law in New Zealand in more than 20 years. It followed not only the Pike River Mine Disaster of 2010, but also the recognition of New Zealand’s generally poor health and safety record in the workplace compared with similar countries in the Organisation for Economic Co-operation and Development. This was observed by the Independent Taskforce on Workplace Health and Safety, which was put in place by the

government in June 2012 to report to the Minister of Labour on whether New Zealand’s workplace health and safety system was fit for purpose. Its report to the Minister in April 2013 made it clear that it was not, and this led to legislative reform and the establishment of an independent regulator, WorkSafe New Zealand (which received an increase in funding).14

Directors and officers of entities owing duties under the Health and Safety at Work Act have specific duties of due diligence in relation to health and safety matters. These duties, new to New Zealand law, require directors and officers to take significant proactive steps to ensure health and safety is properly considered and implemented by their organisations. Significantly, a failure to comply with these obligations (as with other obligations under the Act) can result in individual criminal liability, and penalties including fines, imprisonment, or both. Under the legislation, it is illegal to put in place insurance or any other form of indemnity for fines, meaning that directors and officers will be personally liable for any fines should they commit a breach. Individuals can be fined up to NZ$600,000 or face up to five years’ imprisonment.

III THE DISPUTE RESOLUTION SYSTEM

i Access to courts

New Zealand operates a parliamentary system in the Westminster tradition, with three divided branches of government (the Parliament, the executive and the judiciary). Unlike the United States, Canada and Australia, New Zealand has no written constitution. However, the Constitution Act 1986 does record many of New Zealand’s constitutional arrangements.

New Zealand has a hierarchical and specialist court system. The main law courts are the District Court and the High Court, which have both criminal and civil law jurisdiction. In addition, the Environment and Employment courts sit with specialist jurisdiction. The Court of Appeal (which hears appeals from the High Court and the specialist courts, and some appeals from the District Court) sits as a superior appeal court. The final appeal court in New Zealand is the Supreme Court, which was established in 2004 to replace appeals to the Judicial Committee of the Privy Council based in London. In addition to the courts, there are various administrative tribunals under New Zealand law, including the Disputes Tribunal (which hears civil claims of up to NZ$30,000) and the Employment Relations Authority (a first instance tribunal for the hearing of employment-related claims).

Sports disputes can, and do, end up before any of New Zealand’s courts or tribunals. Employment disputes may be heard in the Employment Relations Authority or the Employment Court. Matters related to planning and resource consents may be heard by the Environment Court (usually after first instance planning decisions or hearings at local government level). Commercial disputes alleging breach of contract, negligence or claims in equity will often be advanced in the District Court or High Court. One recent example is the High Court litigation between media outlets TVNZ and NZME, and pay-tv broadcaster Sky TV, with respect to ‘fair use’ by the media outlets of Sky TV’s licensed sports content.15

Pure sports matters, however, such as selection disputes, doping or other integrity-related matters, or matters involving on-field or on-court disciplinary matters, are rarely heard in the court system, with such matters being heard within the sport’s own disciplinary tribunals.

15 www nbr.co.nz/article/mediaworks-fairfax-settle-sky-tv-over-copyright-dispute-b-211691.
or through the Sports Tribunal of New Zealand (the Tribunal), a statutory body set up to determine sports disputes. Notable exceptions usually take the form of applications to the High Court for the judicial review of decisions made by sporting bodies. Examples of such actions from the sports of rugby and horse racing include Finnigan v. NZ Rugby Football Union Inc [1985] 2 NZLR 159 and Cropp v. A Judicial Committee and ANOR SC 68/2007.

ii The Sports Tribunal of New Zealand

The Tribunal was established in 2003 to hear and determine 'certain' disputes in sport. Its membership is composed of lawyers, doctors, former athletes and other notable individuals with experience in the sports industry. Its chair is required to be a lawyer (of senior standing), and is currently the former president of the Court of Appeal, Sir Bruce Robertson.

The Tribunal operates pursuant to the Sports Anti-Doping Act 2006, and hears and determines:

- anti-doping violations;
- appeals against decisions made by an NSO or the New Zealand Olympic Committee (NZOC) if the rules of the NSO or the NZOC allow for an appeal to the Tribunal;
- other 'sports-related' disputes that the parties agree to have referred to the Tribunal; and
- matters referred to the Tribunal by the Board of Sport New Zealand.

The Tribunal is government funded, and maintains a register of sports lawyers willing to assist athletes and sports organisations in disputes before the Tribunal on a pro bono or reduced-fee basis.¹⁶

Almost all sporting codes that are a signatory to the WADA Code submit the hearing of their anti-doping matters to the Tribunal. The most notable exception, at least in the New Zealand context, is rugby, which has its own anti-doping hearings consistent with the Code.

The Tribunal is seen as an alternative to the Court of Arbitration for Sport (CAS) for the resolution of sports disputes in New Zealand. That said, CAS is still utilised, either as an alternative to the New Zealand court system or the Tribunal, or on appeal from decisions of the Tribunal.

IV ORGANISATION OF SPORTS EVENTS

i Contractual relationships

Contract law provides the legal foundation for many of the relationships present in relation to the conduct of sports events. The common law of contract (borrowing heavily from the United Kingdom and other Commonwealth jurisdictions) is supplemented by a range of statutes, including the Contract and Commercial Law Act 2017, the Consumer Guarantees Act 1993 and the Fair Trading Act 1986. In some cases, entities may have procedural requirements that must be met for entry into contracts: for example, for incorporated societies, a requirement to use a 'common seal'.

ii Accident compensation scheme

A significant feature of the New Zealand legal landscape is the accident compensation scheme (currently governed by the Accident Compensation Act 2001). The scheme, introduced in

¹⁶ See generally www.sportstribunal.org.nz.

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the 1970s, provides for a state-funded compensation and medical treatment scheme for all persons in New Zealand who suffer ‘injury by accident’. A consequence of the scheme is that it generally bars legal action for personal injury.

The scheme has been eroded over time, and there are some exceptions to the bar against suing for personal injury. However, in general terms the prohibition remains, and this makes New Zealand quite unlike any other major legal jurisdiction in that people injured in accidents cannot sue those responsible.

This is significant in both event organiser and spectator relationships, and between event organisers or clubs and athletes participating in their events.

### iii Potential liability for event organisers

Notwithstanding the existence of the accident compensation scheme, significant risk of personal and corporate liability stills exists under New Zealand law for event organisers. The risk of claims for alleged breaches of contract or for acts of negligence causing non-injury-related losses remains, and disputes in such regard are often proceeded with before the courts or using forms of alternative dispute resolution.

In addition, criminal liability can attach to the operation of an event should such an event breach the regulatory requirements for permits or consents, create risk of reckless endangerment, or otherwise promote, encourage or cause illegal activity (such as a breach of transport laws).

Finally, as noted above, reform in the health and safety area creates an increased and significant risk for event organisers should they fail to undertake appropriate due diligence, planning or execution of an event from a health and safety perspective.

### V COMMERCIALISATION OF SPORTS EVENTS

#### i Increasing value of ‘sports rights’

Sport as a business is about the ‘commercialisation’ of sporting ‘products’ and ‘rights’ by sports organisations and those associated with them. As in other jurisdictions, New Zealand law allows for a range of participants in the sports sector to commercialise and profit from their sporting activity, depending upon the role they play.

Broadcast rights remain among the most valuable of sporting rights present in the New Zealand market, with the two major players being the long-standing pay-tv broadcaster Sky TV, and the relatively recent entrant into the market Spark Sport (an online content provider, backed by telecommunications company Spark (formerly Telecom New Zealand)). Unlike Australia, New Zealand has no legislation in place requiring sport to be made available on free-to-air television. In practice, state-owned broadcaster Television New Zealand, and private free-to-air broadcaster MediaWorks (which operates TV3), provide some free-to-air sports broadcasting. In addition, Prime TV (a free-to-air TV channel owned and operated by Sky TV) offers free-to-air coverage of sports, often as delayed coverage of events that Sky TV holds the principal broadcasting rights to.

The entry into the market of over-the-top broadcasting of sport in New Zealand has been a major disruptor in sports broadcasting in recent years. This started with some major sports broadcasting content, such as live English Premier League Football (EPL) and USPGA Golf, being only available in this format. Sommet Sports TV (SSTV) entered the New Zealand broadcast market for a brief period of time, with a free-to-air sports television service. SSTV’s content drew largely on minority sports (e.g., the Australian Football League,
surfing, bull-riding) or on alternative content for more mainstream sports (e.g., the German Bundesliga in football, the Caribbean Premier League in cricket). However, SSTV went into liquidation in December 2014 and ceased broadcasting. Spark Sport’s entrance into the market has been revolutionary because of the scale at which it has been able to operate, obtaining rights for all FIA motorsport (including F1 and the WRC), international rugby (including the Rugby World Cup 2019 and European Rugby), and the EPL. Sky TV has recently retained its rights arrangements with New Zealand Rugby (NZR) (including in relation to the All Blacks), with a deal struck in late 2019, which now sees NZR take an ownership stake in Sky TV.

Outside broadcast rights, image rights, merchandising and sponsorship remain significant commercial commodities, although overall value is often limited by the relatively small nature of the New Zealand sporting market. Some New Zealand sporting brands, such as the All Blacks (rugby) and Team New Zealand (yachting), have significant global value, as evidenced by NZR’s global sponsorship arrangements with Adidas and with insurance giant AIG and Team New Zealand’s association with Emirates Airline. In 2016, NZR ceased its commercial relationship with Coca-Cola Amatil New Zealand Ltd (the local Coca-Cola affiliate) in favour of a relationship with Gatorade. While this may look like swapping one multinational beverage sponsor for another, the manner in which the Gatorade sponsorship was launched (with the All Blacks being ‘welcomed’ to ‘the family’, which included such international sports stars as Usain Bolt and Lionel Messi) indicated the increasing value of the All Blacks brand in overseas sporting markets.

At the athlete level, individual contractual arrangements for the use of image rights or for sponsorship are common. However, it is important to ensure that individual contractual arrangements do not interfere or conflict with overarching arrangements entered into by a club or NSO. In some sports, rules provide for dealing with such conflicts, and the employment arrangements between NZR and its players (represented by the NZRPA) is a good example of athletes permitted to personally endorse non-competing products or services to those that sponsor NZR.

**ii Rights protection**

New Zealand has strong laws relating to copyright, trademarks and other intellectual property, providing rights holders with significant legal protection against improper use. New Zealand law recognises automatic copyright protection for the creator of original works. In addition, application can be made for intellectual property protection for a range of other forms of intellectual property, including trademarks. While New Zealand law does not prohibit parallel importing of merchandise, the New Zealand Customs Service (the government agency responsible for policing New Zealand’s borders) is tasked with intercepting and holding pirated and counterfeit goods, and interfaces with commercial entities with respect to this.

A significant development in New Zealand’s rights protection landscape was the passage of the Major Events Management Act 2007 (MEMA). MEMA allows events designated as ‘major events’ to have special rights protections put in place to preserve the economic value for sponsors and commercial partners involved in the events. MEMA creates criminal offences for those who use protected words and emblems without authorisation, and creates clean
zones around event venues where commercial entities that are not formally associated with the event cannot advertise. MEMA is a major tool for the avoidance of ambush marketing and for the protection of sports events’ economic rights. Events that have operated with MEMA protection in New Zealand include the 2010 Rowing World Championships, Rugby World Cup 2011, FIFA U-17 World Cup 2015, International Cricket Council Cricket World Cup 2015 and the Rugby League World Cup 2017. New Zealand will host the women’s edition of the Rugby World Cup in 2021 and the America’s Cup in the same year, both under MEMA protections.

VI PROFESSIONAL SPORTS AND LABOUR LAW

i Mandatory provisions

Professional athletes are generally engaged as either ‘employees’ or as ‘independent contractors’ depending on the nature and extent of the relationship between the athlete and his or her sport.


Employment law in New Zealand prescribes minimum entitlements for employees, including minimum hourly wage rates (currently NZ$17.70), the requirement to provide holidays and to pay additional remuneration to employees who are required to work on those holidays, and the documentation of employment terms and conditions in writing. In addition, New Zealand is not an ‘at will’ employment jurisdiction. Accordingly, unless an employee is engaged on a valid fixed-term employment arrangement, his or her employment may only be terminated for cause or in the case of redundancy or medical incapacity, and only after the employer follows a fair process (which requires employers to provide sufficient information relating to any decision that might affect the future employment of the employee to him or her ahead of any decision about his or her employment being made, and allowing him or her an opportunity to comment on the same to the employer).

Whether someone is an employee or an independent contractor is a significant matter under New Zealand employment law. With only limited exceptions (the motion picture film industry being the principal example), whether someone is an employee or a contractor will not turn on how they choose to describe the relationship, but whether in fact their relationship is one or the other. If an employing sports organisation gets this wrong, and engages employees as independent contractors, there can be significant consequences if that position is successfully challenged (including the requirement to provide minimum employment entitlements that may not have been provided to a contractor, and the payment of unpaid income taxes).

In practice, athletes in New Zealand operate as both employees or independent contractors depending on the sport and the nature of the engagement. Professional rugby players, for example, are employees, while professional cricketers operate on an independent contractor model. Such arrangements are yet to be subject to any significant scrutiny by

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the courts, and notwithstanding the difference, both rugby and cricket employ a collective approach to bargaining of terms of engagement for the players through their respective player associations.

ii Free movement of athletes

It is common practice in New Zealand sporting leagues, and for New Zealand-based teams in Australian-run leagues, to place limitations on the number of foreign athletes allowed to compete in the competition. Examples include rugby’s Super Rugby competition, netball’s ANZ Premiership Competition (and the former Trans-Tasman Netball League) and the Australian NBL basketball league. However, New Zealand does have, in the form of the Human Rights Act, a law clearly prohibiting discrimination in an employment context on the basis of race and ethnic or national origins, meaning that such practices could be open to potential legal challenge.19

The use of ‘restraint of trade’ clauses in employment arrangements is permitted under New Zealand law where the restriction is necessary to protect the legitimate economic interests of an employing party. This can, and is, used to justify restrictions on the absolute free movement of athletes between respective employers for the duration of an athlete’s engagement. In addition, the use of fixed-term employment agreements where both the athlete and the sporting organisation are bound to honour the agreement for its duration can have the same effect. However, there is neither a culture of athlete drafting, nor of transfer fees, in the New Zealand sporting landscape such as exists in many offshore jurisdictions. In practice, transfer fees may arise out of the operation of private law arrangements put in place by international governing bodies. World Rugby’s provisions requiring compensation payments between unions transferring professional players is one example.20 Another case where this might arise is where clubs agree a release fee to compensate a club where an athlete is leaving before the end of his or her contract term, particularly where the transfer is cross-competition (e.g., Rugby League to Rugby Union).

VII SPORTS AND TAXATION

New Zealand has a variety of different taxation rules that are relevant to sporting organisations and athletes that carry out activities in New Zealand. Sporting organisations and athletes that are New Zealand tax residents will generally be required to pay New Zealand income tax on their worldwide income. An individual that is either present for more than 183 days in a 12-month period, or has a ‘permanent place of abode’ in New Zealand, will be tax resident in New Zealand. Sporting organisations will be tax resident where they are incorporated, have a head office or are centrally managed in New Zealand.

The rate of income tax applicable will depend on the particular characteristics of the sporting organisation or athlete. For most incorporated sporting organisations, a 28 per cent tax rate will apply. However, sporting organisations that are charities or non-profit bodies established to promote amateur sport may be tax exempt. Athletes are taxed at graduated income tax rates of between 10.5 and 33 per cent.

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19 Section 21, Human Rights Act.
A New Zealand tax resident athlete could be either an employee or an independent contractor for tax purposes (or in some cases both). Where the athlete is an employee, their employer will be required to deduct any tax on any employment income they derive at source under New Zealand’s pay-as-you-earn (PAYE) system. An independent contractor athlete will generally be required to pay tax on their income themselves, and must file an individual tax return each year.

Non-resident sporting organisations and athletes will generally only pay New Zealand tax on income that is deemed to have a New Zealand source. In most cases, the New Zealand party that makes payments to the non-resident organisation or athlete will be required to deduct the applicable tax out of payments to the non-resident sporting organisation or athlete at source under the PAYE rules. The applicable deduction rate will generally be 20 per cent and the deducted tax will generally be treated as a final tax from the perspective of the non-resident.

Most tax treaties entered into by the New Zealand government include Article 17 of the Organisation for Economic Co-operation and Development Model Tax Convention, which allows income from the activities of entertainers and sportspersons to be taxed in the country in which those activities are performed. A limited number of tax treaties include provisions that prevent Article 17 from applying to certain sporting events (e.g., league competitions in New Zealand’s tax treaty with Australia). As a result of the complex nature of taxation laws, and the additional complications created by sport often being cross-border, it is strongly advised that specialist taxation advice is sought when structuring sports arrangements in or connected to New Zealand.

VIII SPECIFIC SPORTS ISSUES

i Doping

Sports doping is not a criminal offence in New Zealand, although some of the substances used to dope might be regulated or prohibited under medicines or narcotics legislation. Relevant legislation includes the Medicines Act 1981 and the Misuse of Drugs Act 1971. New Zealand is a signatory to the WADA Code, and has a national anti-doping organisation in the form of Drug Free Sport New Zealand (DFSNZ). As noted earlier, proceedings against athletes and others for anti-doping rule violations are generally heard by the Tribunal, although some sports retain the operation of their own anti-doping tribunals.

ii Betting

New Zealand has a legal but highly regulated betting market. The New Zealand Racing Board (NZRB) is a statutory body (state-controlled) that regulates the racing industry, and manages all legal gambling on racing and sport. Betting is permitted on a range of sports, and legislation requires the NZRB to make payments to NSOs with respect to gambling on their sport (irrespective of whether the gambling is on New Zealand or foreign examples of the sport). This is a major source of funding for a number of New Zealand sports.

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21 See drugfreesport.org.nz.
22 See www.nzracingboard.co.nz.
Manipulation

In 2014, Parliament passed an amendment to the Crimes Act confirming that any manipulation of the outcome of a sports event or any part of a sports event with the intent to influence a betting outcome would amount to a breach of the crime of obtaining by deception.

The Crimes Act (Match-Fixing) Amendment Act 2014 inserted a new Section 240A to the Crimes Act to specifically include instances of match- or spot-fixing in a sporting event as falling within the crime of obtaining by deception (Section 240) where the person involved intended to influence a betting outcome. The amendment does not, therefore, capture instances of match- or spot-fixing that are unrelated to gambling, and instead motivated by another purpose, or where the intent to influence a betting outcome cannot be made out. Anyone convicted under the law is liable to a term of imprisonment of up to seven years. As of the time of writing, no prosecutions have yet been taken under this legislation.

IX THE YEAR IN REVIEW

i Anti-doping

The Tribunal, which hears the majority of New Zealand’s anti-doping cases, reported nine anti-doping decisions in the year to publication,\(^{23}\) from 19 in the previous year, and eight and four in the previous years to that.\(^{24}\) A significant reason for the decrease in anti-doping violations is the end of the clenbuterol.co.nz prosecutions conducted by DFSNZ, following the combined Medsafe, Customs and police investigation that resulted in the operator of the website being jailed, and information in relation to athletes passed on to DFSNZ.

Of the nine cases, five of them were as a result of that investigation. The remaining four were all as a result of adverse analytical findings following testing.

In addition to the cases noted above, a further 15 anti-doping cases were heard by the New Zealand Rugby Anti-Doping Judicial Committee (NZRADJC), which retains jurisdiction to hear WADA Code violations in rugby, separate from the Tribunal. It appears that all of these cases arose from the clenbuterol.co.nz investigation referred to above. This body also heard one case (\textit{Paratene Edwards v. DFSNZ}) where sanctions imposed in 2018 were quashed as the applicant was not able to participate in that hearing owing to serious injuries sustained in a motor-cycle accident, and after providing evidence of no involvement in rugby since 2010.

There has been some criticism of DFSNZ’s prosecution of sub-elite level athletes for breaches of the WADA Code, notwithstanding the Code’s universal application across all Code participating sports. There has been disagreement in legal circles as to the extent of DFSNZ’s discretion to prosecute. This matter has been commented upon by both the Tribunal and the NZRADJC, and DFSNZ has recently announced that it is reviewing its position in this regard.

\(^{23}\) Taken from or to 1 August.

\(^{24}\) See www.sportstribunal.org.nz/decisions/all-decisions/search.
Other Tribunal disputes

In addition to the anti-doping cases noted above, the Tribunal heard two selection dispute cases in the year to date, in table-tennis where a minor successfully challenged her non-selection to a youth national team, and in cycling where a BMX rider was unsuccessful in challenging non-selection for the 2019 World Championships.

OUTLOOK AND CONCLUSIONS

As with recent years, we remain convinced that integrity breaches remain the key risk for sports organisations in New Zealand, and around the world. The potential for a doping, match-fixing or some other corruption scandal to embroil an athlete or a sports organisation must remain of significant concern not only for athletes, but just as importantly sports administrators and governors. If such a scandal does arise, it has the very real potential to cause irreparable reputational and financial harm to sports organisations and to the individuals involved.

A live issue in New Zealand sport at present is the question of athlete welfare, and how that is juxtaposed against the rigours and difficulties of high-performance sport. To what extent coaches’ harsh treatment of athletes is an acceptable part of, and perhaps even requirement for, truly elite level performances, and when that crosses the line into bullying and mistreatment, is a complex issue. A number of sports (such as hockey, cycling and football) have held formal inquiries into precisely this issue, and there are sure to be more issues arising in this space. Sport New Zealand is currently undertaking significant work on the issue of athlete welfare, with this issue very much front and centre.

Maximising commercial revenue is also a live and current issue for New Zealand sports, including in relation to the developing broadcast market. Major events, in the form of the women’s edition of the Rugby World Cup and the America’s Cup, both in 2021 are also firmly on the horizon.

Any cases of sports corruption (whether flowing from the recent FIFA scandal or in relation to other sports) are likely to be closely investigated and prosecuted under existing anti-bribery and corruption laws, given the importance of sport in terms of New Zealand’s economy and global image. However, a key question remains at present as to who would investigate and prosecute such matters. Currently, New Zealand has no overarching sport integrity body, resourced and tasked with investigating matters of sports corruption other than the DFSNZ, which has as its ambit only anti-doping. This is something that is likely to be addressed in some way in the near future, although at present, matters of corruption at least appear to fall into the jurisdiction of the Serious Fraud Office.

As sport becomes more valuable, commercial disputes are likely to increase, whether in relation to the disrupting and evolving broadcast market, or in relation to sponsorship or other commercial activity. Athlete power is also growing, and the development of athlete unions beyond the traditional powerhouses of cricket, rugby and netball remains a possibility. However, the hot topic of the moment remains integrity in sport. It is a topic that is as broad as it is significant, and it continues to be the touchstone for many of the leading developments in sports law and administration in New Zealand for now.
I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Organisational form

Sports clubs

Sport activity in Poland can be conducted in particular in the form of a sports club. After years of intense regulation of sports inherited from the communist times, the Act on Sports, adopted in 2010, is based on the principle of autonomy of sports. Thus, the law does not specify any mandatory organisational forms in which sports clubs can operate, the governmental regulation of sports is very minimal and the majority of issues are left to self-regulation by sports associations, international sports federations and the International Olympic Committee. The only requirement provided in the Act on Sports is that sports clubs should have legal personality. Thus, in practice, sports clubs can operate only in the form of a shareholding company or an association.

Students’ sports clubs are a special kind of sports club established by students, parents and teachers in accordance with the rules provided in the Act on Associations. Students’ sports clubs only require entry in the relevant register kept by the mayor of the locality where the club’s registered office is located. As of 1 January 2020, a simplified administrative procedure will apply for entry in the relevant register. The registration should be deemed effective by tacit agreement if within 30 days from the date of submitting an application for entry in the relevant register the mayor of the locality fails to issue a decision on registration or refusal of registration of a students’ sports club.

Sports associations

At least three sports clubs are required to establish a sports association in the form of an association or a union of associations.

1 Piotr Dynowski is a partner, Piotr Zawadzki is a senior associate and Michał Sałajczyk is an associate at Bird & Bird Szepietowski i wspólnicy sp k.
3 Article 3(2) of the Act on Sports.
Polish sports associations

To hold and conduct competitions in a given sports discipline, a Polish sports association should be established. Sports associations, sports clubs or other legal entities whose statutes or articles of association foresee conducting activities in the given sports discipline may be members of a Polish sports association.

Establishing a Polish sports association requires the consent of the Minister of Sport. A relevant application should be accompanied by:

a) a draft statute of the association;

b) a detailed description of the sports discipline in which the association plans to hold competitions, information on rules of competition and an explanation of the competition system (e.g., cup, league); and

c) certification of membership in the international sports federation active in Olympic or Paralympic sports, or otherwise acknowledged by the International Olympic Committee.\(^4\) The Minister of Sport maintains a list of Polish sports associations, which is available on the ministry's website. Polish sports associations are also required to register in the National Court Register.

Polish sports associations have the exclusive right to:

a) organise and hold competitions for the title of Champion of Poland or Polish Cup in their respective sports discipline;

b) set up and enforce sport, organisational and disciplinary rules of competitions organised and held by them with the exception of rules on doping;

c) appoint a national team for Olympic or Paralympic games, world championships or European championships; and

d) represent their sports discipline in international sports organisations.

In sports where competition is organised in the form of a league, a Polish sports association may establish a professional league. If more than half of the sports clubs playing in the top class league competition are operating in the form of a joint-stock company, a Polish sports association is obliged to establish a professional league. In team sports, only sports clubs operating in the form of a limited liability company or joint-stock company are allowed to play in the league. A professional league should be managed by a separate legal entity in the form of a shareholding company. The operating rules of the professional league should be agreed in an agreement between the league managing entity and the relevant Polish sports association. The agreement is also subject to approval by the Minister of Sport.

Polish Olympic Committee

The Polish Olympic Committee (POC) is a union of associations comprising Polish sports associations and all other entities active in the national Olympic movement. It is considered a non-governmental organisation that independently sets and realises the aims of the Olympic movement. It cooperates with the Minister of Sport and opines on all bills related to the Olympic movement.

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\(^4\) Article 11(2) of the Act on Sports. As at 28 October 2019, an act introducing the possibility for non-Olympic sports associations to be established has been enacted, and is expected to come into force before the end of 2019, after the President signs it into law.
Corporate governance

There are no specific regulations in Poland with regard to corporate governance of sports clubs, and thus standard rules on corporate governance apply, depending on the legal form the sports club has adopted (an association or a shareholding company). The only requirement provided in the Act on Sports is that organised sports activities in a sports association or a sports club participating in competitions held by a Polish sports association may only be conducted by a coach or a sports instructor. The Act on Sports provides minimum criteria for being appointed a coach or a sports instructor.\(^5\)

The term of office of the officers of a Polish sports association cannot exceed four years. The function of a president of a Polish sports association can be exercised by the same person for a maximum of two consecutive terms of office.

If, on the day of appointment as the officer of a Polish sports association, the person appointed meets any of the following conditions, he or she is obliged to cease that activity, sell shares or stocks, terminate the contract, resign or quit the entity within 30 days of appointment, or the person shall be dismissed:\(^6\)

- conducted business activity related to the statutory aims of the association;
- held shares or stocks in a company conducting business activity related to the statutory aims of the association;
- was a partner or held shares in a partnership conducting business activity related to the statutory aims of the association, or was a close relation to such person;
- worked for a ministry in support of the Minister of Sport;
- was a coach of the national team or a member of training staff of the national team in the same sports discipline; or
- was a member of the board, proxy or attorney-in-fact of the entity that provides services, supplies or construction works to the association, including financial or in-kind sponsorship.

An annual financial report of the Polish sports association should be examined and approved by an independent auditor. The annual financial report and report of the managing board of the Polish sports association are subject to review and approval by the general meeting of the members or delegates of the Polish sports association. Once approved, they should be sent within 30 days to the Minister of Sport to be published in the Public Information Bulletin.

Polish sports associations are supervised by the Minister of Sport who can demand copies of all the resolutions of the associations and written explanations concerning activities of the associations, as well as to conduct inspections of the associations.

The statute of a Polish sports association, and every subsequent change to it, requires approval by the Minister of Sport. Upon a motion of the Minister, a court may suspend the authorities of a Polish sports association and appoint a curator, or dissolve the association in the case of grave or persistent violations of law or its statutes by the association.

Corporate liability

There are no specific statutory corporate liability regulations in Poland applicable only to sports clubs. Thus, sports clubs, including their managers and officers, are subject to standard

\(^5\) Article 41 of the Act on Sports.
\(^6\) Article 9 of the Act on Sports.
rules on corporate liability as set out in the Civil Code or the Commercial Companies Code and other acts, depending on the legal form the sports club has adopted (an association or a shareholding company). There may also be additional rules on corporate liability provided in the internal regulations of the relevant Polish sports associations or international sports federations.

The Act on Safety of Mass Events’ provides for liability of an organiser of a mass event with an entry fee for damages, including damage or destruction of property incurred by the police, military police, municipal or city guards, the State Fire Service or other fire protection units and health service in connection with their activities during the mass event.

II THE DISPUTE RESOLUTION SYSTEM

i Access to courts

It is a constitutional principle that no person or entity can be deprived of access to a state court. Hence, any decision of a sports governing body may always be challenged by way of an appeal to a court; however, the nature, scope or conditions for a complaint may vary.

In the case of disciplinary sanctions (including doping matters) and ineligibility decisions, Polish athletes, as well as other persons involved in professional sports (members of sports associations, referees, coaches, managers, etc., as well as, to some extent, supporters and, indirectly, clubs) may challenge decisions of the sports associations in appeals to the Court of Arbitration for Sport at the Polish Olympic Committee (CASPOC). The rulings of CASPOC can only be challenged by a cassation appeal filed with the Polish Supreme Court, but only in cases of gross violations of law by the sport authorities, or where the judgment of CASPOC is obviously unjust.

Also, under certain conditions, Polish law allows appeals against the final arbitration awards (for further details, see Section II.ii).

ii Sports arbitration

Disputes between athletes and sports associations or clubs, or both, in particular arising from contractual or coaching contracts, transfers, managerial or advertising agreements, etc., may be brought before the state courts, but most often they are settled in arbitration (often provided for in the internal regulations of the relevant sports associations). Arbitration courts (in particular CASPOC) are also involved in disciplinary and ineligibility procedures. CASPOC also has jurisdiction in appeal proceedings against the decisions of sports associations in disciplinary matters if the internal regulations or statutes of the relevant Polish sports association or other sports organisation do not provide otherwise. CASPOC is a permanent arbitration court composed of 24 arbitrators appointed by the managing board of CASPOC for a four-year term.

Practically all matters relating to sports may be brought to arbitration. Rare exceptions cover criminal cases, exclusively reserved to the criminal courts. Conducting criminal, civil or administrative proceedings, however, does not exclude conducting disciplinary proceedings in relation to the same acts.

The only formal requirement for a valid arbitration agreement (or arbitration clause) is that it must be concluded in writing. However, it is also recommended that it precisely

indicates the nature and the scope of the matter and the competent court, or at least the basic rules of formation thereof in the case of ad hoc arbitration (including the number of arbitrators and the appointment procedures), as well as reference to the applicable rules (both procedural and substantive). In practice, the permanent arbitration courts (and the rules they apply) are the first choice.

Arbitration courts have competence to render interim measures, such as interim injunctions, which can be granted on the request of a party. However, the enforcement of an interim measure requires approval of the state court (i.e., the enforceability clause (see subsection iii)).

The final arbitration award may be challenged and, as a consequence, revoked if there was no arbitration clause or the clause was invalid, a party was not duly notified of the appointment of the arbitrator or the arbitration proceedings, or otherwise deprived of the ability to defend its rights, or owing to other, mainly formal, defects of the award.

iii Enforceability

Any decision of the sports governing body that does not require compulsory enforcement, is, as a rule, directly enforceable (legally effective), unless the decision is challenged before competent bodies, including state courts.

If, however, the decision requires compulsory enforcement (e.g., taking away property, seizure of objects), it requires obtaining an enforceability clause, that is, a formal confirmation granted by the state court based on certain formal prerequisites, such as the existence of a relevant ruling or award and lapse of deadlines for challenging thereof (the court does not refer to the merits of the case when dealing with the enforceability clause request). Any person or entity may also agree (in notarial need form) to the future enforcement even in the absence of the court ruling or arbitration award, subject only to the enforceability clause.

Compulsory enforcement is only available through a bailiff (i.e., a sports governing body must not enforce its decisions itself).

Once the final and non-appealable decision or award is issued and the enforceability clause is granted, the enforcement may only be challenged in exceptional instances, including the expiry of the enforced commitment (e.g., waiver, its earlier fulfilment or statutory changes). In the case of a decision or award being issued as a result of a crime (e.g., bribery or forgery of documents), Polish law also provides certain, extraordinary measures to challenge the final decisions or awards, and so their enforceability.

III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator

By participating in a sports event, the spectator enters into an agreement with the event organiser. The mutual obligations of the parties are derived from the explicit terms of the agreement, as well as the general terms and conditions of the event and any applicable national legislation (especially the Civil Code and the Act on Safety of Mass Events). In most cases, the spectator acts as a consumer, therefore certain consumer protection regulations would also apply to the contractual relationship with the organiser.

The organisers commonly include the following terms within the terms and conditions of the event:

- the prohibition to sell tickets to third parties;
- the spectator’s consent to use his or her image recorded during the event;
c rules concerning spectators taking photographs or recording videos during the event; and

d objects that are not allowed in the event venue.

Provisions concerning most of these matters are also present in national legislation, but are often expanded in terms and conditions of events. For example, while the organiser is allowed to record the event (including the images of spectators) under the Act on Safety of Mass Events, the footage may only be used for safety purposes. Because of this, organisers tend to require a broader consent from the spectators, which allows them to also use the footage for promotional purposes.

ii Relationship between organiser and athletes or clubs

Entities that participate in professional sports competitions, such as sports clubs, need to be members of Polish sports associations. The latter are exclusively authorised by the Act on Sports to hold competitions for the titles of Champion of Poland, as well as Polish Cup and to establish professional leagues.8

The Act on Sports also grants the Polish sports associations the exclusive authority to lay down competition rules and appoint the national team, among others.9 Sports clubs are subject to these rules owing to their membership in a relevant Polish sports association. Polish sports associations are also bound by regulations of the international governing bodies of specific sports (such as UEFA or FIFA for football). Athletes are associated in their sports clubs, and thus obliged to follow the internal regulations of the clubs and the relevant sports associations, as well as the rules issued by the international sports federations.

Internal regulations of sports associations also include disciplinary measures to ensure that their members comply with them. These regulations have to comply with applicable national legislation, especially the Act on Sports.

iii Liability of the organiser

An important distinction should be made in relation to the Act on Safety of Mass Events. The organiser of the competition (such as a football league) is not considered to be the organiser of each specific event (such as a single football match). In the case of football matches, only the hosting club would be considered the organiser and be responsible for the safety of the event.

In most cases, sports events are considered mass events under the Act on Safety of Mass Events. Its provisions impose certain obligations on the organisers of the events, including the obligation to ensure spectators’ safety (i.e., by providing access to medical assistance and security services).

The organiser may be liable towards spectators and athletes, as well as third parties, under the general rules of civil law. This may include either contractual liability (liability for improper performance of the agreement between the organiser and a specific person)10 or tortious liability (the duty to redress damage incurred).11 For events where an admission fee is collected, the organiser is obliged to hold civil liability insurance.

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8 The professional league is required to be administered by a separate legal entity.
9 Articles 13 and 15 of the Act on Sports.
10 Article 471 of the Civil Code.
11 Article 415 of the Civil Code.
Natural persons acting on behalf of the organiser may also face criminal liability (e.g., for inflicting bodily harm – although in certain situations it is allowed for the security service to use means of physical coercion during mass events). In Polish criminal law, only natural persons may be liable for committing a crime.\(^\text{12}\) Depending on the nature of a specific offence, criminal proceedings may: be started \textit{ex officio}, require the aggrieved party to file a motion for prosecution (which is then conducted by the public prosecutor or the police), or require the filing of a private claim, where the aggrieved party acts on his or her own before the court, usually without the public prosecutor’s involvement. The last procedure is used in cases of causing minor bodily harm, which may be a common cause of liability in relation to sports events.

\textbf{iv} \textit{Liability of the athletes}

Inflicting damage to another athlete, a spectator or to property may be the basis of an athlete’s civil or criminal liability. Although there are no provisions of national legislation specifically addressing athletes’ liability, certain conditions may apply:

\begin{itemize}
    \item[a] according to established court practice, an athlete may not be criminally liable for causing harm to another athlete if the harm was inflicted in the course of a sports competition. The limitation of liability is not absolute, however – for example, it is established that actions that are against the rules of a sport do not qualify for limitation of liability;
    \item[b] in relation to athletes’ civil liability towards each other, arbitration clauses are often in place, so that disputes are resolved before arbitration courts of sports associations, not before regular courts;
    \item[c] in addition to civil, administrative or criminal sanctions, an athlete may also face disciplinary liability for his or her acts.\(^\text{13}\) An agreement between a sports club and an athlete may also include stipulated damages payable to the club for certain wrongdoings of the athlete; and
    \item[d] certain legal provisions govern the liability of athletes for doping.\(^\text{14}\)
\end{itemize}

With these exceptions, athletes are liable for their actions towards third parties (including spectators) under the general rules of civil and criminal law. In practice, this would mainly cover civil law duty to redress inflicted damage. For criminal liability, depending on the nature of a specific offence, criminal proceedings may: be started \textit{ex officio}, require the aggrieved party to file a motion for prosecution (which is then conducted by the public prosecutor or the police), or require the filing of a private accusation, where the aggrieved party acts on his or her own before the court, usually without the public prosecutor’s involvement.

\textbf{v} \textit{Liability of the spectators}

The law provides specific means aimed to protect participants of mass events. There are certain crimes and misdemeanours that may be only committed during a mass event, such

\(^{12}\) For certain crimes, including the crime of organising a mass event without holding a relevant permit or against its terms, the organiser may, however, face secondary liability in the form of a significant fine under the Act on Liability of Collective Subjects for Acts Prohibited under Punishment.

\(^{13}\) Article 45b(4) of the Act on Sports.

\(^{14}\) See Section VIII.i for details.
as failure to follow orders issued by a safety officer, hindering identification of a person (e.g., by covering one’s face) or forcing one’s way into the place where a sports competition is held. Most of them are adjudicated in expedited procedures.

In cases of conviction for a mass event-related crime or misdemeanour, the court is allowed to impose an additional penal measure of a temporary prohibition to participate in mass events (applicable to all mass events or specific ones). As a separate measure, organisers of football matches are also allowed to charge persons who violate the terms of the event venue or mass event safety rules with a ‘club ban’. The club ban prohibits access to all events in which the organiser’s football team participates.

In addition, spectators are also liable for their conduct under the general rules of civil and criminal law, such as a civil law duty to redress damage inflicted. For criminal liability, depending on the nature of a specific offence, criminal proceedings may: be started \textit{ex officio}; require the aggrieved party to file a motion for prosecution (which is then conducted by the public prosecutor or the police); or require the filing of a private accusation, where the aggrieved party acts on his or her own before the court, usually without the public prosecutor’s involvement.

\textbf{vi} \hspace{1cm} \textbf{Riot prevention}

The provisions of the Act on Safety of Mass Events apply to most sports events intended for 1,000 spectators or more (or 300 spectators or more for events held in sports halls).\textsuperscript{15} The Act is intended to ensure safety of spectators, and it imposes several obligations on the organiser of the event to achieve that goal, including:

\begin{itemize}
  \item \textit{a} the obligation to obtain a permit to organise a mass event. A permit is issued by the mayor of the locality where the event is to be held. An application for a permit is required to provide information on safety of the event, such as emergency exit routes of the venue;
  \item \textit{b} the right (and in some cases – the obligation) to record the event for safety purposes;
  \item \textit{c} the obligation of the security service of the event to deny access to the event to persons who are demonstrably under the influence of alcohol or drugs, who are aggressive or who are subject to a disqualification from participation in mass events (a penal measure that may be imposed by a court for committing certain crimes); and
  \item \textit{d} certain additional obligations imposed on the organiser if a mass event is declared to be 'high risk', such as the obligation to employ additional security officers and the prohibition to sell alcohol on the premises of such events.
\end{itemize}

\section*{IV \hspace{1cm} \textbf{COMMERCIALISATION OF SPORTS EVENTS}}

\textbf{i} \hspace{1cm} \textbf{Types of and ownership in rights}

A bundle of sport-related rights may be commercialised in Poland, including the rights to sports events’ broadcasts, images of the athletes, copyrights to a variety of works of authorship (films, music, photos, jingles, apps, etc.) or logos (trademarks), in particular in relation to merchandise.

\textsuperscript{15} Certain sports events are outside the scope of the Act on Safety of Mass events regardless of the number of spectators. This applies in particular to events with participation of minors or disabled athletes, as well as physical recreation events with free admission.
The rights to broadcasts primarily belong to broadcasting organisations, although the recording of an event requires consent of the club, event organiser or a sports association, and is carried out under conditions agreed therewith. Exclusive rights to broadcast competitions in such popular and profitable sports as football, volleyball or basketball, are subject to tenders organised by the relevant Polish sports associations or entities managing the respective leagues.

Images primarily belong to the respective natural persons (and, as such, are inalienable and non-transferable), but may be the subject of licence agreements between athletes and clubs, sports associations or sponsors allowing for their further exploitation. In addition, Polish law provides that an image of an athlete – member of a Polish national or Olympic team – in the Polish national team kit may be used by virtue of law by the relevant Polish sports association or, respectively, by POC.

Other rights, such as copyrights or trademarks may be held by the sponsors, clubs or sports associations.

Rights owners may license their rights (allowing use thereof for a specific time and, usually, with some further limitations) or transfer (assign) them to the purchasers.

ii Rights protection
Where there is controversy over the use of rights under a concluded contract, the basic framework for the resolution thereof will be the contract, and, in particular, dispute resolution rules (if any) contained therein, including the arbitration clause. In the case of other issues, in particular third parties’ infringements, the law of torts and, sometimes, criminal regulations will apply to protect and enforce the rights. In the latter case, state courts and other authorities, including the police or a public prosecutor, may be involved.

Effective protection of rights may sometimes be burdensome, especially if the respective contracts lack clarity (e.g., on the agreed scope or the limits of the permitted use, or the remuneration).

In case of third-party infringements, typically the effectiveness of the protection may be weakened owing to their large scale; for example, in the case of internet sales of counterfeit products. Luckily, significant improvements have been made in that field in recent years, also owing to the greater detection of crimes and torts, and much better cooperation between rights’ holders and competent authorities (police, courts, custom authorities).

iii Contractual provisions for exploitation of rights
Contracts for exploitation of rights must, in the first place, precisely reflect the agreed scope, including time frames, of the permitted use. In addition, if it covers transfer or license of copyrights, it must precisely define fields of use (fields of exploitation) (i.e., permitted ways of using the works, such as copying, distributing, disseminating on the internet, broadcasting). In the absence of precisely listed fields of use, including overly broad and vague clauses (e.g., transferring ‘all copyrights’) the copyrights transfer or license is legally ineffective.

Also, no rights can be assumed on the part of the licensee or buyer; that is, unless a certain right is explicitly granted, it will remain with the licensor or transferor (e.g., a TV broadcasting right does not automatically allow distribution on the internet). Contracts should also precisely define any further specific rules or limitations (including time frames and geographical limits).
V PROFESSIONAL SPORTS AND LABOUR LAW

i Mandatory provisions
As Poland currently follows the autonomy of sports principle in relation to regulating the sports sector, the mandatory provisions on relations between athletes and sports clubs are minimal, and there are no mandatory provisions providing that an athlete must be an employee of a sports club. In practice, the majority of athletes in Poland, at least in the more profitable sports disciplines, are independent contractors having a service contract with the sports club rather than an employment contract.

The Act on Sports only provides for mandatory insurance against the consequences of accidents for athletes participating in competitions organised by Polish sports associations and members of national teams. In the former case, the obligation is on the sports club, whereas in the latter, it is on the respective Polish sports association.

In 2016, the Polish Supreme Court issued an important judgment dealing with the issue of whether a footballer acting under an exclusive ‘agreement for playing professional football’ with a football club can be deemed an individual entrepreneur (sole trader), or merely a service provider. The Supreme Court concluded that where the remuneration is fixed (i.e., not dependent on the player’s results), and the player is obliged to follow the club’s instructions as to the time, place and activities performed (i.e., where the club takes the operational risk), the footballer is just a service provider acting under a service agreement, and not a genuine businessperson or sole trader. As a consequence, it is the football club’s responsibility to calculate the social contributions and pay them on behalf of the footballer.

ii Free movement of athletes
There are no specific statutory regulations in Poland that would regulate free movement of athletes. In the case of athletes holding EU or EEA citizenship, the basic principles of EU law (i.e., free movement of people and non-discrimination) would apply. In the case of athletes having an employment contract, they are treated the same way as any other category of employee. In the case of athletes not holding EU or EEA citizenship, the standard regulations on legalisation of their stay in Poland, employment of foreigners and working permits would apply.

Detailed rules on transfers of athletes and engaging foreign athletes are usually provided in the internal regulations of the relevant Polish sports associations and international sports federations.

Some Polish sports associations regulate the allowed quotas of foreign athletes in a sports club.

16 Judgment of the Polish Supreme Court of 16 February 2016 (File No. I UK 77/15).
17 See, for example, Resolution of the Management Board of the Polish Football Association No. VIII/124 of 14 July 2015 on the status of athletes and rules of changing club membership.
18 See, for example, FIFA Regulations on the Status and Transfer of Players.
19 For example, the rules of the Polish Football Association require that each team of each football club needs to have at least eight players holding Polish citizenship authorised to take part in the competition.
iii Application of employment rules of sports governing bodies

Further specific rules concerning contracts with athletes in the given sports discipline may be provided in the internal regulations of the relevant Polish sports associations20 and international sports federations.21

VI SPORTS AND ANTITRUST LAW

Antitrust laws are also applicable to the sports sector and issues such as state aid, abuse of dominant position or agreements restricting competition are also valid issues in this sector. The Polish Office of Competition and Consumer Protection (UOKiK) is currently particularly active in relation to vertical agreements, for example, with respect to distribution of sports equipment.22

In the past, UOKiK also conducted an investigation into an alleged dominance position on the Polish sports press market (2015), and issued a decision in relation to anticompetitive agreements concluded by the Polish Football Association and Canal+ Cyfrowy sp z o.o. for licensing media rights to Polish Premiership broadcasts.

VII SPORTS AND TAXATION

Athletes’ earnings are subject to personal income tax. The specific rules on taxation (such as tax rates) may vary depending, in particular, on whether the athlete’s earnings are paid under an employment contract or a civil law contract, or whether the athlete is self-employed (acts as a sole trader).

Professional sports clubs are usually incorporated as limited liability companies or joint-stock companies. These are subject to corporate income tax.

As a general rule, Polish tax liability applies to persons who have their usual place of residence in Poland (which is understood as the place where a person’s ‘centre of economic and personal interests’ is located, or where the person stays for more than 183 days per year), regardless of where their income is generated (unlimited tax liability).

If a person does not have a place of residence within the territory of Poland, he or she is only subject to tax liability for the income (revenue) earned within this territory (limited tax liability). As a general rule, fees for services in the field of sports activity, performed by natural persons residing abroad and organised through the intermediation of natural or legal persons conducting activity in the field of sports events in Poland, are collected in the form of a lump sum of 20 per cent of revenue. These general rules only apply unless double taxation avoidance agreements to which Poland is a party provide otherwise.

In principle, entities subject to corporate income tax are taxed in Poland if their registered office or management is located there. Foreign sports clubs are subject to limited tax liability, unless an appropriate double taxation avoidance agreement provides otherwise.

20 See, for example, Resolution of the Management Board of the Polish Football Association No. III/54 of 27 March 2015 on minimum requirements for standard contracts with athletes in the professional football sector.

21 See, for example, footnote 18.

22 See, for example, decision DOK-1/2016 of UOKiK of December 2016 concerning practices restricting competition in relation to ski equipment.
Poland is a party to over 90 international agreements for the avoidance of double taxation. These may amend the general rules provided above – for example, the income earned in Poland by foreign entities may be completely exempt from income tax in Poland or a tax credit method may be applicable.

VIII SPECIFIC SPORTS ISSUES

i Doping
Doping is not a criminal offence that may be committed by an athlete himself or herself. Criminal sanctions may be imposed on a person who administers a prohibited substance to an athlete (without his or her knowledge) or (regardless of the actual knowledge) to a minor. Making available or trading certain forbidden substances is also sanctioned. Of course, the exclusion of the criminal responsibility of the athletes themselves does not exclude disciplinary sanctions or contractual sanctions (e.g., under sponsorship contracts) that may be imposed on them.

Disciplinary rules on doping are set out by the Polish Anti-Doping Agency, which cooperates with the relevant international agencies to the extent necessary. Doping-related disciplinary proceedings are brought before the relevant bodies of sports associations, decisions of which may be appealed to CASPOC, and subsequently to the Supreme Court (for further details, see Section II). Criminal cases are always brought before the state criminal courts, which may impose fines (depending on the gravity of the case, but also the perpetrator’s income), restriction of liberty (social works) and even imprisonment for up to three years.

ii Betting
In general, Polish gambling regulations are considered to be some of the strictest in Europe.

Accepting bets on sports events is allowed, but requires obtaining a prior betting permit issued by the Minister of Finance. A permit may be issued for either land-based or online betting. There are several requirements that must be met to conduct betting operations, including the obligation to submit detailed data on planned operations, draft terms and conditions of the service, technical documentation of the betting website, documents proving the legality of funds used, and so on. Betting operators are obliged to pay gambling tax, which is 12 per cent of the total sum of all stakes paid in. Conducting sports betting also requires executing agreements with the relevant sports associations for the use of their results.

Organising betting without a valid permit is a fiscal crime, punishable by a large fine or imprisonment for up to three years, or both. In addition, it is also subject to an administrative fine, which is five times the government fee for issuing a betting permit.23

Participating in offshore betting while located in Poland is prohibited and constitutes a fiscal crime. As an additional measure to fight against offshore gambling, regulations introduced in 2017 have established a ‘blacklisting’ mechanism – blocking access to websites that provide unlicensed gambling services. These websites are listed in a register maintained by the government. Polish internet service providers are obliged to reroute customers who try to access the blacklisted websites, and payment service providers may not render their services towards these websites. As a result of these measures, a number of foreign online betting

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23 The fee varies depending on the number of websites or betting shops used. For online betting using a single website, in 2018 the permit fee was 402,660 zlotys.
operators have effectively ceased to offer their services to the Polish audience while several others decided to challenge the new regulations in courts, although without much success. At the same time, however, existing licensed operators are booming, and the number of licensed betting operators in Poland has doubled in the past two years.

iii Manipulation

Bribery aimed at match-fixing is a crime and may even result in imprisonment for up to 10 years in the most severe cases. It is also an offence to participate in bets where the participant is aware of the manipulation. The other relevant crime is referring to connections or the ability to informally influence certain persons within the sports association or other bodies aimed at fixing the outcome of the game. However, a potentially responsible person may avoid being punished if he or she notifies the competent authorities about the manipulation and discloses all the relevant facts before the competent authority itself learns about them.

iv Grey market sales

The sale of sports events tickets in the grey market is an offence, but only if the tickets are sold or offered for prices exceeding their nominal value in the official distribution network.

Enforcing these rules may be burdensome. It usually consists of controlling a significant number of sellers, in particular on social media or online sales platforms and requires cooperation with their administrators. In practice, event organisers try counteracting this by means of various registration requirements imposed on purchasers or other means aimed at verifying the identity of the purchaser or event participant.

IX THE YEAR IN REVIEW

One of the highlights of 2019 in sports-related law and business is the case of Wisła Kraków’s financial meltdown and subsequent resurrection. Wisła, one of the oldest and most renowned football clubs in Poland, encountered problems with funding, reportedly caused by irresponsible management. Fortunately, after several extremely difficult weeks (when questionable management expenses came to light and the club was even provisionally sold to an elusive group of businessmen from Luxembourg), the club found new management and is on its way to repaying its debts. The club has launched an innovative equity crowdfunding campaign among its supporters, which helped to raise capital. This was one of the first crowdfunding campaigns in Polish sports, and the results were very positive – all shares were sold in less than 24 hours.

X OUTLOOK AND CONCLUSIONS

Poland is very active at the forefront of the global anti-doping campaign. As a token of recognition of Polish efforts in this respect, the Minister of Sport and Tourism, Mr Witold Bańka, was recently elected to the WADA Executive Committee, whereas Katowice was chosen as the location of the 5th World Conference on Doping in Sport, which took place on 5–7 November 2019. The conference focused on the 2021 World Anti-Doping Code review and culminated with the presentation and endorsement of the proposed Code and International Standards. The conference also concluded with the election of the new WADA president and vice president, who will assume their new roles on 1 January 2020.
The e-sports market is also rapidly developing in Poland. Not only has professionalisation of the e-sports market continued – including the establishment of professional e-sports leagues and the emergence of professional e-sports management companies – but also increasing use of e-sports and e-sports teams and players in marketing activities can be observed, with a number of specialised agencies emerging that assist brands with developing and conducting gamers’ targeted campaigns. The Polish Football Association has recently unveiled plans to establish the Polish national e-football team to participate in the upcoming eEURO 2020 tournament.
Chapter 14

PORTUGAL

Luis Soares de Sousa

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Organisational form

Portuguese sports clubs can generally adopt two different legal forms: sports companies or private non-profit associations.

Sports companies are governed by Decree-Law No. 10/2013 of 25 January, as amended, which sets forth the framework for sports clubs wishing to participate in professional sports competitions. Sports clubs that do not participate in professional sports competitions may choose to incorporate a sports company and, in this case, the sports companies’ regime shall be applicable.

Sports companies may be public limited sports companies or single-member private limited liability companies. These types of companies are subject to the general rules applicable to public limited companies and to single-member private limited liability companies established by the Portuguese Companies Code in addition to the specific rules foreseen in the above-mentioned legislation.

However, sports clubs adopting the legal form of a non-profit private association can only participate in non-professional competitions.

Sports federations are regulated by Decree-Law No. 248-B/2008 of 31 December, as amended, assuming the legal form of non-profit private associations and obtaining a sports public utility status. Sports federations may be multi-sport or single-sport federations.

ii Corporate governance

There are general rules against corruption and anti-sporting conduct that are applicable to sports organisations.

Sports companies are also subject to specific governance rules, notably:

a minimum share capital amounts;
b incompatibility rules for the appointment of directors, including managing directors;
c a special authorisation is required for the sale of real estate;
d a limitation on the exercise of voting rights; and
e limitations regarding share ownership on sports companies applicable to certain public entities.

1 Luís Soares de Sousa is a partner at Cuatrecasas. The author would like to acknowledge, with thanks, the assistance of the following colleagues: Télma Carvalho, Sónia Queiróz Vaz, Tiago Gonçalves Marques, Rui Vaz Pereira, Ana Costa Teixeira and Sofia Monge de Araújo.
Moreover, the Companies Code and the Securities Code are also applicable to sports companies.

For sports federations, there is also a specific set of rules regarding the individuals that may be appointed to the social bodies of federations, including a list of incompatibilities and limitations to the reappointment of individuals to federations’ social bodies.

iii Corporate liability

Law No. 50/2007 of 31 August, as amended, provides a specific criminal regime applicable to all sports entities, including sports organisations, aimed at sanctioning anti-sporting behaviours such as corruption, traffic of influence and criminal association.

In addition to the criminal regime, sports federations must, inter alia, include in their disciplinary regulations rules regarding the conduct of sports agents, as well as the penalties applicable to any violation of such duties.

Besides these rules, the general liability rules foreseen in the Civil Code (Decree-Law No. 47/44 of 25 November 1966 as amended from time to time) and the Companies Code are also applicable.

II THE DISPUTE RESOLUTION SYSTEM

i Access to courts

Athletes and clubs may challenge before the justice counsel of each sports federation any disciplinary decisions regarding issues arising from the execution of technical and disciplinary rules directly related to sporting competition.

Disputes arising from the acts and omissions of the bodies of sports federations and professional sports leagues within the exercise of their public powers are subject to the administrative litigation legal provisions applicable to state courts, with any sporting effects lawfully produced in the meantime under the most recent decision of the competent sport governing body being duly safeguarded.

However, according to the Basic Law of Physical Activity and Sports (Law No. 5/2007 of 16 January), a club, athlete or sports stakeholder may not challenge before a state court a sports governing body’s decision if the decision is of a purely sporting nature, that is, if it is based upon the disciplinary or technical rules arising from the execution of the rules of the game, the sports regulations and the rules on the organisation of sports events.

Disciplinary decisions ruling upon the violation of sports ethics, violence, doping, corruption, racism and xenophobia are not considered issues of a purely sporting nature.

ii Sports arbitration

Disputes arising from acts and omissions of sports federations, professional leagues and other sports governing bodies executed in the exercise of their regulation, organisation, direction and disciplinary powers, as well as appeals from decisions of disciplinary bodies of sports federations or the Portuguese Anti-Doping Agency regarding the infringement of anti-doping provisions, are subject to the compulsory arbitration of the Portuguese Court of Arbitration for Sport, which was created by Law No. 74/2013 of 6 September and started operating on 1 October 2015.

The Court of Arbitration for Sport may rule upon any other disputes that do not fall within the scope of compulsory arbitration but that are directly or indirectly related to sports and that, under the Voluntary Arbitration Law (approved by Law No. 63/2011
of 14 December), may be subject to an arbitral award. Disputes arising from employment contracts between clubs and athletes, especially regarding the lawfulness of dismissal, may also be brought before the Court of Arbitration for Sport on a voluntary basis. The Court of Arbitration for Sport may also rule upon injunctions required by the parties.

The arbitration agreement must be made in writing, and must govern rights of a patrimonial nature or rights that do not have such nature insofar as the parties may settle upon those rights.

The Court of Arbitration for Sport’s activity has been increasing owing to disputes between sports clubs, sports companies, players, coaches, TV sports commentators (which may now be liable if commentating on behalf of a club) and sports managers, and the relevant sports federations, namely within football. The Court has been mainly ruling upon disciplinary issues but it has increasingly been ruling upon other matters, such as doping and electoral issues.

iii Enforceability
An arbitral award may be enforced and the enforcement can be challenged under the same terms as a decision of a state court.

III ORGANISATION OF SPORTS EVENTS
i Relationship between organiser and spectator
According to Law No. 39/2009 of 30 July, as amended, which provides the legal framework governing against violence, racism, xenophobia and intolerance at sports events, sports federations of the respective sports disciplines, professional leagues of clubs and local associations can organise sports competitions. Moreover, promoters of sports events that are local associations, sports clubs, sports companies and professional leagues or federations may also act as organisers of sports competitions.

Additionally, pursuant to the above-mentioned Law, a specific set of information must be printed on sports tickets by sports events organisers. Violation of this obligation triggers the suspension of the sports event.

Further, according to the Basic Law of Physical Activity and Sports, the spectator, as a consumer, shall be protected by Law No. 24/96 of 31 July (the Consumer Protection Act).

According to the Consumer Protection Act, the organiser is legally obliged, upon the conclusion of the contract, to give the spectator several pieces of information in a clear, consistent and evidence-based manner. The relationship between the organiser and the spectator shall be guided by the principles of equal treatment, loyalty and good faith, granting the consumer a special right regarding the protection of his or her economic position.

The only provision in the Portuguese sports legal framework concerning the contractual relationship between organisers and spectators aims to protect the right of spectators as consumers to prior information as to the amount payable at sports events throughout the season.

In addition, the applicable legislation sets forth the conditions governing the access to and presence of spectators in enclosed sports locations.

ii Relationship between organiser and athletes or clubs
Pursuant to the Basic Law of Physical Activity and Sports, sports federations are responsible for organising and regulating professional sports competitions; assuming the applicable legal
and statutory control and supervision functions; and defining the financing rules as well as access organisation requirements applicable to sports competitions. As per the Law, sports federations may delegate the above-mentioned powers to professional leagues.

Currently, the only professional league in Portugal is the National Football League, which acts as organiser of professional football competitions. The relationship between the National Football League and the participating athletes and clubs is regulated by the Competitions Regulation, which sets forth, inter alia:

- the requirements for participating in professional competitions;
- the requirements applicable to sports venues;
- the rights and obligations of athletes and clubs; and
- the requirements for the broadcasting of sports events.

iii Liability of the organiser

Under the Portuguese sports legal framework, the government is responsible for policing the areas outside enclosed sports locations, thus ensuring the safety of sports events. The organiser is responsible for policing the inside areas but can request the policing of these areas to be conducted by the government. According to the Civil Code, the government and the organiser are jointly and severally liable for any acts or omissions, even if committed without fault.

Regarding criminal liability, Law No. 39/2009 foresees a series of administrative offences applicable to organisers, promoters and owners of sports events that are related to the violation or breach of the duties legally assigned to these entities. Administrative fines resulting from such administrative offences can amount to €200,000. This type of liability does not require a specific request from a person who has been damaged. The Criminal Code does not foresee any special crimes related to sports.

iv Liability of the athletes

Athletes (sportspersons) can be held liable for damage caused to other sportspersons. However, a distinction must be drawn according to the type of sport in question.

In sports played side by side, where athletes use the same place and space for the practice of the sport (such as cycling or skiing), there are two potential regimes applicable under the Civil Code. The first is the regime of non-contractual civil liability, where the athlete can be held liable for acts or omissions practised with fault or negligence. As a consequence, compensation shall be paid for the caused losses. The second is the regime of civil liability foreseen for the practice of a dangerous activity, which implies payment of compensation for arising losses, except if the athlete is proved to have acted with the due care required.

In sports where the athlete competes against other athletes (i.e., player against player), the regime of non-contractual civil liability is generally applicable, although sometimes it is held that this liability can be excluded with the consent of the injured party, as provided in both the Civil and Criminal Codes. For example, in combat sports, it can be considered that there is tacit consent on the part of the injured party provided that the rules of the respective sport are adhered to. The injurer does not act intentionally, and therefore there is no criminal liability.

Regarding team sports such as football, it can be questioned whether there is tacit consent when injuries are severe. As per Portuguese jurisprudence, in the case of severe injuries, it is considered that liability arises from such acts, as these are against the generally accepted rules of moral and social conduct.
Regarding criminal liability, aside from the provisions of the Criminal Code, there is no specific framework that is applicable to athletes.

v Liability of the spectators

Law No. 39/2009 sets forth a sanctioning regime applicable to spectators of sports events (whether groups of fans or single parties) that outlines several crimes, administrative offences and disciplinary measures. With regard to criminal liability, the crimes the Law foresees include the following:

a. qualified damage to public transport, facilities or equipment used by the public, as well as any other assets;
b. participation in riots during travel to or from sports events;
c. throwing of liquid products;
d. invasion of sports event areas; and
e. rioting.

All of the above are punishable with imprisonment or a fine. An ancillary penalty of restriction of access to sports venues can also be applicable. Further, when crimes are committed against sportspersons, sports coaches, referees and other sports agents, the penalties are increased.

All of these crimes are public crimes (i.e., they do not depend on the filing of a criminal complaint by the damaged person).

There is no specific regime regarding civil liability; therefore, the Civil Code is applicable.

vi Riot prevention

Law No. 39/2009 sets forth a series of duties applicable to sports events organisers, and promoters and owners of sports venues regarding the adoption of measures to prevent and sanction unsporting behaviours, such as violence, racism, xenophobia and any form of discrimination. As per this law, the crime of participation in a riot is punishable with imprisonment of up to three years or with the payment of a fine.

Pursuant to Decree-Law No. 216/2012 of 9 October, as amended, regarding the System of Policing of Sports Events at Sports Venues and Coverage of Costs from General Policing of Sports Events, the costs of policing sports events shall be covered by the respective promoters or organisers. Pursuant to this Decree-Law, in some cases, the state co-funds the policing of sports events.

Law No. 113/2019 of 11 September amended Law No. 39/2009 of 30 July. This recent amendment granted legal power to the Authority for Prevention and Combat of Violence in Sports to use CCTV footage when applying administrative sanctions. This Law also decreased the video footage retention period from 90 to 60 days. In addition, if sport events’ organisers fail to transmit the CCTV footage to criminal and disciplinary authorities, they are now subject to an administrative offence, punishable by a fine ranging from €2,500 to €100,000.

IV COMMERCIALISATION OF SPORTS EVENTS

i Types of and ownership in rights

Broadcasting, sponsorship, image rights and other personality rights (such as the right to a name), merchandising and trademarks are the main sports-related rights that can be exploited in Portugal.
Although there may be some particularities depending on the type of sport in question, usually the above-mentioned rights are owned by sports clubs or sportspersons, or both. These rights can be transferred or licensed through a written agreement entered into between the respective parties.

ii Rights protection

The Television and Audio-visual On-Demand Services Law (Law No. 27/2007 of 30 July), the Copyright and Related Rights Code (Decree-Law No. 63/85 of 14 March), the Civil Code, the new Industrial Property Code (Decree-Law No. 110/2018 of 10 December) and the Constitution of the Portuguese Republic constitute the main legal framework for the protection and enforcement of sports-related rights, and provide the rules and measures for such protection.

The main practical issues that rights holders may deal with when seeking protection of their rights are: entering into agreements that are required to adequately protect their rights and, when applicable, registering the rights before the competent entities; evidencing the ownership of rights and any infringement of such rights; and proving, with a reasonable degree of certainty, the damages suffered in consequence of such infringement.

iii Contractual provisions for exploitation of rights

There are mandatory statutory provisions that must be included in contracts, namely and without limitation:

a its term;
b the territory involved;
c a list of the rights assigned or licensed, or both;
d in the case of licensing, the conditions for the use of the rights;
e the price; and
f in the case of licensing, whether a licence is exclusive.

Although not mandatory, it is both common and highly advisable to incorporate in agreements a clear object of use, terms and conditions of termination (including in cases of breach) and consequences of termination (namely, regarding the exploitation of rights), jurisdiction and the applicable law.

V PROFESSIONAL SPORTS AND LABOUR LAW

i Mandatory provisions

Law No. 54/2017 of 14 July on athletes’ employment contracts, sports training contracts and agents’ contracts was adopted, repealing Law No. 28/98 of 26 June.

Employment contracts for athletes must be in written form, in triplicate and are always fixed term: for a minimum of one sports season to a maximum of five sports seasons (for contracts entered into by minors, the maximum is three sports seasons).

A collective bargaining agreement for professional football players sets forth a mandatory minimum monthly salary for the different football divisions. A club and athlete may agree upon an increase or decrease in salary depending on whether the club is promoted to a higher division or drops to a lower division.
Athletes’ employment contracts may be terminated in the following situations:

- expiry of the contract;
- agreement to the termination;
- termination for cause (by the club or by the athlete);
- termination during a trial period; and
- collective dismissal.

Law No. 54/2017 has specifically provided for the ‘termination clauses’, under which the parties agree that the athlete may unilaterally and without cause terminate the employment contract, insofar as he or she pays a previously agreed compensation. If the athlete terminates his or her employment contract without cause, a presumption has been set forth that his or her new club had an intervention in the termination; failure to rebut the presumption determines the joint liability of the athlete and his or her new club to pay compensation to the former club.

Pursuant to said Law, in the case of termination without cause, the athlete is no longer entitled to reinstatement in the former club.

Finally, Law No. 54/2017 sets up a legal framework for agents’ contracts, which: may not be entered into by minors, have a maximum duration of two years (renewable by decision of both parties) and, if entered into by an athlete, the agent’s remuneration shall be capped at 10 per cent of the net salary of the athlete.

ii  Free movement of athletes

According to the applicable legislation, athletes may not be denied registration with any sports federation if the athletes fulfil the requirements that are deemed necessary by the federation. In addition, under Portuguese labour legislation, the access of a job candidate or an employee to any type of professional activity or training to gain access to such activity may not be limited based on nationality.

However, in football, for instance, clubs must have at least eight home-grown players in their team, such players being those who, between the ages of 15 and 21, were registered with the Portuguese Football Federation for at least three sporting seasons.

iii  Application of employment rules of sports governing bodies

Employment-related provisions in the statutes or regulations of (international) sports governing bodies may be incorporated into the employment contracts of athletes insofar as these provisions do not collide with mandatory legal provisions.

Legal provisions regarding employment contracts, namely those under the Labour Code, are subsidiarily applicable to the employment relations between clubs and athletes.

VI  SPORTS AND ANTITRUST LAW

In Portugal, there is no specific legislation regarding competition in the sports sector. Therefore, the Competition Act enacted by Law No. 19/2012 of 8 May, and the EU competition and antitrust regulations are applicable.

In general terms, in Portugal, all agreements, collective decisions and recommendations, as well as concerted practices or decisions by associations of undertakings that aim to prevent, restrict or distort competition, or that achieve the prevention, restriction or distortion of
competition, are prohibited. For that reason, undertakings must determine their market behaviour independently. Where there is evidence of coordination or collusion, the existence of anticompetitive practices is likely and must be corrected.

The provisions of the Competition Act are enforced by the Portuguese Competition Authority.

VII SPORTS AND TAXATION

Until 2007, a special regime for personal income tax (PIT) purposes applied to Portuguese tax-resident contracted athletes, sports players and referees under which said taxpayers were entitled to opt (other than in respect of advertising-related income) for the taxation of their net income at progressive tax rates (thereby benefiting from an unlimited deduction of insurance contributions), or for a reduced autonomous and flat taxation applicable to their gross income.

This special tax regime is no longer available to Portuguese tax-resident contracted athletes, sports players or referees, regardless of the national or international nature of the underlying sports event; such taxpayers do, however, benefit from some specific provisions.

Portuguese tax-resident sportspersons who are contracted or self-employed may deduct, up to a maximum limit of €2,178.80 on the amount of the income they have received, their contributions to life, personal illness and accident insurance policies, as well as to insurance schemes that guarantee (once the individual reaches the age of 55) a pension upon retirement, disability or death. The underlying policy must not guarantee any return of capital and no payment can be made during the initial five-year period.

Moreover, under certain conditions, no PIT applies to:

a allowances granted to high-performance athletes and their coaches by the Portuguese Olympic and Paralympic Committee and by sports federations benefiting from having ‘public utility’ status;

b training allowances, such as those recognised by a joint decision of the Finance and Sports Ministers and granted by sports federations benefiting from the ‘public utility’ status to non-professional sportspersons (including athletes, judges and referees) to a maximum limit of €2,375;

c compensation for non-professional performances granted by sports federations benefiting from the ‘public utility’ status to judges and referees to a maximum limit of €2,375; and

d prizes granted as recognition for high-value and high-merit competitive sports events under the applicable laws (such as the Olympic, Paralympic and Deaflympic Games, World and European championships and the Universiade).

For non-resident contracted sportspersons, PIT is withheld at a final rate of 25 per cent on the gross payment of Category A income if their activities are personally exercised in Portugal, irrespective of whether the payer is established in Portugal or the income accrues to a person other than the relevant athlete. The same 25 per cent final withholding tax rate applies to (non-resident) self-employed sportspersons in consideration of sporting activities.

Where sports-related services are rendered by using a rent-a-star company, no PIT applies to the payments made to the company. However, fees for sports-related services paid to a non-resident entity controlled by sportspersons are taxed as business profits, and are subject to corporate income tax (CIT) if they are attributable to a Portuguese permanent
establishment. In other cases, such fees paid for services supplied or used in Portugal are subject to a final 25 per cent withholding tax, unless an applicable double tax treaty provides otherwise.

Within an international context, Portugal tends to closely follow the Organisation for Economic Co-operation and Development’s Model Tax Convention on Income and on Capital, having made no reservation to Article 17 or observation on its commentaries. On that basis, the general rule that it is possible, without any limitation in Portugal, to tax the activities of sportspersons therein exercised, irrespective of whether the income accrues to the athlete himself or herself or to another person, should apply.

Notwithstanding the above, on a case-by-case basis, the government tends to grant tax exemptions to high-exposure international sports events. For instance, general PIT and CIT exemptions were granted to the organiser and participating clubs, players and technical teams of the 2013–14 UEFA Champions League and 2013–14 UEFA Women’s Champions League, and more recently, to the organiser and the participating national associations and clubs, players and technical teams of the 2019 UEFA Nations League Finals and the 2020 UEFA Super Cup Final.

VIII SPECIFIC SPORTS ISSUES

i Doping

Law No. 38/2012 of 28 August, as amended, establishes the Portuguese Legal Regime of Anti-Doping in Sports, according to which violations of anti-doping rules may entail the following.

Criminal offences

The trafficking or attempted trafficking of prohibited substances or methods may be subject to imprisonment for a term ranging between six months and five years. Additionally, the administration or attempted administration of prohibited substances or methods may be subject to imprisonment for a term ranging between six months and three years, unless the administration is authorised for therapeutic purposes.

The above imprisonment penalties may be increased to the double of their minimum and maximum limits in the following cases: the victim is particularly vulnerable because of his or her age, disability or illness; the author of the act acted through misleading or intimidating the victim; or the author of the act has prevailed on the victim through a relationship of hierarchical, economic or professional dependency.

Administrative offences

The provisions concerning administrative offences have undergone amendments, by virtue of Law No. 93/2015 of 13 August, which transposed the World Anti-Doping Code rules into Portuguese law. Currently, they consist of the following.

Conduct that subverts the doping control process is considered to be an administrative offence subject to fines of up to approximately €10,000.

The possession of any prohibited substance or method by an athlete, or by a support staff member connected to the athlete, competition or training place, is also considered to be an administrative offence unless the athlete establishes that the possession is consistent with the therapeutic use exemption or gives another justifiable reason.
Moreover, assisting, encouraging, aiding, abetting, conspiring, covering up or any other type of intentional complicity involving an anti-doping rule violation, any attempted anti-doping rule violation or the violation of the prohibition of participating in a sports competition during the suspension period, by another person, constitutes an administrative offence.

In addition, association in a professional or sport-related capacity with a support staff member who is serving a suspension period, has been convicted in a criminal or disciplinary proceeding to have engaged in conduct equivalent to an anti-doping rules violation, or is acting on behalf of or as an intermediary of any of the individuals described above, is considered to be an administrative offence.

Teams, clubs or sports public limited companies that breach anti-doping rules and that participate in official sports competitions may also be subject to fines.

**Disciplinary penalties**

Doping is considered to be a disciplinary offence subject to a suspension period of up to 25 years, depending on the circumstances.

**Sports penalties**

An anti-doping rule violation may lead to the disqualification of the athlete’s individual results with all attending consequences, including the athlete’s forfeiture of all medals, points and prizes.

**ii. Betting**

The Portuguese legal framework applicable to betting is regulated by Decree-Law No. 422/89 of 2 December, as amended, which sets out general provisions and principles related to the gaming industry, including rules for casinos and gambling houses.

Moreover, Decree-Law No. 84/85 of 28 March, as amended, establishes the regime for lotteries and lotto, granting the exclusive right to organise and operate the same to Lisbon Holy House of Mercy, a non-profit making organisation operating under the control of the government.

According to Decree-Laws Nos. 67/2015 and 68/2015, both of 29 April, Lisbon Holy House of Mercy also has the exclusive right to the exploitation and operation of betting on sports events and horse races on a territorial basis.

In relation to online gambling and betting on sports events, Decree-Law No. 66/2015 of 29 April foresees that the right to exploit such activities is reserved to the government. The government can, however, grant online gambling and betting licences to public limited liability companies with a registered office in an EU or European Economic Area Member State, if certain conditions are met.

In scope of the recent decentralisation initiatives, Law No. 50/2018 of 16 August and Decree-Law No. 98/2018 of 27 November have permitted municipalities to assume the legal power of granting gambling licences to some modalities of fortune games, within a transitional time frame. During 2019, interested parties should consult the General Direction of Municipalities to be informed about which municipalities have already assumed these legal powers. By 1 January 2021, all municipalities will be exclusively empowered to grant these licences.
iii  Manipulation

Law No. 50/2007 of 31 August, as amended, foresees that corruption, illicit use of connections and criminal conspiracy that aims to manipulate the results of sports events are considered criminal offences subject to up to five years’ imprisonment, a term that is extended in the case of sports leaders, referees and managers.

This Law also sets forth ancillary penalties, such as suspension from sports competitions for up to three years, privation of the right to receive public subventions and a prohibition on performing sporting duties for up to five years.

Moreover, on 7 August 2015, Portugal ratified the Council of Europe Convention on the Manipulation of Sports Competitions, which commits Member States and sports organisations to raise their efforts in the fight against corruption, match-fixing, illegal betting operations and other kinds of malpractice in sports competitions.

iv  Grey market sales

According to Decree-Law No. 28/84 of 20 January, as amended, grey market sales may be considered to be a criminal offence subject to imprisonment for a term ranging between six months and three years, and a fine of not less than 100 days if tickets for an event are sold at a higher price than the price fixed by the event organiser.

IX  THE YEAR IN REVIEW

During 2018, there has been a notable increase in sports or sports-related disputes, especially employment, disciplinary and criminal matters, such as termination of employment contracts by the employees due to physical and psychological violence against them from the club and the supporters, violent behaviour of supporters leading to matches played behind closed doors, bribery and match-fixing.

The Court of Arbitration for Sport’s activity has also been increasing, with six procedures initiated in 2015, 31 in 2016, 76 in 2017 and 66 in the first three quarters of 2018.\(^2\)

Law No. 111/2019 of 10 September amended Law No. 38/2012 of 28 August, which approves the law on anti-doping in sports by adopting the rules set out in the World Anti-Doping Code within the domestic internal legal system.

Also, the recently approved Law No. 113/2019 of 11 September establishes the legal regime for the fight against racism, xenophobia and intolerance in sports shows and events, amending Law No. 39/2009 of 30 July. Article 18, ‘Video Surveillance Systems’, especially Paragraph 2, states that recordings of images and sound must be kept for 60 days (the previous law established a storage period of 90 days) and that the images collected may be used by the National Authority Against Violence in Sports, in addition to the security forces, for the purpose of investigating infringement proceedings foreseen by law. Law No. 113/2019 of 11 September came into force 30 days after its publication in the Official Gazette (No. 174 of 11 September).

\(^2\) The list of cases brought before the Court of Arbitration for Sport’s activity is available at the following link: www.tribunalarbitraldesporto.pt/documentacao/processos-arbitrais/processos-arbitrais-2019.
X OUTLOOK AND CONCLUSIONS

The government aims to promote intervention on the phenomena of violence associated with events and, in particular, sporting activities, with a particular focus on deterring manifestations of racism, xenophobia and intolerance, promoting civic behaviour and tranquillity in society, as well as the enjoyment of public spaces. Due to incidents that have occurred in sporting events, the level of control over violence implied the need to reinforce the effectiveness, efficiency and speed of processes, recognising the immediate need to guarantee enforceable mechanisms to decrease the number of violent events. Recent events have emphasised and made imperative the need for the creation of an entity devoted exclusively to the monitoring and exercise of state authority in the context of violence in sport. Therefore, in October 2018, the government approved a new law regarding violence in sports. The new law, Regulatory Decree No. 10/2018 of 3 October created the National Authority Against Violence in Sports. This recently created authority, in liaison with the security forces and the Committee on Equality and Against Racial Discrimination, ensures oversight and compliance with the legal regime to combat violence, racism, xenophobia and intolerance in sports events, provided for in Law No. 39/2009 of 30 July, in its current wording, assuming the duties that until now were committed to the Portuguese Institute of Sport and Youth.

The authority's main responsibilities are to:

a perform all registrations legally required in relation to the legal regime, as well as to supervise, control and sanction any acts deriving therefrom together with the competent security forces;

b apply the fines and ancillary penalties set forth in the legal regime applicable to violence, racism, xenophobia and intolerance in sports events;

c promote activities related to the creation of a good sports environment based on the highest ethical values and moral principles;

d issue technical and scientific opinions, recommendations and warnings regarding the prevention and combating of violence, racism, xenophobia and intolerance in sports events; and

e study and propose administrative and legislative measures that are adequate to the prevention and combating of violence, racism, xenophobia and intolerance in sports events.
I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

The Spanish sports model is basically structured on Act 10/1990 on sport, and developed by various other regulations that deal with the institutions involved in sports, as well as the organisation, governance and development of sports.

However, owing to the particular construction of the state, it is not only the regulations enacted by the Spanish parliament (such as Act 10/1990) that need to be taken into account in this respect: while Spain is a single sovereign state, it is composed of 17 regions or autonomous communities that are vested with a fair amount of autonomy and with competencies to rule on very diverse issues, among them, sports. Therefore, some particularities may be found in specific territories as a result of the powers granted to regions to rule on sports matters.

i Organisational form

From an organisational perspective, Act 10/1990 and the relevant provisions developing it mainly govern the following kinds of sports entities.

Clubs

Clubs are sports associations composed of natural or legal persons that are devoted to the promotion of one or several sports modalities, their practice by relevant associates and participation in sports activities and competitions.

Clubs that participate in official professional sports competitions of national scope shall take the legal form of a sports limited liability company (SAD). These companies have a special regime established in Act 10/1990 and Royal Decree 1251/1999 on sports limited liability companies and the Companies Act (the Royal Legislative Decree 1/2010).

Federations

Federations are private entities with legal personality that, inter alia, are responsible for the organising sports events and competitions, promoting sport and exercising the disciplinary powers within their material scope. Federations develop their own private competencies but also carry out, by delegation, public functions of an administrative nature. Depending on their territorial scope, these federations can be national or regional. Regional federations are part of their overall national federation, but have their own specific rules and regulations.

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Leagues

Leagues are sports associations exclusively and compulsorily composed of sports clubs that take part in official competitions of a professional nature and national scope. They have legal personality and independent autonomy for their internal organisation, even when they are part of their corresponding federation.

Governing bodies

The National Sports Council, which sits at the top of the sports organisational pyramid, is the government authority overseeing and ruling general sports activities in Spain.

In addition to the ordinary organisational structure outlined above, Spain has a National Olympic Committee and a National Paralympic Committee.

ii Corporate governance

Good governance issues are gathered under both the legal regulations and the internal rules of sports entities.

Concerns about good governance in sport come under the Spanish Criminal Code, which foresees a specific offence of corruption for managers, employees and collaborators of sports entities as well as referees and athletes for conduct aimed at predetermining or altering, in a deliberate and fraudulent manner, the result of a sports competition of special sporting or economic relevance. Act 19/2013 on transparency, access to public information and good governance also applies to the sport market. On the basis of this Act, some sports entities are obliged to make public information about their functions, regulations and organisational structure, including an updated organigram of the organs they are composed of and the profile of persons belonging to them.

Another relevant piece of legislation regarding corporate transparency is the bundle of rules contained in Royal Decree 1251/1999 on Sports Limited Liability Companies with regard to restrictions on the ownership of shares in these companies and these companies’ duties of information. For example, the acquisition of over 25 per cent of the share capital of a company must be authorised by the National Sports Council; professional clubs and SADs cannot participate in the share capital of another SAD taking part in the same competition; and those parties that own 5 per cent or more of the share capital of a SAD cannot hold, directly or indirectly, a participation of 5 per cent or more in the share capital of another SAD, and the financial information of these SADs is to be communicated to the National Sports Council.

A number of internal regulations of sports entities also deal with good governance issues. Those of the Spanish football league, La Liga, may be the most complete and exhaustive, with a focus especially on the aim of the economic control and balance of clubs and SADs.

iii Corporate liability

The general principle of *neminem laedere* is applicable regarding the liability of managers and officers of sports organisations.

In addition, some sports regulations also specifically refer to this liability. For instance, Act 10/1990 expressly establishes that in cases of wilful intent or gross negligence, managers of clubs will be held liable towards associates, the club or third parties. The general regime of liability of SAD directors is stipulated in the Companies Act, and is quite strict.
Managers and officers are not only subject to civil liability, but also to the relevant disciplinary measures, including those arising out of the legal provisions mainly set out in Act 10/1990 and Royal Decree 1591/1992 approving the Sports Discipline Regulations, but also those that specifically arise out of the internal regulations of sports entities.

II  THE DISPUTE RESOLUTION SYSTEM

The Spanish sports dispute resolution system is interconnected, involving not only the ordinary courts but also the dispute resolution bodies of federations and leagues, and arbitration.

i  Access to courts

Athletes, clubs and other sports stakeholders may have access to the courts when the circumstances so enable, whether at first instance (e.g., access to the labour courts in employment matters, or to the relevant ordinary courts in purely civil or commercial disputes) or with the intent to challenge certain decisions previously taken by sports or administrative bodies on organisational, disciplinary or other issues. Apart from the ordinary courts is the Sport Administrative Court, which deals with various sports-related issues, even if it has limited *ratione materiae* scope.

ii  Sports arbitration

The rules regarding arbitration in Spain are outlined in Act 60/2003 on arbitration, which permits any and all controversies on subjects that are within the free disposition of the parties to be resolved by arbitrators. A wide range of sports conflicts may be thus brought to the knowledge and decision of arbitrators.

The submission of a dispute to arbitration will require that the parties have agreed on a valid arbitration clause in writing, with no specific formalities in this respect beyond their clear will to bring disputes that may arise between them to arbitration.

Apart from the rules foreseen in Act 60/2003 dealing with general issues (regarding the arbitration clause, the arbitrators, their competence, the basic procedural issues, and the award, its execution and annulment), the specific provisions of an arbitration court administering the procedure shall also be observed (ad hoc arbitration in sports is not common in Spain). The Spanish Court of Arbitration for Sport, created under the auspices of the Spanish National Olympic Committee, and the Arbitration Tribunal for Football, created under La Liga, are two of the arbitral courts to which sports disputes may be brought, provided that the nature of the relevant dispute may be allocated within their relevant material scope.

iii  Enforceability

The enforcement of arbitral awards shall be conducted through ordinary courts in accordance with the provisions specifically foreseen in Act 60/2003 and in Procedural Act 1/2000. The enforcement of arbitral awards can only be challenged on the basis of very restricted grounds foreseen in the above-mentioned Acts (basically, the fulfilment of the award's decision and the cessation of the statute of limitations of the execution).

The internal regulations of sports federation bodies foresee measures that foster the compliance of parties with any decisions.
III ORGANISATION OF SPORTS EVENTS

The key element in events organisation is the compulsory adherence of all members and participants to the rules of their corresponding sports bodies. The federations and leagues normally undertake the organisation of sports competitions.

i Relationship between organiser and spectator

Sports organisers are free to establish the terms and conditions that spectators shall fulfil when attending a sports event. However, in any case, sports organisers shall abide by the mandatory provisions of Act 19/2007 against violence, racism, xenophobia and intolerance in sport events, and Royal Decree 203/2010 approving the regulations on the same subject.

ii Relationship between organiser and athletes or clubs

The organiser ensures the terms of the participation of athletes in competitions by means of sports licences. Upon the signature of the relevant labour agreement, athletes request through their club that the relevant federation issues sports licences that will allow them to participate in the corresponding official competition. When a federation grants a licence, all the relevant sports regulations at the national and international level become binding on the athlete, and he or she thus becomes subject to the organic and disciplinary authority of the organiser.

iii Liability of the organiser

Article 5 of Act 19/2007 establishes the economic and administrative liability of organisers of sports events for all damage that may take place owing to their lack of diligence, or prevention of damage or public disorder. This liability is independent of and without prejudice to any other criminal or disciplinary liability.

iv Liability of the athletes

Owing to the specific characteristics of sport, as a general rule athletes are not liable for damage (e.g., injuries) that they may cause during the performance of a sports activity. In particular, it is understood that athletes assume the risk that is inherent in the sports activity. However, the theory of the assumption of risk only applies to damage caused within the ordinary limits of a sport activity (i.e., behaviours in line with the relevant standards of conduct). Therefore, when an athlete’s behaviour goes beyond those limits, he or she can be liable for the damage he or she has caused. In addition, under some circumstances, an athlete can also be found guilty of a criminal offence when he or she had the clear intention to hurt or damage a third party (intent to injure).

v Liability of the spectators

Spectators that breach the regulations under Act 19/2007 can be administratively sanctioned by the competent disciplinary body (not only with economic fines but also, inter alia, with a prohibition of access to sports venues). Spectators can also incur civil liability for any damage that, through their fault or negligence, is caused to third parties. Further, spectators can also be found guilty of criminal offences they may commit during a sports event, not only in sports venues, but also in their surrounding areas.
vi Riot prevention

Pursuant to Article 27 of Organic Act 4/2015 for the protection of public safety, and Article 35 of Royal Decree 203/2010, the public security forces are responsible for security and public order during sports events. Neither clubs nor organisers have to pay a financial contribution towards this public service. However, Act 19/2007 and Royal Decree 203/2010 establish certain measures that clubs and organisers shall implement in sports venues aimed at preventing not only riots but also any kind of violence, racism, xenophobia and intolerance therein. In this regard, organisers are responsible for implementing the necessary measures to prevent riots and guaranteeing that the spectators meet the conditions of entrance to a sports venue. For this purpose, clubs are obliged to arrange the necessary private security in sports venues and to implement all the means necessary to accomplish the security measures imposed by law. In particular, clubs and organisers shall implement, inter alia, a computerised system of access control, turnstiles, security equipment and video surveillance. In addition, all sports venues must have a control room where a security coordinator will manage the security measures in place during a sports event, and will coordinate all the security bodies involved (private security, police, firefighters, emergency services, sanitary services, etc.).

IV COMMERCIALISATION OF SPORTS EVENTS

i Types of and ownership in rights

The main sports-related rights exploited in Spain are athletes’ image rights, the broadcasting rights of sports competitions and the intellectual property (IP) rights held by clubs and organisers.

The right to self-image, guaranteed by Article 18 of the Spanish Constitution and developed by Organic Act 1/1982 on the protection of honour, intimacy and self-image, enables athletes (those who practise individual sports and those who render their sporting services in collective sports) to exploit their image and to assign it to third parties.

Each sports competition exploits its own broadcasting rights. The ownership of the sports broadcasting rights will ultimately depend on the competition at stake. However, as a general rule, these broadcasting rights belong to the clubs participating in the sports competition or to the organiser of the competition, or to both. In this respect, the government enacted Royal Decree-Law 5/2015 on urgent measures in connection with the commercialisation of rights to operate the audiovisual content of professional football competitions, by virtue of which it has established rules for the exploitation of the broadcasting rights of the national professional football leagues (first and second division), the Spanish Cup and the Spanish Super Cup, including the distribution of revenues among clubs and SADs (depending on some legal criteria).

Clubs and organisers can also hold IP rights that are exploited through the merchandising activity of their brands and symbols, either personally or through a licence to third parties, based on private law rules.

ii Rights protection

The protection and enforcement of sports-related rights depend on the type of right involved in each specific case.

With regard to athletes’ image rights, their defence can be enforced before the ordinary courts through proceedings based on the principles of preference and preliminary hearings or, if applicable, through a relevant claim before the Constitutional Court. In particular, the
right to self-image is covered by the civil protection procedure established in Act 1/1982, which provides legal safeguards against illegal exploitation of the self-image right. Spanish jurisprudence has made important contributions to the development of this right.

IP rights are protected through the specific mechanisms envisaged in Act 17/2001 on trademarks that include, inter alia, cessation of actions, removal of effects and compensation for damage in the case of a breach of any IP rights.

The tools and mechanisms foreseen in Act 34/1988 on general advertising and in Act 3/1991 on unfair competition should also be considered with regard to the protection of this kind of right.

### iii Contractual provisions for exploitation of rights

In accordance with Spanish law, sponsorship, merchandising and image rights contracts are not expressly ruled by any specific regulation; thus, the parties can freely determine their content with the sole limitations arising out of law.

Nevertheless, a number of provisions typically arise in these contracts, such as the relevant licensing of trademarks and other distinctive signs, non-compete and exclusivity clauses, first refusal clauses and provisions regarding the assignment of IP rights. In this regard, Spanish regulations prohibit the sponsorship of sports events by alcoholic drinks and tobacco brands. The exact definition of the scope of the exploitation and assignment of these rights is also of utmost importance, as is the self-reservation of rights, as the case may be.

The sale of broadcasting rights may be carried out on an exclusive or non-exclusive exploitation basis in accordance with the legal provisions in force. It is mandatory that the duration of the assignment of rights does not exceed three years. In addition, pursuant to Act 7/2010 on audiovisual communication, the exclusive assignment of the television broadcasting rights of sports competitions cannot restrict citizens’ rights to information. For this purpose, the broadcasters that hold the exclusive rights with regard to an event of ‘general interest for society’ must allow other broadcasters to broadcast ‘brief information summaries’ (of less than 90 seconds) to be used only in general information programmes in which the logo or trademark of the organiser and the brand of the main sponsor of the event shall appear.

### V PROFESSIONAL SPORTS AND LABOUR LAW

Professional athletes have a ‘special labour relationship’ with their employers that is ruled in accordance with Royal Decree 1006/1985, given the special features of the kinds of services to be rendered and the qualities of the persons rendering these services.

#### i Mandatory provisions

Royal Decree 1006/1985 applies on a compulsory basis to sports contracts, while the general regulations on employment in Spain (especially the Workers Statute) will only apply on a subsidiary basis.

The special relationship of athletes with their employers is of a temporary nature, and salaries are, as a general rule, fixed in the relevant collective bargaining or labour agreement, or in both, apart from in the contract.

The labour relationship may end because of any of the general causes of termination of labour contracts (e.g., expiry of term, by mutual agreement), even if there is a special regime of unilateral termination of the contract by the athlete in exchange for the payment of
compensation to the club, which will be the compensation fixed for this purpose in the labour agreement or, in the absence of a provision of this kind in the contract, the compensation established by the labour courts.

ii Free movement of athletes
The free movement of athletes from EU Member States is guaranteed in the same general terms applicable in all EU countries. However, in some sports there are some direct or indirect restrictions on the number of non-EU athletes that can take part in competitions (inter alia, football and basketball). The same happens with minors.

iii Application of employment rules of sports governing bodies
Labour agreements may contain provisions that the parties freely agree (including those potentially already included in the regulations of the sports governing bodies), provided that these do not contravene compulsory laws, in which case they would be deemed null and void.

VI SPORTS AND ANTITRUST LAW
In Spain, competition law issues are increasingly prevalent in the field of sport. Instances of state aid to clubs, the a priori economic control rules imposed on clubs by some professional leagues and the conditions of access to professions (e.g., in the case of licences for football coaches) have led to legal discussions concerning their potential restriction of competition.

The intervention of antitrust law measures in sport is not new in Spain. However, situations encountered in the past (such as in matters related to the freedom of movement of athletes or broadcasting rights distribution) have been resolved, and new issues have developed. While we are probably not in a position to state that a genuinely separate and autonomous competition sports law exists in Spain, it is undeniable that in recent years, the competition rules have come into play and the authorities are involved more and more in the day-to-day activity of sports, and that the authorities take antitrust principles into consideration in their resolution of conflicts. The professionalisation of sport in Spain has had a great deal to do with this.

VII SPORTS AND TAXATION
The main particularities of the tax regime for athletes and professional clubs in Spain may be briefly summarised as follows.

Athletes who are tax residents in Spain shall pay personal income tax (PIT) on their worldwide incomes. The PIT rate is progressive, and can reach up to 48 per cent depending on the athlete's territory of residence in Spain. The PIT rules do not foresee a special tax regime for these athletes (this used to apply in the past).

Athletes who have transferred their image rights to a third party and who have a working relationship with a club that has obtained their image rights as part of the relationship are also taxed PIT on the payments made by the club to third parties for the image rights.

Athletes who are not tax-resident in Spain and foreign clubs that obtain income related to their participation in events in Spain can be subject to non-resident income tax in Spain in relation to their participation in events held in Spain. Double tax treaties (if any) will have to be considered in this respect.

SADs are subject to corporate income tax at a general tax rate of 25 per cent.
VIII SPECIFIC SPORTS ISSUES

i Doping
Besides the administrative sanctions established by the Organic Act 3/2013 on the protection of the health of athletes and the fight against doping in sport by those who infringe its provisions, under Spanish law, those who, without therapeutic justification, prescribe, provide, dispense, supply or facilitate banned or prohibited pharmacological substances or other prohibited methods to athletes to enhance physical capabilities or modify the results of a given sports competition commit a criminal offence (Article 362 quinquies of the Criminal Code).

Therefore, the Criminal Code punishes doping in sport, but it does not criminally sanction the use of doping substances by athletes, only its provision or supply to the latter. The criminal sanctions established by the Criminal Code include the imprisonment of the offender for a period of between six months and two years, a fine equivalent to six to 18 months’ salary, and a special disqualification for the exercise of his or her profession or of holding a public service position.

ii Betting
Act 13/2011 on the regulation of gambling and rules regarding sports betting, which are permitted activities in Spain, provides a general legal framework for online national gambling activities in Spain. However, the ‘autonomous communities’, in light of the provisions set out in Section I, are competent to regulate gambling within their respective regions, so their regulations must be considered as well.

In particular, Act 13/2011 regulates national gambling performed through electronic, interactive and technological means, which include the internet, television, mobile phones, landlines and any other interactive communication systems. Betting operators must obtain the corresponding licence prior to carrying out any betting activities. Further, Act 13/2011 prohibits the advertisement, sponsorship or endorsement of gambling activities, as well as the advertisement or promotion of gambling operators that do not hold the appropriate licences. The provisions of Act 13/2011 are also applicable to cross-border gaming activities. In this regard, remote betting operators must obtain an administrative authorisation or licence granted by the relevant Spanish authority prior to carrying out their business in Spain.

iii Manipulation
As mentioned, the Criminal Code envisages corruption offences for collusion between individuals, including a specific modality in relation to professional sports competitions. In this regard, Article 286 bis of the Criminal Code sanctions match-fixing and, in this regard, sanctions club directors, managers, employees and those who collaborate with sports entities, whatever their legal form, as well as athletes and referees, in relation to conduct aimed at deliberately and fraudulently attempting to alter the results of a professional sports match, game or sporting competition. The sanction foreseen for this conduct includes imprisonment of between six months and four years, a special disqualification banning practising in the industry or commerce for a term of between one and six years, and a fine of up to three times the value of the gains obtained by the illicit activity.

As the Criminal Code refers only to the intention to alter results, it is currently not absolutely clear if this can be applied to actions intended to alter the development of an event that can have no impact on the final results.
Finally, a criminal offence will be committed through the mere intent of match-fixing; therefore, it is not required that the effective benefit or advantage intended actually occurs.

iv  Grey market sales

Article 67.2 of Royal Decree 2816/1982 approving the General Police Regulations on Public Entertainment and Leisure Activities stipulates that the resale of tickets is prohibited. Notwithstanding this, and bearing in mind that the Regulations only prohibit the resale of tickets on the street (and not, for example, resale through the internet), it is unclear whether the resale of tickets outside those channels established by the organiser of the sports event is prohibited by law.

However, regarding the sale of tickets to a sports event, most organisers impose a general prohibition on purchasers on reselling tickets, thus establishing the conventional prohibition of such resale as valid.

IX  THE YEAR IN REVIEW

The following recent decisions of the Spanish courts and authorities on sports-related issues are worth mentioning:

a  A judgment of the Supreme Court of 14 May 2019 unified the doctrine criteria regarding the right of football players to be compensated in accordance with the Workers Statute when their temporary sporting contracts expire. Royal Decree 1006/1985 rules on the special labour relation of professional athletes, but the Workers Statute applies in a subsidiary manner. This Statute stipulates that the employee is entitled to a compensation of 12 days of salary per each year of service when his or her temporary contract expires. The Supreme Court analysed two contradicting prior judgments where, on the one hand, the Superior Court of Aragon confirmed the relevant compensation in favour of a second division football player and, on the other hand, in a very similar case, the Superior Court of Madrid denied the compensation to another footballer as it considered that the relevant payment only applied to athletes with ‘modest’ economy and not to ‘elite’ players. The Supreme Court finally ruled that the right to compensation was not restricted to the salary level of the employee and confirmed that football players are entitled to the relevant compensation when their temporary contracts expire.

b  A judgment of the National High Court of 4 July 2018 dismissed an appeal filed by Sevilla FC against a fine of €60,001 imposed by the Security Secretary of State as regards a match against its city opponent Real Betis Balompié, where the ‘ultra’ fan group of Sevilla, ‘Biris Norte’, displayed two banners that contained the logo of the radical group. The Court established that this action violated Act 19/2007 against violence, racism, xenophobia and intolerance in sports and considered that Sevilla FC was not diligent in the adoption of preventive measures to avoid the display of such banners.

c  A judgment of the High Court of Madrid of 15 February 2019 dismissed an appeal filed by the football player Pedro León against a judgment of a commercial court that upheld the legality of La Liga’s regulations on clubs’ salary caps. Back in 2014, the player could not obtain his licence to play in the national competition because his team, Getafe CF, exceeded its salary cap approved for the season of 2014/2015. The athlete considered that the private regulations of the league constituted an abuse of dominant position.
However, the High Court considered that the rules of La Liga are compliant with the laws and respond to the legitimate objective of fighting the excessive indebtedness of clubs and promoting the sustainability of professional football.

d The Central Dispute Administrative Court confirmed on 24 May 2018 the resolution of the Administrative Court of Sports of 25 April 2014, which, in turn, ratified the sanction of administrative relegations to the third division imposed by the Royal Spanish Football Federation to Xerez Club Deportivo. The judgment emphasised that the appeal filed by Xerez could not be accepted since the club was not up to date in its payment obligations as of 31 July 2013. In the judgment, the Central Court reasoned that the club breached its payment commitments towards the players, that the increase or decrease of the debt does not imply distorting the infringing act and that the alleged partial payments made by the club do not imply that the club was complying with its payment obligations of 31 July 2013.

e The National High Court, in a ruling of 16 July 2018, accepted the claim of the trade union ‘Futbolistas ON’ against the Association of Spanish Footballers (AFE) trade union, annulling the requirement imposed so far by AFE of being affiliated with this organisation and being up to date with the payment of its quotes to be entitled to receive the aid provided for in the savings plan called ‘the End of Career Fund’. In accordance with this decision, first, second, second B and first female division players are allowed to have access to the End of Career Fund regardless of their affiliation to AFE or any other group.

X OUTLOOK AND CONCLUSIONS

The sports law system in Spain is well developed, but it is still growing and being perfected in line with the relatively rapid conversion of sports into a business.

Spain has moved from amateurism in sports to professionalism over the past 25 years and, as usually happens, the law follows the reality. This has meant that a significant number of changes have taken place in recent years to address problems that were unknown decades ago. The tendency in the Spanish system is to continue to evolve to an even greater extent with the aim of harmonising legislation, as far as possible, with the new trends in international sports law. Spain has come a long way (especially in matters related to doping, bankruptcy, distribution of broadcasting rights, financial control and the coordinated fight against match-fixing), but new challenges are still pending and will require the Spanish legislators’ and sports institutions’ intervention in the near future.
Chapter 16

SWEDEN

Karl Ole Möller

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Organisational form

Almost 3.5 million of Sweden’s 10 million inhabitants are members of a sports club (as competitors, leaders, trainers, coaches, supporters, etc.). Some 2.45 million of these compete regularly. For historical reasons, voluntary non-profit associations play a major role in Sweden. The right to participate in clubs and societies is guaranteed by the Swedish Constitution. Sport in Sweden is historically organised as an independent voluntary movement (generally known as the ‘Scandinavian’ or ‘Nordic’ model). A long experience of collaboration with central government and local authorities has led to the sports movement being entrusted with the task of organising sport in Sweden with the help of financial support from the state and local authorities.

Local sports clubs are the foundation of the sports movement in Sweden. There are more than 20,000 local sports clubs in Sweden registered as non-profit associations with the purpose of organising sport activities, having elite sports and sport-for-all under the same umbrella. A non-profit association becomes a legal entity from the moment it is set up. For a non-profit association to exist in the legal sense, it is necessary for a number of individuals to have entered into an agreement to act jointly in an organised form to meet a common, non-profit purpose (organising sport activities). The actual agreement must be legalised in the form of a statute. A non-profit association cannot engage in commercial activities to enrich its members, but only in support of the non-commercial purpose. Sports clubs are thus governed by their statutes, which require democratic forms such as annual general meetings and executive committees. A sports club is ‘owned’ by its individual members, who determine, at the sports club’s annual meeting, what activities the club shall do and how the club is to allot its financial resources, etc. The basic principle is that each member has one vote.

The Swedish Sports Confederation is an umbrella organisation consisting of 72 special sports federations and 19 district sports federations, which organises more than 250 different sports and 20,000 sports clubs, which are all members of the Confederation. Membership is only admitted to non-profit associations. Legally, the Swedish Sports Confederation is itself a non-profit association that is regulated by the statutes agreed by its members.

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Confederation has the task of supporting its member federations and, in an official capacity, representing the whole Swedish sports movement in contacts with the authorities, politicians and so on.

Sports clubs hold participating licences to take part and compete in sports activities arranged by their respective special sport federation. Clubs are, however, allowed to transfer these rights to a wholly or partly owned limited liability company under certain conditions; for instance, that the sports club holds the majority of the votes at the general meeting of the limited liability company (the 51 per cent rule) and that the limited liability company is prohibited from transferring the sporting rights to a third party. Many sports clubs with elite professional sport activities, such as the top-level clubs in football and ice hockey, have used this opportunity to have their elite teams in a separate legal entity, which may attract financial investors from private business. So far, only one of these limited liability companies, AIK Fotboll, has listed its shares on the public market.

The supreme authority of Swedish sports in all Olympic matters is the Swedish Olympic Committee (SOC). It comprises 35 national Olympic sports federations (about half of the special sports federations mentioned above) as well as 12 federations of sports recognised by the International Olympic Committee. The main responsibility for developing individual sports rests with the appropriate special sports federations, but the SOC aims to strengthen the work of these federations.

ii Corporate governance
Swedish law does not provide for specific corporate governance rules for sports clubs or sport governing bodies. Sports have historically received substantial state support, but the governance of sports has been semi-autonomous of the state and therefore self-regulation, rather than regulation by the state, has been the norm. However, in recent years, sport governance has been subject to professionalisation, commercialisation and globalisation, as in the rest of the world. Therefore, sport governance in Sweden (including corporate governance) will probably go through a period of transformation. If an organisation is incorporated as a limited liability company, it will need to comply with the Swedish Companies Act. Listed limited liability companies are also subject to specific rules and recommendations on corporate governance, such as the Swedish Corporate Governance Code. The Code may also be applied voluntarily by non-listed companies.

iii Corporate liability
Swedish law does not provide any specific statutory provisions for liability of managers and officers of sport clubs or sport governing bodies. Most sports organisations are structured as non-profit associations and, in some cases, as limited liability companies. The board is responsible for the organisation and management of the organisation’s business. The board shall continually assess the financial situation of the organisation and ensure that the organisation of the association or company is structured in such a way that the accounting, management of assets and financial situation of the organisation in other respects are monitored in a safe manner. The board is also the organisation’s organ, which represents the organisation officially and has the power to sign on behalf of the organisation.

Chapter 11(A) of the Swedish Sport Confederation’s statutes 2019.
The Swedish Corporate Governance Code, available at www.corporategovernanceboard.se.
A member of the board or an officer of a non-profit association may be liable for damage that he or she causes the organisation (or its members or shareholders) intentionally or negligently in the performance of his or her duties. The general rules of the Swedish Companies Act (2005:551) apply for those sports clubs that are organised as limited liability companies. Pursuant to the Companies Act, an incorporator, a member of a board of directors or a managing director may be liable for damage that he or she causes the company (or a shareholder) intentionally or negligently in the performance of his or her duties. Board members are primarily responsible for the acts and omissions within the scope of the board’s area of responsibility. Members of the board may be liable for acts taken by an officer of the organisation within the day-to-day management if they have neglected their duty to supervise. The level of care expected of board members depends on various factors, such as the type of business, the allocation of work between the board members, and the qualifications and experience of the board member in question. Generally, board members are required to keep themselves informed of the association’s financial situation and make decisions based upon sufficient information. They shall also respond to warning signals, such as liquidity problems. Board members are often entitled to rely upon information assembled by officers and others, provided that they have no reasons to suspect that the information is incorrect.

A member of the board and an officer of an organisation are similarly liable for damage that he or she intentionally or negligently causes a third party by violating the statutes of the association or the provisions in the Companies Act. A board member may also be subject to a wide range of further provisions in specific legislation; for instance, related to bookkeeping, annual accounts, tax payments or environmental matters. Board members and officers of an organisation may also incur criminal liability under certain provisions of the Companies Act and for a number of offences under the Swedish Criminal Code, such as credit fraud, embezzlement, breach of trust and bribery.

Insurance policies against liability exposure for board members and officers may be obtained and are quite common. The coverage, limit and premium of the insurance policies may differ between different insurers and most insurance policies are usually ‘claims made’ policies.

II THE DISPUTE RESOLUTION SYSTEM

i Access to courts

There are no established principles in Sweden regarding when the public courts can examine and decide on lawsuits in relation to decisions of sport governing bodies; for instance, decisions on disciplinary sanctions. Generally, public courts are restrictive with challenging decisions from sport governing bodies related to the specific rules of the sport and there are very few legal cases on this issue. However, a public court can set aside a decision from a sports governing body if the decision involves at least some financial consequences for the athlete or if the decision is based on obvious unreasonable circumstances, such as discrimination because of race or religion. In the absence of an agreement to arbitrate, public courts have

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6 Chapter 29(1) of the Swedish Companies Act.
jurisdiction over all disputes outside the specific rules of the sport, such as employment law disputes or disputes related to commercial agreements, such as sponsorship, venue or merchandising agreements.

Arbitration outside the public court system is the preferred method of dispute resolution in the Swedish sports sector. A public court may not, over an objection of a party, rule on an issue that, pursuant to an arbitration agreement, shall be decided by arbitrators. A party must invoke an arbitration agreement on the first occasion that a party pleads its case on the merits in the court. In this case, the court will dismiss the legal proceedings, unless the arbitration agreement is invalid. 8

ii  Sports arbitration

Disputes concerning matters in respect of which the parties have an unrestricted right of disposal may, by an agreement, be referred to arbitration. The arbitration agreement may relate to future disputes pertaining to a legal relationship specified in the agreement. The dispute may also concern the existence of a particular fact. 9 As mentioned, a public court may not, over an objection of a party, rule on an issue that, pursuant to an arbitration agreement, shall be decided by arbitrators. 10

The use of arbitration is very common in the Swedish sports sector. By the Swedish Sports Confederation’s statutes, sports federations, clubs and athletes are bound to resolve their disputes by arbitration and disputes may not be arisen in an ordinary court. Each special sports federation has its own arbitration board, with the Supreme Sports Tribunal as the final instance. 11 The Supreme Sports Tribunal deals with appeals against sport-related decisions and disciplinary sanctions handed down by the special sports federations. The Supreme Sports Tribunal also serves as the second instance of appeal for decisions made by the Doping Panel based on the Regulations for Anti-Doping.

During the pendency of a dispute before arbitrators or prior thereto, a state court may, irrespective of the arbitration agreement, issue decisions in respect of security measures that the court has jurisdiction to issue. 12

An arbitral award can only be declared invalid or wholly or partly set aside by a public court under certain specific conditions. 13

iii  Enforceability

A Swedish arbitration award is enforceable as a court judgment after a decision of the Swedish Enforcement Service. 14 Swedish arbitration awards can be challenged on certain formal grounds only 15 (e.g., if it includes determination of an issue that, in accordance with Swedish law, may not be decided by arbitrators, or if the award is clearly incompatible with the basic principles of the Swedish legal system).

8  Section 4 of the Arbitration Act; Chapter 10(17a) of the Swedish Code of Judicial Procedure.
10  Section 4 of the Arbitration Act; Chapter 10(17a) of the Swedish Code of Judicial Procedure.
11  Chapter 2(8) of the Swedish Sports Confederation’s statutes 2019.
12  Section 4 of the Arbitration Act.
13  Sections 34–36 of the Arbitration Act.
15  Sections 33–34 of the Arbitration Act.
In accordance with the 1958 New York Convention, to which Sweden is a party, arbitral awards are recognised and enforceable in most countries. Foreign arbitration awards may be enforced in Sweden upon application to the Svea Court of Appeal. Enforcement may only be denied on the basis of certain formal grounds. Where the Court of Appeal grants the application, the award shall be enforced as a final judgment.\textsuperscript{16}

III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator

The sale of a ticket to a sports event is a legal contract between the spectator and the sports event organiser. This contractual relationship is governed by the Contracts Act and the general principles of contract law. It is important that the ticket terms and conditions are brought to the attention of the spectator at the time he or she is purchasing the ticket. Access may be granted to the spectator on certain specified terms and conditions, which are usually reflected on the ticket itself, by notices placed at and outside the venue, or if the ticket is purchased on the internet, with clear notice to the purchaser that specific ticket conditions apply, which should be listed in full on the website. For major sports events, it is often necessary and desirable for an event organiser to impose specific terms and conditions of entry, such as the possibility of refusing access to the event for security reasons, imposing restrictions on resale of the ticket and recording footage of the event, restricting access to the event to certain specified areas of the venue and specifying the ticket holder is over a certain age. The purchase of the ticket will be deemed to be an acceptance of these terms and conditions, so that a contract will exist between the event organiser and the purchaser of the ticket. Breach of these terms and conditions would render the ticket void and the event organiser will usually reserve the right to eject any person from the venue who fails to comply with the ticketing conditions or who represents a security risk, nuisance or annoyance to the staging of the event.

The event organiser’s main obligation is to organise and stage the event. If the event is cancelled or postponed prior to the start of the event, the spectator shall normally be entitled to a refund in the amount of the face value of the ticket or be able to attend the event at the rearranged date.

ii Relationship between organiser and athletes or clubs

The legal relationship between the event organiser and the athletes or clubs is primarily governed by the statutes of the relevant special sports federations and general principles of contract law and the Contracts Act. In large sporting events, the relationship may also be subject to rules and regulations imposed by international governing bodies. The contracting issues may be very complex in large-scale sport events; for instance, international sport events, where the event organiser is contracting with a number of participating athletes, clubs, teams or representative bodies.

The primary obligations on the part of the event organiser will usually include the organising and staging of the sport event in a professional manner in accordance with the standards expected for such an event, and providing a suitable and safe venue for the event. The primary obligations on the part of the athlete and clubs will usually include participation.

\textsuperscript{16} Sections 54–59 of the Arbitration Act.
in the event in accordance with the terms and conditions of the participation contract, the event or tournament rules, the rules and regulations of governing bodies (such as rules regarding doping and disciplinary infringements) and the laws of the game.

iii Liability

Liability of the organiser

An event organiser’s civil liability is governed by the Swedish Tort Liability Act (1972:207) and Swedish case law.17 Under Swedish law, damage in non-contractual liability normally covers personal injury and loss of or damage to property. Compensation for pure financial loss is excluded, except in the case of criminal behaviour.18

Liability for damages arises only when the event organiser acts intentionally or negligently. If a claim is made as a result of an incident, an event organiser that has taken all reasonable steps to manage the risks at the event would be more likely to successfully defend a claim or minimise the amount of damages awarded against the event organiser. The event organiser shall take all reasonable steps to prevent incidents from occurring at the sport event. If the event organiser has done what could be considered reasonable in the circumstances, a court would probably find that there was no negligence on the part of the event organiser.

An event organiser may be liable to compensate injury caused by an employee in the course of his or her employment.19 It is a general principle of Swedish tort law that damages can be reduced if the plaintiff has contributed, by fault or negligence, to the injury sustained.20 Damages are assessed on the basis of the injury suffered by the plaintiff. Damages are awarded only for injury actually sustained. However, there are no formal limitations as to the level of damages. Punitive or exemplary damages are not available under Swedish law.

An event organiser that acts as an employer will also be subject to various statutory duties imposed by legislation to ensure the health, safety and welfare of its employees.21 Individuals acting for an event organiser may also incur criminal liability for a number of offences under the Swedish Criminal Code, such as credit fraud, embezzlement, breach of trust and bribery. Authorities will generally have to investigate criminal matters ex officio.

Liability of the athletes

The statutes of the Swedish Sport Confederation include, inter alia, provisions regarding dispute resolution with sanctions that can be imposed on member organisations and individuals (including athletes). Athletes bind themselves contractually to comply with the rules of their club, their district and national federations, the Swedish Sport Federation and the corresponding international rules; for instance, the new World Anti-Doping Agency (WADA) Code.

17 Only a few relevant cases have been decided by the Swedish Supreme Court so far, all related to failure to secure a safe venue (NJA 1950 p. 550, NJA 1959 p. 280 and NJA 1993 p. 149).
18 Pursuant to Chapter 1(2) of the Swedish Tort Liability Act (1972:207), pure financial loss means economic injury arising without any person having concurrently sustained loss of life, personal injury, or loss of or damage to property.
19 Chapter 3(1) of the Tort Liability Act.
20 Chapter 6(1) of the Tort Liability Act.
21 See, for example, the Swedish Work Environment Act (1977:1160).
An athlete’s civil liability is governed by the Tort Liability Act and Swedish case law. Liability for damages arises only when the athlete acts intentionally or negligently. Athletes may be held liable for damage or injury caused to other athletes, spectators, etc.

Athletes have normally accepted the risks inherent in the specific sport, *volenti non fit injuria*. In some sports, violence is a natural part of the exercise. However, violence between athletes may constitute a criminal case even in sports where more violence than normal remains allowed (e.g., ice hockey and boxing). The question of civil and criminal liability for athletes has been dealt with by Swedish public courts in several cases.22 Some actions that happen in the context of sporting activities can be given criminal liability by juridical argumentation. Other actions can be significantly more difficult to call criminal liability. If a clear distinction cannot be found, an assessment of each sport needs to be done. As long as the athlete adheres to the relevant sporting rules, his or her actions will most likely not incur any civil or criminal liability. However, violence that takes place in a different part of the playing field than the game will meet with a greater risk of prosecution and conviction.23 In a much-debated court case in 2017, a Swedish professional hockey player was convicted for assault after he struck an opposing player across the neck with his hockey stick during a game in 2015. Offences against personal reputation may also occur. In a defamation case in 2017, the former head coach of the Swedish national athletics team was sentenced by a district court for gross slander for having insinuated that professional football player Zlatan Ibrahimović had used illegal substances during his time playing for Juventus. Sports-related violence is subject to public prosecution. Authorities will generally have to investigate criminal matters *ex officio*.

**Liability of the spectators**

A spectator’s civil liability is governed by the Tort Liability Act and Swedish case law. A spectator may be held liable in respect of damage to property or personal injury caused to the event organiser, other spectators or athletes. Liability for damages arises only when the spectator acts intentionally or negligently. Spectators may also incur criminal liability for a number of offences under the Criminal Code.

iv Riot prevention

Following tragic incidents related to hooliganism at Swedish football grounds, legislation was introduced in 2005 relating to the access to sport events.24 According to the Act, an individual may be prohibited to enter a venue where a sport event is going to be held. A banning order from a public prosecutor can be made against, for instance, a violent supporter,25 for up to three years. This order can be imposed owing to the individual’s previous violence at sport events, previous convictions for sports-related violence, etc. Anyone breaking the banning order will be sentenced to a fine or maximum of two years’ imprisonment. In March 2017, new anti-hooligan legislation was introduced for a ban against covering one’s face at sporting events. The new rules mean that, with some exceptions, people inside an arena who cover their face in a way that prevents identification may be sentenced to a fine or maximum of

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24 Act (2005:321) on denial of access to sport events.
25 Sections 1–3 of the Act (2005:321) on denial of access to sport events.
six months’ imprisonment. Currently, only clubs organised as limited liability companies have to make a financial contribution for measures taken by the police to prevent riots at sports events, which has been much debated within the Swedish football sector.

IV COMMERCIALISATION OF SPORTS EVENTS

i Types of and ownership in rights

Swedish law does not recognise independent proprietary rights to an event per se. The idea or concept for a sport event is not protectable under Swedish intellectual property laws. However, the sport event organiser can usually protect the sport event and the commercial rights to the event through a combination of real property law, contractual provisions, intellectual property law and tort law. The event organiser often controls access to the venue in which the event is going to be held. The event organiser may restrict third-party access to the venue and ensure, through various agreements, that the spectators, athletes and others admitted to the event are not entitled to benefit commercially from their attendance. The control over the venue is based on the laws of real property, contract and tort law. Tort law generally makes a trespasser of anyone who enters onto the land without permission, or enters with permission but then violates the terms and conditions of that permission. The event organiser can also protect and commercially exploit the various commercial rights in the event through agreements regarding the entry to the event (ticketing), sponsorship, broadcasting, merchandising, catering, hospitality, etc. Broadcasting agreements are regarded as the most valuable source of revenue to the sport event organisers, and the development of the internet and other media as additional broadcasting mediums will have an impact on the business of broadcasting in the coming years.

ii Rights protection

Rights related to exploitation and commercialisation of sports-related rights can be protected through a variety of intellectual property rights listed below.

Copyright and database rights

In Sweden, no particular form of copyright covers sports events specifically and an athlete's performance during a sports event would not be protectable in itself, but the provisions of the Act on Copyright in Literary and Artistic Works (1960:729) (the Copyright Act) can successfully be applied to the sports industry. The Copyright Act protects the expression of an original work, such as literary, dramatic, musical, artistic works, broadcasts and sound recordings, with a protection ranging from 50 to 70 years.26 The protection will arise automatically on the expression of the work. The compilation and use of sports databases for commercial reasons may also be protectable under the Copyright Act under certain conditions (such as substantial investment in the obtaining, verifying or presentation of the contents of the database). As mentioned, an athlete's performance during a sports event would not be protectable in itself, but any recording (sound, visual and audiovisual recordings), broadcast and footage of that performance may be protectable under the Copyright Act.

26 See Chapters 4 and 5 of the Swedish Copyright Act.
**Trademarks**

A trademark (a mark that denotes the nature or origin of goods or services) can be registered for a period of 10 years in the Trademark Register kept by the Swedish Patent and Registration Office and can be renewed (each time for a period of 10 years from the expiry of the previous registration period). \(^{27}\) The owner of the mark can bring an action against anyone making unauthorised use of the mark. A name or logo that is subject to trademark protection grants exclusive rights to the proprietor and prevents all third parties from unauthorised use of the name, or any sign confusingly similar with that name, within the course of trade. A trademark may consist of words (e.g., the name of a well-known athlete), signatures, symbols, emblems, numerals, patterns, or the shape of goods or their packaging, provided that the signs are distinctive. \(^{28}\) Trademark registration is territorial in nature (i.e., enforceable in Sweden) and may be infringed by conduct that takes place in Sweden, but it will not be infringed by conduct that takes place in a foreign jurisdiction, unless it has also been registered in that jurisdiction's trademark registry (or as an EU trademark).

**Image rights or rights of publicity**

Swedish law recognises an independent right to protect a recognised athlete's personal name or picture against exploitation in commercial contexts by the Act on Names and Images in Advertising (1978:800, the Names Act). The Act gives fundamental protection against tradepersons' use of an individual's name or picture in marketing without the explicit permission of the individual. \(^{29}\) Nevertheless, many recognised professional athletes in Sweden choose to protect their names as trademarks in accordance with the Trademarks Act. The Names Act may be applied on most types of trademark uses as well. The two Acts are therefore applicable in many corresponding situations.

**iii Contractual provisions for exploitation of rights**

The sports industry is massive and fast-growing, both abroad and in Sweden. As a general rule, Swedish law does not require that any mandatory statutory provisions are to be incorporated into commercial agreements regarding the exploitation of sport-related rights or apply under such contracts. As mentioned in Section IV.i, sport events will usually require several different agreements, such as broadcasting, sponsorship, ticketing and merchandising contracts. Sometimes these contracts can be very short and simple, depending on the size of the sport event and the extent and value of the commercial rights packages offered to, for instance, a sponsor. However, large-scale sport events usually include a complex collection of rights and obligations, and the contracts tend to be comprehensive and detailed. Key deal terms for these contracts will usually be the term and duration of the contract, the territory in which the sponsor can exploit the sponsorship rights, the nature and scope of the sponsor’s rights (such as exclusive or non-exclusive rights to naming and title rights, official supplier rights, advertising rights or presentation rights), the use of trademarks or logos, and the remuneration to be paid for the rights and warranties from the parties (e.g., that the event organiser owns or controls all rights in and to the sports event).

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\(^{27}\) Chapter 2(3233) of Swedish Trade Marks Act (2010:1877).

\(^{28}\) Chapter 1(4) of the Swedish Trade Marks Act.

\(^{29}\) Section 1 of the Names Act.
V PROFESSIONAL SPORTS AND LABOUR LAW

i Mandatory provisions

Swedish employment law is generally applicable to the relationship between clubs and athletes within all sports.\(^{30}\) Whether an athlete is considered as an employee or not is determined on principles according to Swedish employment law and not on the sporting definition of amateur or professional, although the definitions of an employee and a professional athlete often overlap.\(^{31}\) The characteristics of an employment agreement are that one person (the employee) carries out work for another (the employer) under the supervision and management of the employer from which the direct benefit goes to the employer, and from which the employee receives financial compensation. If these requirements are fulfilled, the labour legislation sets the minimum level for the conditions of employment. It has been well established that athletes in the most commercialised team sports (e.g., football and ice hockey) are regarded as employees. However, individual athletes (such as tennis players, golfers, track and field athletes) who perform sports activities for a sports club are usually not considered to be employees of the club, especially if they perform their activities through wholly owned legal entities, such as limited liability companies.

According to Swedish employment law, the general rule regarding form of employment is an indefinite employment, although temporary employments up to a fixed term of two years are accepted.\(^{32}\) However, exceptions from the temporary employment rule are possible by agreeing on permission for longer temporary employment in a collective bargaining agreement, such as the collective bargaining agreements currently existing in elite football and ice hockey.\(^{33}\) The collective bargaining agreement for football allows temporary employment for up to five years, while in ice hockey the general principle is one or two years at a time.

The general principle regarding temporary employment states that the contract may only be terminated upon expiry of the contract or by mutual agreement. Most athletes have a temporary employment without any provision regarding premature termination. This means that the parties cannot terminate the contract (or the athlete switch clubs) before the fixed date, unless a material violation of the contract has occurred\(^{34}\) or if the parties mutually agree to terminate the contract. According to Swedish employment law, it is possible to terminate the employment relationship with immediate effect if the employee has grossly violated his or her liabilities according to the contract (i.e., ground for dismissal, such as if the athlete has committed a serious doping offence) or if the sports club materially has violated its liabilities according to the contract (e.g., by violating its payment obligations towards the athlete).

There are no mandatory provisions in Swedish law with regard to salary protection for employed athletes. Salary and other employment benefits are subject to individual negotiations between the sports club and the athlete.

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\(^{30}\) For instance, the Swedish Employment Protection Act (1982:80), which is to a large extent compulsory to the benefit of the employee. It is, however, possible for the parties on the labour market to deviate from parts of the Employment Protection Act by way of a collective bargaining agreement.


\(^{32}\) Section 5 of the Employment Protection Act.


\(^{34}\) AD 1976 No. 52, AD 1979 No. 152 and AD 1991 No. 81.
ii Free movement of athletes
Sweden is a member of the European Union and, as such, subject to EU rules regarding the free movement of labour, cross-border competition and discrimination. After the Bosman case of 1995, sports were recognised as an employment market in Sweden, where athletes were entitled to a more far-reaching employment law protection. Thus, one consequence of the Bosman case has been that Swedish sport clubs and associations have adjusted their internal rules and regulation to comply with EU law. In team sports, operations that restrict the number of players from EU Member States are prohibited, but the number of non-EU players may be limited to some extent. The Swedish Football Association has adopted rules whereby the ‘home-grown’ rule is introduced. A ‘home-grown’ player has been registered for a Swedish football club for at least three years from the ages of 12 to 21 years. This specific rule applies to the elite divisions within Swedish football, meaning that at least half of the players noted in the football club’s player list are required to be home-grown players.

iii Application of employment rules of sports governing bodies
Swedish athletes are often bound by regulations of (international) sports governing bodies by agreement or in their employment agreements. These regulations would, however, be considered invalid and unenforceable if they violate mandatory provisions in Swedish employment law. Subject to the requirement to incorporate mandatory provisions, the parties are free to decide upon the terms of employment agreements.

VI SPORTS AND ANTITRUST LAW
The competition law regime has, at the EU level, for a long time been applied to different sports contracts and agreements. During the 1990s, the Bosman ruling on transfer rights for football players was in focus. Since then, issues such as TV rights to football broadcasts have been tried several times. Swedish sports currently have a considerable economic dimension, in addition to the social dimension and public health considerations. Clubs and sport governing bodies, to the extent that they engage in economic activity, must respect the rules of the Competition Act (2008:579). The Competition Act applies to the business activities of sports event organisers and sports governing bodies when they hold a dominant position in relation to the business activities in question.

In Sweden, the first competition law case regarding sports contracts and agreements was tried in 2012. In 2011, the Swedish Competition Authority (SCA) adopted a much-debated decision against the Swedish Automobile Sports Federation, Svenska Bilsportförbundet (SBF). The decision concerned SBF’s statutory rules, which contained duty of loyalty clauses preventing licensed drivers and stewards from participating in races other than those organised by SBF or its member clubs. The SCA found that these duty of loyalty clauses amounted to an illegal restriction of competition that could not be objectively justified and ordered SBF to change its rules. The intention was to make it possible for drivers and officials to participate in competitions organised by independent operators. SBF chose to appeal the decision, after which the Swedish Market Court in 2012 sided with the SCA and stated that, notwithstanding the specific nature of the sport, the rules were neither considered as

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35 ECJ, judgment of 15 December 1995 – C-415/93 (Bosman).
36 The Swedish FA’s representation conditions 2019.
being necessary nor proportionate to achieve their legitimate objectives. The Market Court’s judgment received much attention in the media where the Swedish Sports Confederation primarily strongly disputed that competition law could be applied. The Market Court’s ruling shows, as was already established at the EU level, that no sector is free from competition law review. This case may be followed by others where the conduct of sports clubs will be challenged from a competition law perspective.

VII SPORTS AND TAXATION

The general Swedish tax rules – for example, the Income Tax Act (1999:1229) – apply to athletes, sports clubs and sport governing bodies. As far as national income tax is concerned, Swedish legal entities are subject to an unlimited tax liability (22 per cent). Most Swedish sports clubs, however, are non-profit associations and, as such, most of their activities are tax-free. A non-profit association cannot engage in commercial activities to enrich its members, but only in support of a non-commercial purpose. A non-profit association can therefore, under certain circumstances, enjoy relief on payment of income tax and it is therefore only liable for taxation on income from business relating to real property and business activities. Consequently, such an association enjoys exemption from taxation on regular income from capital and capital gains, membership dues, contributions to the public service activities, donations and testamentary dispositions, while income from real property and business activities is in principle liable to taxation. Tax-privileged non-profit associations that pay taxable remuneration and benefits to its employees (e.g., its athletes, trainers) shall, like other employers, pay social security contributions on the remuneration and benefits.

Individual athletes living in Sweden permanently are taxed under the Income Tax Act for all income received. Taxable income includes cash payments or other forms of remuneration for sporting activities that are performed in Sweden or abroad. A non-resident athlete who derives taxable income from Sweden must, as a rule, also pay tax in his or her country of residence. The same double taxation problems occur when Swedish athletes and taxable sports clubs participate in sports events abroad. To avoid double taxation of the same income, Sweden has entered into double taxation treaties with other countries. In some cases, the provisions of the double taxation treaty can mean that special income tax does not need to be paid. Double taxation is usually eliminated by deducting the tax paid abroad when counting the annual gross income of an athlete or club.

Payment of remuneration to non-resident athletes and others may be made on particularly favourable tax terms for a limited period in accordance with the rules of the Act on Special Income Tax for Non-resident Artists and Others (SFS 1991:591).

37 Case MD 2012:16.
39 See the Swedish Tax Agency’s guide SKV 520B regarding payment of remuneration to non-resident artists, athletes and others, October 2015.
VIII  SPECIFIC SPORTS ISSUES

i  Doping

The Doping Act (1991:1969) covers certain specific doping substances that are criminalised: synthetic anabolic steroids, testosterone, growth hormones and chemical substances, which enhance the production or release of testosterone and its derivatives or of growth hormones. These substances may not be imported, transferred, manufactured, acquired for transferal purposes, offered for sale, held or used. Anyone wilfully breaking the Act will be sentenced to a maximum of two years’ imprisonment. If a violation is considered to be a misdemeanour, a fine or a sentence of maximum six months’ imprisonment will be imposed. However, if a violation is considered to be serious, a sentence of a minimum six months and maximum six years’ imprisonment is imposed for a serious felony. When judging the seriousness of the crime, it shall be heeded whether it has formed a part of activities carried out on a large scale or commercially and comprising a particularly large amount of doping preparations, or otherwise been of an especially dangerous or ruthless nature.

The anti-doping programme within the Swedish sports movement is led and coordinated by the Swedish Sports Confederation and its Doping Commission. In 2004, the Swedish Sports Confederation implemented the WADA uniform and global World Anti-Doping Code in its own Regulations for Anti-Doping. The Regulations for Anti-Doping generally apply to all athletes under the Swedish Sports Confederation who engage in competitive sports. All positive doping results are investigated by the Doping Commission, which decides whether the matter should be reported for disciplinary action. The primary instance of decision on disciplinary actions for all sports is the Doping Panel of the Sports Confederation. The decision may be appealed to the Swedish Supreme Sports Tribunal.

ii  Betting

The Swedish gambling market changed on 1 January 2019 when the new Gambling Act (2018:1138) entered into force. Some parts of the gambling market will be exposed to competition and more operators will, therefore, be able to apply for licences. The Swedish Gambling Authority has overall responsibility for licensing and supervision within the field of gambling, and monitors compliance with the Act. Its role is to increase state control of the gambling market. In recent years, there has been a trend towards increased online gambling through operators without permits in Sweden. The new regulation will make it possible for these operators to apply for gambling licences in Sweden. This will create better opportunities for controlling the market and establishing a higher level of consumer protection, while gambling operators without licences can be excluded.

iii  Manipulation

Swedish sporting associations, the gambling industry, the justice system and the media have paid increasing attention to match-fixing in recent years, mainly within football. The number of cases is growing and the consequences are serious. Individual teams and athletes are the primary victims of manipulated matches but, in the long run, they can also damage the credibility of the sports movement, cause losses to gambling companies and their customers, and contribute to diminished societal trust in general. Efforts to prevent match-fixing are complicated when operators are run in different countries.

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40 Chapter 13 of the Swedish Sports Confederation’s statutes 2019.
Match-fixing and other manipulation of sports activities had previously no specific and separate penal provision in the Criminal Code. A specific new criminal provision with regard to the manipulation of sports activities has now been introduced in the new Gambling Act. Those who take inappropriate actions to manipulate the outcome of a game that is subject to licence requirements under the new Gambling Act shall be imprisoned for a maximum of two years for cheating (gambling fraud). The Gambling Authority has also created a special council concerning match-fixing and may halt or prohibit or both, specific types of betting.

In 2015, the Swedish Sports Confederation adopted a general code to fight the manipulation of sporting competitions.41 According to the code, it is prohibited to wilfully or negligently take part in the betting and manipulation of sports activities in the ways described in the code. The code applies to all members of the Swedish Sports Confederation (such as sports federations, clubs or individual athletes who participate in sport activities under the auspices of a federation or a club). Sanctions may be imposed in the form of a temporary ban for individuals of up to 10 years, fines (for sports federations and clubs) and cancellation of results achieved in competitions, etc.

In 2015, a court of appeal in Sweden rendered Sweden’s first landmark decision in match-fixing and found six people, including three former footballers, guilty of taking bribes to manipulate the outcome of a football match in Division 1, the third level of the Swedish football league system. The Swedish Supreme Court denied leave to appeal.

iv Grey market sales

There are, at present, no laws against ticket touting, and it is very common at online outlets and has been much debated in Sweden. Ticket resale by scalpers above face value is, however, still legal in Sweden regardless of limitations imposed by the event organiser. Official ticket sellers have tried to prevent grey marketing by including a prohibition against reselling the tickets in its sale agreements or on the tickets themselves. Thus, reselling the ticket would be considered a contractual breach. Also, ticket quotas per customer and designating tickets for specified customers who can identify themselves have been used to prevent grey market sales.

IX THE YEAR IN REVIEW

Pressure continues on Swedish sport governing bodies, police and the government to fight against the manipulation of sports competitions. Integrity is critical for sport, and match-fixing strikes at the very heart of it. The introduction of the new Gambling Act will hopefully lead the betting companies involved in online betting to cooperate with the sport governing bodies to investigate match-fixing. The e-sports industry continues to grow in popularity and viewership, and the Nordic countries are in an excellent position to dominate this new arena in the near future. The Nordic region’s reputation for producing some of the world’s best-selling games is based on a huge gaming community. Sweden has more professional e-sport players than any other country, closely followed by Denmark, Finland and Norway. However, the Swedish eSports Association has not yet been successful in becoming a member of the Swedish Sports Confederation.

41 The Swedish Sports Confederation’s Regulations on prohibited betting and manipulation of sports activities (match-fixing).
X OUTLOOK AND CONCLUSIONS

The commercial side of the sports sector is continuing to grow in Sweden and the awareness of laws affecting sports and the sports industry has, therefore, increased. It can be assumed that antitrust laws will continue to influence the way sport is organised in Sweden, since the professionalisation, commercialisation and globalisation of the sports sector is growing, both abroad and in Sweden, and the economic and financial interests are becoming more complex. Sports organisations in Sweden (particularly sports governing bodies and clubs) that monitor their athletes must still be acquainted and compliant with the GDPR to avoid hefty sanctions under the new data protection rules. The e-sports industry will continue its rapid growth and e-sports stakeholders will have the opportunity to learn lessons from traditional sport in relation to regulatory and governance perspectives as well as from certain commercial aspects.
I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

The Swiss Constitution (BV) protects the principle of freedom of association under which every person has the right to form, join or belong to an association and to participate in the activities of such association. In addition, the BV protects economic freedom, which includes, in particular, the freedom to choose an occupation and the freedom to pursue a private economic activity. These constitutional provisions form the basis of the liberty to set up legal entities in various forms, including associations and share corporations, which are the most commonly used forms of entities in the area of sport. The Swiss Civil Code (ZGB) and the Swiss Code of Obligations (OR) provide a more detailed legal framework for associations and share corporations.

Within the boundaries of the mandatory statutory legislation, parties are free to determine at their discretion all relevant aspects of the organisation and management of a legal entity such as its structure and internal judiciary system. In particular, the statutory framework for associations provided in the ZGB is very liberal, providing not more than 23 articles of rather generic content. This ensures a very friendly environment for sports governing bodies, which make full use of this freedom to enact comprehensive statutes and regulations that fit their organisations’ specific goals and needs.

i Organisational form

The ZGB and the OR provide the basic statutory framework permitting the establishment of associations, share corporations and limited liability companies.

In contrast with the corporate world, where businesses operate as share corporations or limited liability companies, most sports federations domiciled in Switzerland (e.g., FIFA,
UEFA, the International Handball Federation, the International Cycling Union and the World Rowing Federation) are organised as associations. They are established and managed by their members, and have neither any defined share capital nor, as a consequence, shareholders. Sports federations organised as associations have a participatory nature. They do not have a defined company capital and quota or shares that can be held by owners. In addition, the decision-making process follows the per capita principle (i.e., each member has, as a rule, one vote in members’ meetings). However, this principle is not mandatory and it is permissible to deviate from it if there are valid reasons. According to the statutes of the Swiss Ice Hockey Federation, each first division club has three votes, while the second division clubs have only two votes in the National League assembly. Allocation of voting power according to size or sporting performance, or both, of a stakeholder has become an increasingly important topic in national and international sports federations.

In contrast with associations, share corporations and, in some limited cases, limited liability companies, are the forms used for professional sports teams, and in particular for football and ice hockey teams. These types of entities have a capitalistic structure and provide a defined company capital divided into specific quota, usually shares, held by the company’s owners (i.e., the shareholders). In principle, the more stock a shareholder holds, the stronger his or her influence will be on the decision-making process at the shareholder level (i.e., at shareholders’ assemblies). Share corporations are often used in Switzerland to operate a sport club’s professional team (e.g., in football or ice hockey). The junior teams and, if any, the recreational teams remain part of the club (or association) that maintains a close contractual relationship to the share corporation operating the professional team. According to a more recent trend, sports clubs hold a group of separate legal entities to which certain business areas or outsourced.

Despite the above differences, share corporations and associations have various important aspects in common. Both types of organisations are legal entities with their own legal identity and company name; have different decision-making and management bodies; and have their own personnel performing the required strategic, operational and administrative functions.

ii Corporate governance

The members of associations established under Swiss law enjoy wide discretion in terms of structuring and administering an entity; for instance, in respect of establishing its internal governance, the rights and obligations of the members as well as the judiciary instances. It is because of this fundamental liberty that the form of association is very often chosen not only for (non-professional) sports clubs, but also for national and international sports federations. According to a review undertaken by the Swiss Federal Office of Sport in 2017,
more than 19,000 sports clubs forming part (through their relevant national federations) of Swiss Olympics were organised as associations. The form of association is chosen for small sports clubs with fewer than 100 members (68 per cent of all sports associations) as well as for large clubs with more than 300 members (8 per cent of all sports associations). Once an association is operating a trading, manufacturing or other type of commercial business, it is obliged to enter it in the commercial register. This duty typically applies to national and international sports governing bodies that generate material income through the commercialisation of the sports events organised under their auspices. The obligation of an association to register itself in the commercial register also triggers a duty to keep accounts in compliance with the statutory requirements on commercial accounting and financial reporting.

In light of the economic and (sport) political power of major sports bodies (such as FIFA, UEFA or the IOC), corporate governance within, and organisation of, such sports bodies has also become a topic of scrutiny by the legislator.

iii Corporate liability

The rules on the corporate liability of sports organisations as well as their managers and directors are set out in the OR (in respect of share corporations and limited liability companies) and the ZGB (in respect of associations).

In respect of the corporate liability of associations, the relevant statutory framework is rather simple. It provides that persons acting on behalf of an association bind it by concluding legal acts as well as by other actions, and that an association's managers may become personally liable for their wrongful acts.

The liability of managers and directors of a share corporation is subject to comprehensive statutory regulation pursuant to the OR. Managers and directors of a share corporation can be held liable in relation to the company, the shareholders and, under certain conditions, the company's creditors for any loss or damage arising from any intentional or negligent breach of their duties.

A legal entity and its managers and directors can also become liable for criminal acts in accordance with the Swiss Penal Code (StGB). If a criminal act has been committed by or in a company during the exercise of a commercial activity, and if it is not possible to attribute this act to a specific natural person within the company owing to its inadequate organisation, the act will be attributed to the company, which shall be sanctioned accordingly. However, if the wrongdoer can be identified, he or she will be sanctioned.

For some specific offences (e.g., criminal organisation, financing of terrorism, money laundering, bribery of Swiss and foreign public officials), the company will be subject to

14 ibid., p. 8.
15 Article 61, Paragraph 2 ZGB.
16 For example, FIFA, the International Olympic Committee and the International Ice Hockey Federation (IIHF).
17 Article 69a ZGB in conjunction with Article 957 et seq. OR; Article 69b ZGB.
18 Article 55 ZGB.
19 In particular, Articles 752 to 760 OR.
20 Article 754, Paragraph 1 OR.
21 Article 102, Paragraph 1 StGB.
criminal sanctions irrespective of the criminal liability of a natural person, unless the company can prove that it has taken all reasonable organisational measures required to prevent the criminal act.22

II THE DISPUTE RESOLUTION SYSTEM

i Access to courts

In accordance with Article 30 of the BV, all persons whose case falls to be judicially decided have the right to have their case heard by a legally constituted, competent, independent and impartial court. Further, in accordance with Article 75 of the ZGB, any member who has not consented to a resolution of an association that infringes the law or the articles of association of an association is also entitled by law to challenge such resolution in court within one month of learning thereof, even if the judiciary rules of the association would not foresee such right of challenge.

As mentioned, a sports governing body, most commonly organised in the form of an association, is free, within the limits provided for by mandatory law, to organise its structure and determine the judicial system that shall apply within the organisation. This includes the setting up of different internal instances that shall determine issues between the association and its members as well as between the members and other stakeholders. Examples of internal judiciary instances include the FIFA Dispute Resolution Chamber and the UEFA Control, Ethics and Disciplinary Body. This freedom also includes the right to define and apply sanctions in the case of a breach of the statutes, regulations or other rules of the association by its members or officials, and other stakeholders such as players or athletes. These measures typically include sanctions such as reprimands, fines, suspensions and expulsion.23 If an association has established such internal judiciary systems, it may foresee that internal sanction decisions may be challenged before an internal higher instance or before a governing body of an umbrella organisation prior to an appeal being lodged before an independent court.24

Moreover, freedom of association and economic freedom comprise a sports governing body’s right to enact and enforce the rules of the game of its particular sport.25

The distinction between the rules of the game and rules of law is of paramount importance. The purpose of the rules of the game is to ensure fair competition, and the rules are aimed at regulating athletes’ conduct only during a competition. In other words, they have effect only during the course of the competition, and consequently do not affect the personality or other rights of an athlete. For this reason, it is a widely accepted principle that rules of the game decisions (or field of play decisions) should be and are, as a matter of principle, final and not appealable.26 However, decisions of sports governing bodies that affect personality or other rights of an athlete are open to appeal before the state courts or an arbitration court, depending on the dispute resolution mechanism that applies.27 For

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22 Article 102, Paragraph 2 StGB.
23 BSK ZGB I-Heini/Scherrer, footnote 4, Article 70, Paragraph 18.
25 Such as, for example, the Laws of the Game of FIFA or the IIHF Official Rule Book.
27 BGE 120 II 369 cons 2; BGE 118 II 12, cons 2; BGE 103 la 410, cons 3b.
example, the awarding of a penalty kick and the sanctioning of an ice hockey player with a five-minute sanction are rules of the game decisions not open to appeal, while, by way of example, suspending a player from five subsequent games or imposing a fine would be a rule of law decision affecting the athlete’s rights that would, consequently, be open to appeal.

Internal judiciary instances of sports governing bodies (as described above) normally do not fulfill the criteria of independent and impartial courts, as their members are usually elected and remunerated by the sports governing body itself. For this reason, any member or other stakeholder that has been sanctioned by an association, or is otherwise subject to a decision of such association, has the right to challenge the decision and file an appeal with the competent state court, even if the relevant regulations of the association would not expressly foresee such course of action. Alternatively, an appeal may be lodged with a court of arbitration (that fulfills the requirements of independence and impartiality) if a valid arbitration agreement is in place.

Sport arbitration is of utmost importance in Switzerland given that the Court of Arbitration for Sport (CAS) has its seat in Lausanne, Switzerland. In the landmark Gundel and Lazutina cases, the Swiss Federal Tribunal confirmed that the CAS is a true arbitral tribunal.

ii Sports arbitration

In Swiss domestic arbitration, the *lex arbitrii* is found in the Swiss Civil Procedure Code (CPC). In international arbitration (i.e., where the court of arbitration has its seat in Switzerland, but where at least one party is not domiciled in Switzerland), the 12th Chapter on the Swiss Statute on Private International Law (PIL) applies. Article 354 of the CPC provides that in domestic arbitration, only claims that the parties may freely dispose of are arbitrable, while pursuant to Article 177 of the PIL, in international arbitration, any pecuniary claim may be subject to arbitration. It is strongly disputed whether claims based on Article 75 of the ZGB (i.e., appeals against decisions of an association), for instance, an appeal by an athlete against a sanction for a doping offence or an appeal by a player against a suspension for unfair behaviour on the field, are of a pecuniary nature and are thus arbitrable. According to prevailing opinion, such appeals are deemed to be of a non-pecuniary nature, which would mean that such cases could not be brought to arbitration (e.g., before the CAS). That notwithstanding, the Swiss Federal Tribunal in its practice usually accepts the arbitrability of appeals against sanction decisions of sports governing bodies brought before the CAS in international arbitration.

In domestic arbitration, arbitrability of employment matters is restricted, as disputes regarding the mandatory rights of an employee in the sense of Article 341 of the OR cannot be brought to arbitration against the employee’s will, even if the employment agreement provides an explicit arbitration clause. These are rights that the parties cannot freely dispose of. In international arbitration, however, admissibility has to be determined in light of Article 177 of the PIL. The Swiss Federal Tribunal holds that an employment issue may be brought before a court of arbitration having its seat in Switzerland such as the CAS if the

28 BGE 119 II 271, cons 3b.
29 BGE 119 II 271 and BGE 129 III 445.
30 For example, BGE 108 II 15, cons 1a.
31 For example, BGE 136 III 345.
32 For example, Swiss Federal Tribunal 4A_515/2012 of 17 April 2013, cons 4.3. See also: Swiss Federal Tribunal 4A_7/2018 of 18 April 2018, cons 2.
employment agreement provides for an arbitration clause, even if employment disputes are exempt from arbitration in the domicile country of the employee. According to the Swiss Federal Tribunal, Article 177(1) of the PIL provides that any claim that has a pecuniary or economic interest can be brought to arbitration, and that this rule also applies to monetary claims under a labour contract.\textsuperscript{33} When assessing the issue of arbitrability of international employment issues, the Swiss Federal Tribunal also considers the risk that the prevailing party may not enforce the arbitral award in the relevant jurisdiction. However, it holds that when enacting Article 177 of the PIL, the Swiss legislator deliberately accepted the risk that an award may not be enforceable in a given jurisdiction, but that it is the parties’ duty when agreeing on arbitration to assess whether a final award will be enforceable.\textsuperscript{34}

On 24 October 2018, the Swiss Federal Council published the draft bill for a revision of the PIL. The proposed amendments aim at selectively adjusting and modernising the statutory rules governing Swiss-seated international arbitration proceedings, without, however, diverging from Switzerland’s philosophy to offer parties maximal autonomy and procedural flexibility. The key amendments are as follows:

a Scope of application: the draft expressly allows the conclusion of arbitration agreements by unilateral acts (e.g., last wills, tender offers, establishment of foundations or trusts) or by incorporation of an arbitration clause in articles of association.

b Form requirements: the new law expressly allows the conclusion of arbitration agreements by unilateral acts or by incorporation of an arbitration clause in articles of association.

c Appointment, replacement and challenge of arbitrators: if the parties have not agreed on a procedure on how to appoint or replace the arbitrators, the juge d’appui (i.e., the state court assisting the arbitral tribunal) at the seat of the arbitral tribunal is empowered to appoint the arbitrators.

d Additional provisions regarding the juge d’appui: proceedings before the juge d’appui are to be conducted under the provisions of the CPC on summary proceedings.

e Submissions to the Federal Supreme Court in English: the new law shall enable parties to file their submission in English.

f Correction and revision of arbitral awards: the draft seeks to clarify and express the Federal Supreme Court’s jurisprudence of the recent years regarding correction and revision of arbitral awards.

g The draft will now be discussed in Parliament. Currently, it is unclear when Parliament will deliberate and vote on the draft bill, and it is, therefore, difficult to predict when the new provisions will enter into force.

iii Enforceability

Two basic and fundamentally different avenues of enforceability must be distinguished: the way to enforce decisions of state courts and courts of arbitration, and the path to enforce decisions of internal judiciary bodies of sports associations.

In domestic disputes, decisions of state courts or independent and impartial arbitration courts are subject to enforcement in accordance with Article 335 et seq. of the CPC unless the decision relates to the payment of money or the provision of security, in which case it is

\textsuperscript{33} Swiss Federal Tribunal 4A_388/2012 of 18 March 2013, cons 3.4.1; Swiss Federal Tribunal 4A_654/2011 of 23 May 2012, cons 3.4.

\textsuperscript{34} Swiss Federal Tribunal 4A_388/2012 of 18 March 2013, cons 3.3.
enforced pursuant to the provisions of the Federal Act on Debt Enforcement and Bankruptcy. The recognition, declaration of enforceability and enforcement of foreign decisions in Switzerland are governed by said articles of the CPC, as well as relevant international treaties and Article 25 et seq. of the PIL. The recognition of decisions of Swiss state courts and arbitral awards of arbitration courts having their seat in Switzerland is subject to the relevant international treaties such as the Lugano Convention on the Jurisdiction, Recognition and Enforcement of Judgments in Civil and Commercial Matters, and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

However, internal decisions of sports associations are usually not recognised as judgments or awards of a court or an arbitral tribunal, as the requirements of independence and impartiality are usually not met. Therefore, they are not, as such, enforceable in accordance with the international treaties or domestic statutory provisions discussed above. That notwithstanding, these decisions are relevant for the parties concerned, as the decision would still be enforceable at the level of the association rendering the decision. Any non-compliance with the decision could trigger sporting and other sanctions by the relevant association in accordance with its own rules and regulations. If the decision is not appealed with the state courts, or a court of arbitration such as the CAS, it would become final, and the relevant party would become subject to sanctions by its association. Consequently, although the internal decisions of a sports governing body are not enforceable in the manner of decisions of the state courts or courts of arbitration, they are usually complied with by the relevant party as such party would otherwise run the risk of sporting or financial sanctions, or both, of the association that could have a material and adverse impact on that party.

III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator

The relationship between the organiser of a sports event and spectators is primarily of a contractual nature, with the contract usually becoming effective when a spectator purchases a ticket for the event. The fundamental points of each such spectator contract consist of a spectator being granted admission to the stadium in return for a fee so that the spectator can follow a certain match or other sport event ‘live’. The spectator contract may govern additional topics, such as safety, advertising and liability as well as the right – of special importance with a view to the commercial exploitation of a sports event via television broadcasts – to film spectators within the scope of television broadcasts.

ii Relationship between organiser and athletes or clubs

The relationship between an organiser and athletes or clubs participating at a certain sports event can, on the one hand, be based on a specific agreement on participation. On the other hand, it can be based on membership to an association, and thus on obligations pursuant to a sports association’s statutes and regulations (e.g., competition regulations defining the criteria for being eligible for participation as well as the rights and obligations of the participating athletes or clubs).

35 ibid.
iii Liability of the organiser

If a person (e.g., a spectator or another third party) suffers damage because of the conduct of other spectators or athletes before, during or after a sports event, the organiser may, in principle, become liable either for breach of contract or, if no agreement with the damaged party is in place, for tort.

If the damage-causing event took place outside the arena and the surrounding private property, liability (if any) would typically be based on tort. Under Swiss law, liability for tort necessitates, inter alia, that the damaging party be charged with unlawfulness through inflicting damage in an appropriately causal manner (Article 42 of the OR). Pursuant to the established legislation of the Swiss Federal Tribunal, the causing of damage is unlawful when it breaches a general statutory obligation by either impairing an absolute right of the damaged party or effecting pure financial damage through breach of a rule that by its purpose aims to protect against such damage.36 Since, in this instance, the organiser has not itself caused the damage, it also has not itself breached such protective standard. For this reason, liability from forbearance may be conceivable. A non-contractual liability because of forbearance necessitates, pursuant to the Swiss Federal Tribunal, non-action despite the existence of a legal obligation to act.37

Pursuant to the established legislation, however, unlawfulness can only develop when a protective standard in favour of the damaged party explicitly requires action. Such protective standard can first arise from some part of objective law and secondly from general legal principles.38 If an absolute right is at risk (such as ownership), according to an unwritten legal principle a capacity to act exists for the person who has created a dangerous circumstance or otherwise is responsible for it in a legally binding manner.39 This ‘danger clause’ provides that the person who creates or maintains a dangerous circumstance must take the protective measures necessary to avoid damage.40 According to the Swiss Federal Tribunal, such clause is suitable, in the event of a breach of absolute legal assets, for establishing unlawfulness in the event of a lack of a specific protective standard.41 When applied to the question of the possible liability of an organising club for damage caused by rioting ‘fans’ outside a stadium, these principles confirmed by the Swiss Federal Tribunal mean that an organiser could only be held liable for an unlawful action if a third party suffers damage to an absolute right (such as to his or her property, but not solely his or her assets) and if the circumstances reasonably require action by the organiser to avoid such damage. Whereas a breach of an absolute right will be regularly recognised when a car, house or another item is damaged, in the opinion of the authors, obliging the organiser to compensate such damage would, however, regularly fail in that the organiser cannot take any effective measures in the first place to avert damage outside the stadium, and is not even authorised to do so owing to the monopoly to use force lying with the state.

36 BGE 133 III 323, cons 5; BGE 132 III 122, cons 4.1; BGE 123 III 306, cons 4.
37 BGE 115 II 15, cons 3b.
39 BGE 121 III 358, cons 4.
40 BGE 124 III 297, cons 5b.
However, if a spectator suffers damage in the stadium because of the conduct of another spectator or other person, the liability of the organiser (if any) would typically be contractual. The decisive aspect when assessing the organiser’s liability is whether the organising club has an obligation to protect spectators from rioting ‘fans’. According to general principles under Swiss law and in light of the nature of the business and the hypothetical will of the parties under a spectator contract, one must assume that the organiser’s duties include the obligation to protect the spectators from damage. However, the crucial question is how far this obligation of protection extends. Maximum protective measures protecting against all possible incidents do not exist, and comprehensive protection can also not be expected from an organising club that has acted in good faith. However, it can be demanded that the organiser takes the objectively appropriate protective measures. The event organiser, thus, must take the security measures that the spectator can reasonably expect. When examining the specific circumstances, such as the quality of the stadium, the type of match (friendly, championship-deciding match, etc.) as well as any known willingness to use violence on the part of own fans and those of the visiting club need to be taken into account. In this regard, important indications are also offered by the relevant regulations that the responsible sports association has issued on the topic of safety and safety measures in stadiums. If such regulations exist, a court that has been called upon to assess an incident of damage will then also orient itself to these regulations. If an organising club does not comply with these regulations, it could only in exceptional cases assert that the specified measures were excessive or not expedient, and that it therefore did not comply with them.

iv Liability of the athletes

Athletes may also become liable either for breach of contract or for tort. In both cases, the athlete may be held liable for compensation of the damage caused. In cases of tort liability, the damage is caused unlawfully when the athlete breaches a general statutory obligation by either impairing an absolute right of the damaged party or effects pure financial damage through breach of a rule that by its purpose aims to protect against such damage. In respect of sport injuries incurred during participation in a sports event, in general, the principle of ‘acting at one’s own risk’ applies, at least as far as the rules of law have been complied with or have not been breached by the damaging party in a serious manner. In the case of an excess violation of the appropriate standard of care or the rules of the game, or both, the damaging athlete may be not only be held liable for damages but may also expose himself or herself to sanctions under criminal law.

v Liability of the spectators

Express written terms may be scarce in a spectator contract. For this reason, the generally recognised principles under Swiss law that contractual content is not solely determined by the wording of the contract, and that other obligations exist that result in good faith from the nature of the contract and correspond to the hypothetical will of the parties, are also important in the case of the misconduct of a spectator. In the authors’ opinion, such other non-written or implied obligations undoubtedly include, for example, an obligation on the

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43 In respect of liability in general: BGE 133 III 323, cons 5; BGE 132 III 122, cons 4.1; BGE 123 III 306, cons 4.
spectators not to let off any firecrackers and, more generally, their obligation not to disturb the course of the event and not to jeopardise the health of the other spectators and the players. From a legal dogma perspective, these are ancillary obligations of spectators (i.e., additional obligations to the payment of the admission price). Such ancillary obligations cannot always be claimed independently, but when they are breached they nevertheless result at least in an obligation of the breaching party to pay compensation. If a spectator breaches a primary or ancillary obligation under the spectator contract, he or she becomes liable for compensation pursuant to the general regulations under Article 97 et seq. of the OR if he or she cannot prove that he or she is not culpable.

vi Riot prevention

The Concordat on Measures to Combat Violence during Sports Events (the Concordat) was introduced in Switzerland as an inter-cantonal set of rules aimed at reducing acts of violence at sports events, and in particular at games featuring professional football teams in 2007 and was amended in 2012 (as at the time of writing, 24 of 26 cantons acceded to the amended Concordat). Measures under the Concordat include, for actual and potential wrongdoers, the designation of off-limit areas, the requirement to report to the police at certain dates and times, and police custody. The Concordat also makes provision for authorising private security firms commissioned by the organiser of the event to perform admission checks and to conduct clothed body searches for prohibited items, irrespective of a specific suspicion.44

The Concordat can also result in an obligation for clubs to request that spectators show proof of their identity to ensure that no persons are admitted who are subject to a stadium ban or to other measures pursuant to the Concordat.45 However, while, as a matter of principle clubs are responsible for ensuring security within a stadium and in any surrounding private area, in the case of a violent dispute inside or outside a stadium pursuant to the monopoly of the state on using force, the police must intervene. Clubs thus have their hands tied with regard to effective measures to curb violence within arenas.46

To compensate the state for security measures implemented before, during and after a sports event, the cantonal laws foresee an organiser’s duty to contribute to the costs incurred.47 This cost contribution is usually determined by taking into account the entire cost incurred, the purpose of the event and the interest of the general public in such event.48

IV COMMERCIALISATION OF SPORTS EVENTS

i Types of and ownership in rights

From a legal viewpoint, the organisation and realisation of a sports event, such as a tournament or a championship, presupposes a complex system of contractual arrangements. This is owing to the fact that the organisers of a sports event work together with a multitude of different partners, and must guard against contractual and non-contractual risks to the extent possible and justifiable.

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44 Article 3b, Paragraph 2 of the Concordat.
45 Article 3a, Paragraph 3 of the Concordat.
46 Gurovits, footnote 42, p. 273 et seq.
47 Article 58, Paragraph 1, Letter (a) Police Act of the Canton of Zurich.
48 Gurovits, footnote 42, p. 275 et seq.
From an organisational viewpoint, the hub of this complex system consists of the organisation agreement that is, as a rule, entered into between the sports association under whose auspices the sports event will be held and the host. In terms of commercial exploitation, television agreements and sponsoring agreements are of substantial importance. Spectators who wish to watch a sports event live in a stadium (or at another event location) are located at the other end of the organisational chain. A separate contract (the spectator contract, discussed in Section III) is entered into with each individual spectator or ticket purchaser. Additional contractual relationships arise with owners or operators of stadiums or other competition sites. As a primary matter, these agreements govern the right on the part of a host or sports association, or both, to use a stadium (or other competition site) for the purposes of the relevant sports event. Depending on the situation, other parties involved in this system may include merchandisers and caterers. Caterers are responsible for supplying competition sites, or certain VIP zones or both, with food, beverages and other resources necessary for catering to the public, provided that this activity is not assigned to a sponsor within the scope of the sponsoring agreement. Merchandisers are responsible for the production and delivery of products (e.g., balls, T-shirts, caps, watches and other fan articles) bearing the logo or the trademark of the sports event or sports association, or both. Finally, the host or the sports association, or both, will have to conclude insurance policies that primarily cover risks of personal injuries and property damage.

Within the above-described contractual framework, a number of different rights are involved that must be appropriately secured or assigned, or both. In this chapter, the discussion is limited to a description of the most relevant rights involved and their protection (i.e., the domestic authority, the rights on the athlete’s own image, copyrights and trademarks).

ii Rights protection

Domestic authority

The holder of the domestic authority has the power of decision regarding access to the premises. It may, for example, enter into contracts with spectators and vendors as well as with broadcasting companies to grant the right to access and install the necessary materials for emitting signals to register and broadcast the sport event.49

Right to one’s own image

The right of athletes and spectators to their own image is protected from unlawful infringements by Article 28 of the ZGB. However, as athletes are usually public personalities, their right to claim protection is limited. They are, as a rule, considered to have accepted that they will be filmed and photographed during events.

However, the reproduction of recordings and pictures is, as a matter of principle, only allowed in relation to a specific event; for any other use, consent is required. For interviews, a tacit consent can be assumed.50

Copyright

Sport events are, as a rule, not protected by copyright because they are not works pursuant to the Copyright Act (URG). However, recordings of sports events are considered works pursuant to the URG as long as they have an individual character, which may be the case if specific techniques are applied such as, for instance, special picture direction, specialised commentary or slow-motion replays. Copyrights are protected intellectual property with erga omnes effect. They do not require any specific registration. The URG provides protection of related rights (or neighbouring rights) of the producer, allowing the reproduction and distribution of recordings, and allowing the broadcasting organisation to retransmit and distribute its broadcasts.

Trademarks

Trademarks need to be registered in the trademark registry to be protected. Trademarks are protected intellectual property and have erga omnes effect. They can either be assigned, or their usage can be granted through licences. The legal remedies set out in the Trademark Protection Act are similar to those provided in the URG. Trademarks are typically used to designate specific sports events.

V PROFessional Sports and Labour Law

i Mandatory provisions

Under Swiss law, an employment agreement does not need to be in writing or to be signed to come into force. If a party can otherwise demonstrate that an agreement has been concluded, it is valid and binding.

Employment relationships are subject to a number of mandatory provisions that are to be found in the OR as well as in the Swiss Employment Act. While the former sets out mandatory rules in respect of the content of agreements, such as, for instance, terms, termination, holidays, sickness leave, non-compete clauses and intellectual property rights, the latter contains provisions on employee protection, including health protection, overtime work and work during nights and on weekends. While these latter provisions are, in principle, mandatory and applicable to all employees in Switzerland, they are considered as inappropriate in respect of the activities of professional athletes.

In addition, mandatory provisions can be found in the Federal Act on Employment Services and the Hiring of Services (AVG) and its implementing ordinances is relevant for agents of athletes who, on a regular basis, provide their services in Switzerland. Pursuant to the AVG, such agents need to be Swiss residents and need to obtain a licence from the competent public authority. Further, the agent fee is restricted to a maximum of 5 per cent.

51 Article 2, Paragraph 1 URG.
52 Article 2, Paragraph 2, Letter (g) URG.
53 Thomas Hügi, Sportrecht, Berne 2015, p. 195.
54 Article 36 URG.
55 Article 37 URG.
56 Articles 5 and 6 of the Trademark Protection Act.
57 Hügi, footnote 53, p. 276 et seq.
58 Article 2, Paragraph 1 AVG.
of the gross annual salary for the first year of the employment contract of the athlete.\textsuperscript{59} In the case of infringements the agent may become subject to criminal sanctions.\textsuperscript{60} In the authors’ experience, this law is disregarded in many cases.

\textbf{ii Free movement of athletes}

The treaty on the free movement of individuals between the European Union and Switzerland (FZA) grants the citizens of contracting states the right to freely choose their place of work and residence. The FZA is also applicable to professional athletes.\textsuperscript{61} In accordance with Article 2 of the FZA, discrimination because of citizenship is forbidden.

The system under the FZA also applies to citizens of the European Free Trade Association countries (Norway, Iceland and Liechtenstein). Citizens of third countries are subject to the Swiss Foreign Nationals Act (AuG), which provides, in general, higher burdens regarding admission to employment and residence, but also provides some exceptions in respect of professional athletes.\textsuperscript{62}

Swiss sports associations may, however, voluntarily restrict the free movement of athletes. They did so, for instance, in ice hockey based on a gentlemen’s agreement pursuant to which no more than four foreign players shall be on the roster for a particular game.

\textbf{iii Application of employment rules of sports governing bodies}

Employers and employees are free to determine the terms of their employment contract within the limits of mandatory Swiss law. This includes their right to agree that standard terms of a national sports association shall form an integral part of the agreement. Such standard terms are enacted, for instance, by the Swiss Football League and by the Swiss Ice Hockey Federation with regard to the top junior performance categories.

\section*{VI SPORTS AND ANTITRUST LAW}

The Swiss Federal Act on Cartels and other Restraints of Competition (CartA) applies to private and public undertakings that are parties to cartels or to other agreements affecting competition, that exercise market power or that are part of a concentration of undertakings.\textsuperscript{63} In accordance with the CartA, agreements that significantly restrict competition in a market for specific goods or services and that are not justified on grounds of economic efficiency, and all agreements that eliminate effective competition, are unlawful.\textsuperscript{64} Further, dominant undertakings are seen to behave unlawfully if they, by abusing their position in the market, hinder other undertakings from starting or continuing to compete or disadvantage trading partners.\textsuperscript{65}

Undertakings in the sense of the CartA are consumers and suppliers of goods and services regardless of their legal and organisational form if and as far as they are active in commercial

\textsuperscript{59} Article 3, Paragraph 1 GebV AVG.
\textsuperscript{60} Article 39, Paragraph 2, Letter (d) and Paragraph 3 AVG.
\textsuperscript{61} Kurt Rohner/Adrian Wymann, ‘Das Freizügigkeitsabkommen mit der EU und der Schweizer Sport – Konsequenzen für die Arbeitsverhältnisse’, CaS 2004, p. 5.
\textsuperscript{62} Article 23, Paragraph 3, Letter (b) AuG.
\textsuperscript{63} Article 2, Paragraph 1 CartA.
\textsuperscript{64} Article 5, Paragraph 1 CartA.
\textsuperscript{65} Article 7, Paragraph 1 CartA.
activities. Thus, sports governing bodies and other sports organisations are bound by the CartA as they participate in commercial activities such as the sale of broadcast and marketing rights. However, the activities and regulations of a sports governing body are traditionally considered to be outside the scope of the CartA if and to the extent they are related to the organisation, governance and administration of their particular sport. The rules of the game, eligibility provisions, regime of sanctions, internal dispute resolutions systems and similar provisions are, therefore, usually excluded from scrutiny from an antitrust law perspective.

However, as sports governing bodies may be seen as having a dominant position on the relevant sports market or markets, the above dichotomy of rules falling within and those falling outside the scope of the CartA is subject to growing criticism, and it is also argued that the organisational and administrative rules of a sport governing body may be in violation of cartel law if they significantly impact an athlete’s (commercial) rights.

VII SPOR

TS AND TAXATION

The Swiss taxation system is complex, and any comprehensive discussion thereof would go far beyond the scope of this chapter. Therefore, the following discussion shall be limited to those Swiss tax aspects that are relevant for foreign (professional) athletes that participate at sports events held in Switzerland.

The income of employed and self-employed athletes who are non-Swiss residents is subject to source tax in respect of the income generated from their participation at sports events in Switzerland. Taxable income consists of all gross earnings, including allowances and value in-kind contributions, and it also includes earnings that are not paid to the athlete but to a third party, such as an organiser, manager or agent. The applicable tax rates and allowed deductions depend on the canton of performance. In the canton of Zurich, for instance, a lump sum of 20 per cent of the gross earnings may be deducted for costs incurred in respect of the performance in Switzerland. If the athlete elects to deduct (higher) actual costs, he or she must evidence such higher costs by producing the relevant receipts. Currently, the relevant source tax rate in the canton of Zurich covering federal, state and municipality tax ranges between 10.8 per cent for daily earnings up to 200 Swiss francs and 17 per cent for daily earnings in excess of 3,000 Swiss francs. The source tax becomes due at the date of payment of the taxable income to the athlete. The host of the event must pay the tax to the tax authority of the municipality where the event took place within 30 days of the beginning of the month following the payment. The social security consequences must be reviewed on a case-by-case basis.

Most double taxation treaties entered into by Switzerland follow Article 17 of the Organisation for Economic Co-operation and Development Model Tax Convention and do not alter the rules discussed above.

VIII SPECIFIC SPORTS ISSUES

i Doping

Article 19 et seq. of the Federal Law on the Promotion of Sports (LPS) and Article 73 et seq. of its implementing ordinance provide the legal framework for the fight against doping. Measures include restriction of the supply of prohibited substances, the execution of doping controls
and the authorisation of private bodies to perform such controls, as well as the sanctioning of
certain violations of the LPS. Criminal sanctions for violations of the law include penalties or
imprisonment for a period of up to five years, or both.

Criminal sanctions may be imposed on anyone who produces, purchases, imports,
exports, transports, distributes, acts as an agent for, prescribes or possesses prohibited
substances, or applies prohibited methods to other persons. The ordinance includes a list
(annex to the ordinance) of the forbidden substances and methods. This list does not fully
 correspond with the doping list of the World Anti-Doping Agency (WADA). If a substance
or a method is not listed in the annex to the ordinance, it is not relevant from a criminal
perspective (nulla poena sine lege). According to the LPS, the production, purchase, import,
export, transportation or possession of prohibited substances for a person’s own consumption
are not subject to criminal sanction pursuant to the LPS.

In addition, doping is banned by the relevant doping regulations of the various sports
governing bodies and WADA. Violations of these rules will, however, not be sanctioned
based on statutory public law, but rather in accordance with the relevant sanction regime of
the sports governing body and WADA.

ii  Betting
Under the Federal Lottery Act, commercial betting in the area of sports is, as a rule, forbidden.
This ban is to be understood broadly, and it prohibits offering to act as an agent for bets,
the operation of a betting provider as well as any form of advertising and promotion of
betting activities. Anyone who violates the law may become subject to criminal sanctions,
which could include imprisonment for a period of up to three months or a fine, or both.
According to the Lottery Act, the cantons may authorise exceptions and grant licences to
specific betting providers.

The provisions of the Lottery Act are also of practical relevance in the international
context, in that advertising on jerseys (e.g., jerseys worn by football players) is not allowed,
and that this ban would also extend to foreign teams playing in Switzerland during, for
example, the UEFA Champions League or Europa League. If a betting provider is a sponsor
of such foreign team and its logo is displayed on the players’ jerseys, the team would not be
allowed to play in Switzerland wearing these jerseys.

The Lottery Act has been replaced by the Federal Gaming Act, which entered into force
on 1 January 2019.66

iii  Match-fixing and manipulation in sports
The new Federal Gaming Act has replaced the existing Federal Law on Lotteries and the
Federal Law on Games of Chance and Casinos. As part of the revision, among others, the
following measures have been implemented: manipulation of sports results is classified
as a criminal offence; requirements are imposed on sports betting operators to combat
the manipulation of sports results; and the exchange of information is ensured between
authorities, sports organisations and betting operators. Since 1 January 2019, the date the
new law entered into force, certain acts of manipulation are now specified in the law and can
therefore be sanctioned. Swiss authorities are now also entitled to grant judicial assistance in

66  See Section VIII.iii.
criminal matters to foreign prosecuting authorities because the Federal Act on International Mutual Assistance in Criminal Matters (IMAC) requires that the relevant act is punishable not only in the relevant foreign jurisdiction, but also in Switzerland.67

iv Grey market sales
In the past few years, three parliamentary interventions in the National Council addressed the issue of grey market sales, asking the Swiss Federal Council to evaluate the situation.68 The Swiss Federal Council, however, held that the legislation already provides efficient means to combat grey market sales. It also held that technical and contractual measures are available for organisers to prevent or limit grey market sales.69 For these reasons, the Swiss Federal Council did not propose any new measures in this context. The National Council shared this opinion and renounced initiating a legislation process.70

IX THE YEAR IN REVIEW
On 30 April 2019, the CAS delivered an award with respect to the appeal of Caster Semenya and Athletics South Africa (ASA) regarding the validity of the IAAF’s Eligibility Regulations for the Female Classification (the DSD Regulations), which concern athletes with differences of sex development. The CAS dismissed the requests for arbitration finding that the claimants could not establish that the DSD Regulations were ‘invalid’. The panel considered that the DSD Regulations are discriminatory, but such discrimination is a necessary, reasonable and proportionate means of achieving the legitimate objective of ensuring fair competition in female athletics in certain events. The CAS panel also expressed serious concerns about the future application in practice of the DSD Regulations and stressed that while the evidence in this case has not established that those concerns are justified, or that they preclude the conclusion of prima facie proportionality, this may change in the future unless constant attention is paid to the fairness of how the regulations are implemented. Ms Semenya appealed against this decision, and in May 2019, the Swiss Federal Supreme Court approved a request of Ms Semenya for a superprovisional injunction, and thus suspended the application of the testosterone rule for the time being. Ms Semenya was therefore able to compete again for a short time without lowering her testosterone level. By the end of July 2019, the Swiss Federal Supreme Court revoked the superprovisional injunction as it did not consider the appeal filed by Ms Semenya to be highly likely justified. A material decision of the Supreme Court in this matter is still pending, but it is likely that the appeal will ultimately be dismissed.

On 2 October 2018, the European Court of Human Rights (ECHR) ruled that the CAS as an arbitral tribunal did not violate the right to a fair trial. In a joint request with former professional footballer Adrian Mutu in a separate matter, Claudia Pechstein applied to the ECHR for a decision that their human rights (namely their right to a fair trial under Article 6(1) of the European Convention on Human Rights) had been violated on the basis

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67 Article 64, Paragraph 1 IMAC.
68 Postulate No. 15.3397, Wiederverkauf von Veranstaltungstickets zu überhöhten Preisen. Sanktionen; Motion No. 14.3478, Weiterverkaufte Tickets dürfen nicht teurer werden; Interpellation No. 10.3078, Graumarkt für Tickets für Konzert- und Sportveranstaltungen.
69 Interpellation No. 10.3078, Graumarkt für Tickets für Konzert- und Sportveranstaltungen.
70 Postulate No. 15.3397, Wiederverkauf von Veranstaltungstickets zu überhöhten Preisen. Sanktionen.
of the following provisions: the alleged lack of independence of the CAS, and the procedure for deciding on the outcome of CAS cases, in particular with regard to the absence of a public hearing.

The ECHR first had to decide whether Ms Pechstein had waived the guarantees provided for in Article 6(1) by agreeing to the arbitration clause of the International Skating Union (ISU) rules, which ultimately referred disputes to the CAS. The ECHR decided that in this case such consent was not given voluntarily; as the ISU is the only worldwide governing body of professional speed skating, she had only the option of either accepting the arbitration clause and earning her living by practising her sport as a professional, or rejecting the clause and being obliged to cease her professional activity altogether. She had, therefore, not waived her rights under Article 6(1).

The ECHR then had to decide whether the CAS was an ‘independent and impartial court established by law’ to comply with Article 6(1). In a decision welcomed at CAS headquarters in Lausanne, the ECHR stated that this was the case. The Court found that the CAS had full jurisdiction to examine all disputes submitted to it on the basis of the law and in accordance with a prescribed procedure. In addition, its decisions provide a legal solution that can be challenged by the parties to the Swiss Federal Supreme Court.

Ms Pechstein challenged the independence of the CAS primarily on the basis of a perceived imbalance between sports federations and athletes in the selection of the arbitrators making up its panels. The ECHR referred her to the importance of the International Council for Arbitration in Sport (ICAS), the body that oversees the administration of the CAS and the appointment of arbitrators to the CAS list. Ms Pechstein had been allowed to select one of the referees for her case from a list of some 300 names compiled by ICAS, and the ECHR decided that it could not establish the lack of independence or impartiality of the referees on that list. Also, with regard to the composition of the arbitral tribunal that had ruled on her case, she had only challenged the president of the arbitral tribunal without successfully substantiating her allegations. The ECHR, therefore, rejected her arguments on this point, although two of the seven judges expressed a dissenting opinion.

However, the ECHR agreed with Ms Pechstein on her second point on the absence of a public hearing. The ECHR found that she had explicitly requested a public hearing and that the request had been rejected without valid reason. The court, therefore, found that Ms Pechstein’s right to a fair hearing under Article 6(1) had been infringed in this respect. The ECHR also found that Switzerland should pay Ms Pechstein €8,000 as fair compensation.

Following the decision rendered on 2 October 2018, Ms Pechstein filed a request to refer the matter to the Grand Chamber of the ECHR, composed of 17 judges. The request was consequently dismissed. The CAS has reacted to the decision of the ECHR and has in the meantime implemented new rules to allow public hearings in disciplinary and ethics matters.

X OUTLOOK AND CONCLUSIONS

Swiss law does not provide a comprehensive set of rules for sports-related legal issues. Sport is, rather, subject to the general statutory framework, and the relevant rules can be found in codifications such as the OR, the ZGB, the StGB, the PIL, the CPC and many others. The current statutory framework provides appropriate solutions for most topics that are of relevance in the sports sector. The Pechstein case showed that the CAS is an independent
arbitral tribunal, but it also made it clear that the CAS needs to constantly review and develop its procedures and internal organisation to maintain independence and comply with all standards of the ECHR.

Sports governing bodies and other sports organisations established in Switzerland enjoy a broad autonomy in regulating their internal affairs. In addition, Swiss law and the jurisprudence of the Swiss Federal Tribunal are ‘arbitration-friendly’. This is particularly important for the impressive number of international sports associations that are domiciled in Switzerland as well as for the CAS, which has its seat in Lausanne. The judiciary system in the world of sports that provides that the CAS shall act as final instance in sports matters is based on pertaining arbitration clauses mostly set out in the statutes and regulations of the sports governing bodies to which athletes are bound through their affiliation to the relevant association.
Chapter 18

UNITED ARAB EMIRATES

Steve Bainbridge, Jane Rahman, Xavier Solanes, Sabrina Saxena and Daniel M Louis

1 ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Organisational form

The United Arab Emirates (UAE) law requires that sporting activity should be pursued under the aegis of the General Authority of Sports (GAS), which is the supreme government authority responsible for the sports sector. It is responsible for ensuring that there is a national governing body (typically a federation or an association) in existence to sanction events and carry out any required government procedures in relation to a given sport. As the UAE is a relatively young jurisdiction and is actively developing its sporting culture, applicant bodies should consult with the GAS to determine whether their sport has the status of a new sport with a need to establish a new national governing body in accordance with GAS guidelines, or whether a national governing body already exists and the sport is eligible to seek official membership through an existing federation or association.

Once the GAS has ensured that there is an appropriate national governing body under which the elements and activities of a sport can proceed and develop, a framework within which other entities that typically comprise a sport (clubs, teams, academies and various commercial entities, etc.) can be established. For sports clubs, associations, unions and committees seeking to provide a service that aims to develop a sports activity, an application needs to be made to the GAS and certain supporting documentation submitted.

GAS will provide guidance to applicants on completing the process in accordance with its rules and regulations, and there will be no registration processing fee for the clubs or associations.

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1 Steve Bainbridge is a partner, Jane Rahman is senior counsel, and Xavier Solanes, Sabrina Saxena and Daniel M Louis are associates at Al Tamimi & Company.

2 Originally established pursuant to Federal Law No. 25 of 1999.


4 No more than one federation may be declared for the same game, sport or activity in the UAE (Article 2, Chairman's Resolution No. 40 of 2014 concerning the amendment of Chairman's Resolution No. 69 of 2011 concerning the executive regulation of sports federations).

5 There may be cases in which new sporting events could be held prior to the establishment of a national governing body (e.g., an exhibition match of a sport new to the UAE); however, this would need to be done in conjunction with the GAS and would likely require one or more no-objection certificates.

6 Federal Law No. 12 of 1972 concerning the organisation of clubs and societies in the field of youth care and development.

7 GAS website at https://gas.gov.ae/#/ar/home.
In respect of commercial or private entities seeking to act within the sphere of sporting activities, once an applicant for a commercial licence has consulted counsel or other advisers, or both, approached the relevant department of economic development and chosen its preferred corporate vehicle, it will be referred to the GAS if a proposed activity on its trade licence involves the sports sector. Any such commercial endeavour will be subject to compliance with the standard established requirements for corporate set-up (a limited liability company is the most common choice, but there are other corporate structuring options) along with an additional requirement for GAS approval in respect of any sporting activity. Depending on the nature of the chosen activity and the sport or sports involved, approval may require coordination or membership with the relevant federation or association to ensure compliance with any regulatory standards or membership requirements, and to ensure there are no objections to a chosen activity, etc.

ii Corporate governance

In principle, a legal entity (including a club) is a legal person with its own capacity to create rights and bear liabilities, and as such can own property, enter into contracts with other parties and be involved in a dispute with other legal people. A company can only enjoy those rights and incur those liabilities through decisions made by the parties that own or control the company. The day-to-day management of a company is usually entrusted to its directors. The law imposes duties upon directors of a company based on the particular nature of that company.

Since the financial crisis, significant effort has been made to develop corporate governance in the UAE. Some of these developments required internal committees and external auditor oversight. Each company's constitutional documents – just like each sports club or association's by-laws or charter – should include management's duties, responsibilities and any limitations set upon the authority of those holding positions of responsibility, thereby setting forth good corporate governance.

The UAE has undertaken significant measures to safeguard its reputation as a regional hub for international business, and anti-corruption measures play a strong role in all corporate activities, including the legal framework surrounding sports. In this respect, the UAE has implemented a comprehensive Anti-Money Laundering and Counter-Terrorist Financing Law,\(^8\) which was last amended in 2018,\(^9\) and is supported by regulations and circulars issued by the Federal Cabinet and the Ministry of Justice as necessary.

iii Corporate liability

Sporting organisations are governed by Federal Law No. 2 of 2015 concerning commercial companies, unless they are operating exclusively in a free zone within the UAE or are an exempted industry.\(^10\) Companies are defined as economic enterprises aiming at profit.\(^11\) If a company is not validly incorporated, persons concluding contracts in its name are

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\(^8\) Federal Law No.4 of 2002 as amended.

\(^9\) Federal Law No. 20 of 2018.

\(^10\) Exempted industries include oil as well as power generation; there is no express exemption for companies that operate in the sports industry.

\(^11\) Article 8(1) of Federal Law No. 2 of 2015.
individually and jointly liable for the performance of obligations arising out of those contracts. Managers authorised to manage the company must exercise power to maximise the benefits for the company.

Any provision in the memorandum or articles of association authorising the company to agree to exempt officers from personal liability that they bear in their capacity as current or former officers of the company for their acts or omissions shall be void. Similarly, managers are personally liable to pay compensation for damage suffered by the company, its partners or third parties because of a breach of the memorandum of association of the company. Further, each manager is liable for any fraudulent acts, the improper use of power, the contravention of any law, the memorandum of association or contract appointing the manager, or for any gross error on his or her part.

II THE DISPUTE RESOLUTION SYSTEM

i Access to courts

The default forum for resolving disputes arising out of contracts concluded, enforced or to be executed in the UAE is a local court. This default forum is derived from the general principle of the right of access to justice as regulated under both the UAE Constitution and the UAE Civil Procedural Code (the CPC). There is no specific limitation as to sports-related disputes set forth in either the Constitution or the CPC. According to the UAE Federal Supreme Court, the right to seek justice through the ordinary judicial system can be neither fettered nor restricted. While this is the general principle, sports federations regulate internal justice (i.e., dispute resolution) through internal regulations.

By way of example, Article 25 of the UAE Football Association (UAE FA) statute restrains the UAE FA, its members, players, agents and administrators from resorting to local courts, unless expressly allowed under the statute or otherwise under the FIFA Regulations. This article further states that any dispute is to be referred to the relevant dispute resolution body within UAE FA, FIFA or the Asian Football Confederation. Article 126 of the same statute adds that domestic disputes are to be referred to the UAE FA, whereas international disputes are to be referred to the Asian Football Confederation.

Moreover, the UAE FA has issued several regulations regarding dispute resolution committees and arbitration committees that have jurisdiction of disputes relating to football. UAE FA Regulations regulate appeals filed in respect of appeals of decisions made by the Dispute Resolution Committee and appeals of decisions made by the Appeal Committee. That committee has jurisdiction to decide on appeals against decisions by the Appeal Committee and it is expected to remain so until the UAE promulgates the law relating to the National Sports Arbitration Centre (NSAC).

12 Article 9(2) of Federal Law No. 2 of 2015.
13 Article 24 of Federal Law No. 2 of 2015.
14 Article 51 of Federal Law No. 2 of 2015.
15 Article 84 of Federal Law No. 2 of 2015.
16 The UAE Federal Constitution No. 999 of 1971.
17 UAE Federal Law No. 11 of 1992 promulgating the CPC.
18 Federal Supreme Court Decision of 22 April 2013.
19 See the Dubai Court of Cassation Decision in Appeal No. 156/2010, dated 9 January 2011.
20 Pursuant to Article 46 of the UAE FA Arbitration Committee Regulations.
ii Sports arbitration

In line with international practice, sports disputes are routinely referred to arbitration. The relevant contract or governing body’s regulations, or both, will generally determine the appropriate forum for disputes to be resolved. Ordinarily, first instance disciplinary decisions are handed down by a non-arbitral dispute resolution chamber of the relevant governing body, usually with a right to appeal the decisions to an arbitral body either internally (i.e., an arbitral body set up by the governing body), nationally (e.g., the NSAC) or internationally (e.g., the Court of Arbitration of Sport (CAS)).

Domestic arbitration and commercial dispute related to sports – the basic arbitration framework

Generally, arbitration is a significant feature of commercial sporting life in the UAE, and as the national courts may be slow or lack the necessary specialisation to interfere in a sports dispute resolution process, parties may prefer arbitration.

The seat of any sports arbitration will determine, among other things, the procedural law that applies to the arbitration. The procedural law will often determine issues such as arbitrability and the availability of interim measures. If an arbitration is seated in the UAE (and unless otherwise agreed by the parties), the UAE’s new arbitration law, introduced in 2018\(^{21}\) (the UAE Arbitration Law) will apply. If an arbitration is seated within the Dubai International Financial Centre, the DIFC Law No. 1 of 2008 (the DIFC Arbitration Law) will apply. If an arbitration is seated within the Abu Dhabi Global Market (ADGM), the ADGM’s Arbitration Regulations 2015 will apply (the ADGM Arbitration Law). All three arbitration laws are modelled on the UNCITRAL Model Law.

As regards the validity of an arbitration agreement, the UAE Arbitration Law, the DIFC Arbitration Law and the ADGM Arbitration Law require that at a minimum the arbitration agreement be in writing\(^{22}\) and be entered into by a person with proper capacity and authority. The extent of what constitutes ‘in writing’ and ‘proper capacity and authority’ varies across the jurisdictions.

As to arbitrability, namely the issue of what disputes may and may not be subject to arbitration, this also varies across jurisdictions and can be a complicated issue. In respect of arbitrations that are subject to the UAE Arbitration Law, matters for which conciliation is not possible are not arbitrable.\(^{23}\) The UAE’s federal laws clarify these matters to include those related to public policy, criminal matters and family matters. Also, certain commercial agency and distributorship disputes,\(^{24}\) and labour disputes,\(^{25}\) are not arbitrable. The DIFC and the ADGM are bound by the federal laws of the UAE, save for civil and commercial matters. Therefore, similar restrictions as apply in onshore UAE, also apply in the ADGM and DIFC. ADGM Arbitration Law contains no express language regarding arbitrability. The DIFC Arbitration Law permits arbitration in relation to consumer contracts and employment disputes where the consumer or employee has provided consent after the dispute has arisen.\(^{26}\)

\(^{21}\) Federal Law No. 6 of 2018.
\(^{22}\) UAE Arbitration Law, Article 7(1), DIFC Arbitration Law 12(2), ADGM Arbitration Law, Section 13(2).
\(^{23}\) UAE Arbitration Law, Article 12(2).
\(^{24}\) e.g., Federal Law No. 18 of 1981, as amended.
\(^{25}\) e.g., Federal Law No. 8 of 1980.
\(^{26}\) DIFC Arbitration Law, Article 12(2).
The procedural law will often determine the availability of interim measures. The UAE Arbitration Law, the DIFC Arbitration Law and the ADGM Arbitration Law provide for the tribunal or the appropriate courts, or both, to order interim measures in support of arbitrations. The extent to which the tribunal or courts, or both, are able and willing to provide such support varies across the jurisdictions.

**Specific sports arbitration developments**

Legislators are mindful of the potential benefits of having a forum dedicated to resolving disputes in the sports sector at the national level.

In 2013, the UAE Minister of Youth, Culture and Community Development formed a committee to draft the articles of association for a new sports arbitration centre, prompted by a decision of the UAE National Olympic Committee that, among other things, approved the formation of such an entity. A draft law creating the NSAC has since been prepared though has not yet come into effect. This draft law envisages the NSAC having jurisdiction to hear appeals challenging the decisions of UAE sports federations.

For the time being, some UAE sports federations have made their own arrangements in respect of dispute resolution. For example, Article 128 of the UAE FA statute stipulates that, for the 2018–2019 sporting season, internal decisions may be appealed before the CAS pending the establishment of the NSAC. To facilitate optimal access to the CAS, the Abu Dhabi Judicial Department entered into a cooperation agreement with it in 2012, launching a CAS Alternative Hearing Centre in the UAE.

**iii  Enforceability**

Disciplinary measures or other decisions by sports organisations are usually self-enforced or carried out in accordance with the rules and procedures of the relevant sports organisation.

Similarly, arbitral awards may be voluntarily complied with by the parties. However, where an arbitral award is not voluntarily complied with, a party can seek to enforce the award through the relevant domestic court.

The law surrounding the enforcement of domestic and foreign awards in the UAE has been subject to changes recently. It is too early to tell how these changes will work in practice. In short, the UAE Arbitration Law makes provision for the enforcement of domestic awards but is silent as to the enforcement of foreign awards. However, Cabinet Decision No. 57 of 2018, which entered into force in February 2019, deals with the issue of the enforcement of foreign awards in the UAE.

The UAE is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). The DIFC and the ADGM are bound by the New York Convention as they are part of the UAE.

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27 e.g., in the UAE Arbitration Law, Articles 18(2) and 21, the DIFC Arbitration Law, Article 24, and the ADGM Arbitration Law, Articles 27 to 29.

28 For further discussion of this issue, see Law Update, September 2018, ‘Is the Introduction of Interim Relief: A relief?’, Al Tamimi & Company.

29 The 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, acceded to by the UAE pursuant to Federal Decree No. 43 of 2006.
III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator

The UAE is primarily a civil law jurisdiction, and the UAE Civil Code\(^{30}\) and the Commercial Transactions Law\(^ {31}\) govern commercial transactions – including transactions between ticketholders and event organisers. This means that the provisions of the Civil Code will effectively be read into the contractual arrangement and will apply in the event of certain prescribed circumstances. However, all rights and obligations are not necessarily within the four corners of any contractual document entered into. For example, any attempt to contractually limit liability for personal injury will be void by operation of the Civil Code. Likewise, any attempt to contractually fix damages will be subject to the court’s discretion to award actual damages sustained in an event of a breach.

Where the organiser is also in control of the venue or facility at which the event is taking place, in addition to the commercial contract formed by the purchase of the admission ticket, there will be statutory requirements and regulations the venue will need to remain compliant with (e.g., in terms of health, safety and environmental regulations). There are a multitude of risks that require consideration, risk management analysis, control and mitigation measures, including fire safety, security, crowd control, public hygiene, food safety and controls against prohibited items or hazardous substances entering the stadium.\(^ {32}\)

Notable among federal laws applicable to organisers of sporting events are the implementing regulations to an existing law concerning sports facilities, fan conduct and corruption in bidding for sports events\(^{33}\) (the Resolution). The Resolution is now the primary vehicle through which the Ministry of Interior will oversee elements of safety and security at sports events in the UAE, leveraging the police, civil defence and other relevant authorities as necessary.\(^ {34}\) All sporting events should have a flexible administrative and organisational guide,\(^ {35}\) including necessary measures relevant to the nature and scope of the event (e.g., detailing proposed access or egress routes, safety procedures, security plans, communication protocols), as well as specifics on the venue. This guide is subject to approval by a designated police contact.

The control of fire risks is crucial to the safe management of sports and major events. New buildings and stadiums in the region are built to international standards.\(^ {36}\) Older buildings are required to bring fire safety equipment up to date. In Abu Dhabi, additional

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\(^{30}\) Federal Law No. 5 of 1985.

\(^{31}\) Federal Law No. 18 of 1993.


\(^{33}\) Cabinet Resolution No. 31 of 2015 on the Executive Regulations of Federal Law No. 8 of 2014 concerning sports facilities and events security.


\(^{35}\) Cabinet Resolution No. 31 of 2015 on the Executive Regulations of Law No. 8 of 2014 concerning sports facilities and events security at Chapter 2, Article 5, to be reviewed and approved in conjunction with the designated police command.

instruments requiring compliance are in force. Any major incident at a large stadium that has the potential to cause serious injury or fatalities could lead to both criminal and civil sanctions, commercial implications, and the suspension or revocation of a trade licence.

ii  Relationship between organiser and athletes or clubs

While in the UAE it is anticipated that the detail given to commercial benefits and obligations will be more significant in a contract between an organiser or venue and a team or athlete than it would be in the case of a fan admitted on the basis of a ticket stub (and perhaps some standardised terms and conditions of entry incorporated by reference to a venue website), the principles of the legal relationship will largely be as noted in the previous section; the organiser or venue is subject to certain regulations and standards while hosting events on its site, and that dynamic will inform the legal relationship with those participating in and viewing the event.

iii  Liability of the organiser

Civil liability arises under the law of contract or tort, or both. The seven emirates of the UAE each have a civil law system. The laws of the emirate in which a claim against an organiser is brought, as well as federal laws applicable in that emirate, will govern the liability of a sports organiser for death, personal injury, illness or damage to property.

The Civil Code contains the statutory framework for contractual and tort-based liability and is applicable in all emirates. It provides for liability to make compensation under a contract where there is a breach by one party, loss incurred by another party and a causal link between the two. The statute contains a non-exhaustive list of the acts that might cause harm, and the national courts have discretion in deciding what amounts to harm. For example, the organiser of an event would be liable for harm caused by the collapse of a building unless he or she was not guilty of any wrongdoing or default.

The organiser may also have a vicarious liability for employees or officials under his or her supervision, even if he or she may not have been free in choosing them (such as officials provided by the governing sport body). An employee or official may also be liable to provide compensation on the basis outlined above. Similarly, the organiser of the event may be individually and jointly liable for the acts or omissions of athletes and spectators, but only if they are under his or her supervision. If not, the injured party may bring a claim in tort against the athlete or spectator directly.

We are not aware of any decision in which the organiser of an event in the UAE has been held liable for the acts or omissions of an athlete or spectator, although event organisers routinely take measures to reduce the likelihood of this liability.

With respect to ex officio investigations, a criminal act, in principle, is punishable in and of itself. The relevant state actors (police, etc.) are authorised to take action and do

37 Including the Code of Practice relating to Fire Prevention, Planning and Control (AD EHS RI. Code of Practice 7.0 Version 2) and the UAE Fire Code.
40 Article 313 of Federal Law No. 5 of 1985.
41 e.g., in respect of the Publications Law, event organisers appreciate that signage and advertising must be compliant with UAE law, and where there is prohibited advertising (e.g., for alcohol branding), organisers will actively make participants aware of restrictions and potential penalties.
not require a specific complaint before taking measures to uphold UAE law. As noted, the Resolution also imposes event management obligations on organisers and facilities; venues and event organisers can be subject to fines of up to 500,000 dirhams for non-compliance with those rules.

iv Liability of the athletes
Liability of the athletes related to their actions during the course of the competition is usually regulated internally by relevant sports federations or the organiser of the competition, mainly by a disciplinary or ethics code, or both.

A civil or a criminal liability may be brought against an athlete for his or her actions during or outside the competition. UAE laws do not set specific requirements for bringing an action against an athlete – the common provisions civil and criminal laws shall apply.

v Liability of the spectators
As a result of the Resolution, spectators face tougher fines for criminal actions conducted at sports events. The law does not replace the existing Penal Code\(^\text{42}\) it complements it. This means that committing a Penal Code offence at a sporting event may now be considered an aggravating factor and, as such, may attract greater punishment than if it had been committed elsewhere.\(^\text{43}\)

There are numerous other restrictions, but generally the changes bring the UAE legally in line with global best practice when it comes to the conduct of fans. Breaking the law can now have dramatic consequences. Depending on the severity of the crime, it can result in imprisonment of three months and a fine up to 30,000 dirhams.

vi Riot prevention
The Resolution clarifies the Sports Facilities and Events Security Law,\(^\text{44}\) requiring organisers to coordinate safety and security for events with the authorities so that potential crowd control and other security risks are proactively managed. These measures include requirements such as the need for a designated and qualified event security officer to coordinate with a police observer, as well as the use of the latest technology in communications and crowd management, effectively mandating a combination of common sense and modern capabilities to increase safety and security as appropriate for modern-day sporting entertainment.

The Resolution also formalises crowd restrictions on entering the field of play, bringing prohibited or dangerous materials into a venue, taking to, or acquiring weapons inside, a venue, violent conduct, throwing materials, insulting, racially abusing or gesturing inappropriately to other people, disregarding facility rules and using a venue for political purposes. Breaches of the law may lead to fines and imprisonment.

\(^{42}\) Federal Law No. 3 of 1987 (the Penal Code).

\(^{43}\) See Article 22 of Federal Law No. 8 of 2014; see also, Haneen Dajani, ‘UAE Sports Law against racism will see offenders fined up to DH1m’, The National, thenational.ae (online) 27 December 2015.

\(^{44}\) Federal Law No. 8 of 2014 concerning sports facilities and events security.
IV COMMERCIALISATION OF SPORTS EVENTS

i Types of and ownership in rights

The UAE is a sophisticated transactional market and, although still developing, the Civil Code incorporates elements from a long and illustrious mercantile history. The core elements of sponsorship, broadcast and merchandising agreements negotiated and drafted for use in the UAE broadly reflect global practices. Part of the reason for this is undoubtedly the growth of major sporting events in the region, both those hosted in the UAE and those hosted elsewhere but sponsored by UAE-based corporate entities. The chain of ownership in such rights reflects this reality. Entities that design and organise events own the commercial rights to the events and exploit them accordingly through those revenue channels. Local teams and clubs are increasingly aware of their intellectual property portfolios, and individual athletes likewise seek sponsorship where appropriate. As noted in Section IV.ii, UAE law recognises and protects these rights as an element essential to development and sustainability.

ii Rights protection

In relation to the commercial aspects of sporting activities, protecting the rights of those who invest as sponsors, broadcasters or merchandisers is fundamental to sustainability by encouraging continued investment. UAE law aims to protect intellectual property on a number of fronts. Laws regarding intellectual property include trademarks, copyright and related rights, industrial property, and press and publishing law. Federal government authorities, as well as local government authorities in several of the emirates, have jurisdiction to enforce intellectual property laws, and have trained personnel ready to carry out raids of shops and warehouses, seize goods and levy fines on offending parties. Customs authorities also have the right to seize and destroy illegal goods.

In part because of largely ubiquitous high-speed internet access and a significant expatriate population with a broad array of international sporting interests, the UAE has seen significant recent growth in broadcast piracy with respect to premium sports content. Strong measures have been taken to combat broadcast piracy in the UAE. The primary statutory tool of the copyright law (which includes, inter alia, prison terms), taken together with a recently formed Anti-Piracy Coalition – including leading networks and various elements of government from the Criminal Investigations Department and the Department of Economic Development at the emirate level – have led to significant enforcement activity.

Many of the practical problems that could occur to aggrieve a rights holder in the UAE will be familiar issues in many jurisdictions. Sponsorship is relatively contained, because

47 Federal Law No. 7 of 2002 concerning copyrights and neighbouring rights.
48 Federal Law No. 31 of 2006 pertaining to the industrial regulation and protection of patents, industrial drawings and designs.
49 Federal Law No. 15 of 1980 concerning publications and publishing.
parties can cooperate where a mutually beneficial arrangement is struck, and commercial
terms will be enforceable by contract and reference to the courts or other agreed dispute
resolution mechanisms.

iii  Contractual provisions for exploitation of rights
The commercial acquisition of rights to sporting events is transactional and largely subject
to the nature of the bargain reached between the respective parties in the context of the
Civil Code. One particular difference is more practical than legal, but should nonetheless
be reflected in rights acquisition agreements, and relates to the term of the agreement and
the price of rights exploitation. Because many events are being developed or brought to the
region for the first time, the history of success and data concerning target demographics that
sponsors want to see is often absent. This can introduce an element of risk and speculation that
may reduce the cost. Understanding and preparing for these issues in advance of negotiations
allows for creating rights agreements that suit both parties and can lay a foundation for
relationship development, which is highly valued in the UAE market.

Additionally, in terms of sponsorship agreements, some elements of the contract that
may differ slightly in the UAE context taken against the larger sports markets in America
and western Europe may require greater attention for detailed and tailored drafting. This can
include an appreciation of local publishing laws,\textsuperscript{52} which tend to reflect greater sensitivity
to public morality concerning matters of dress and behaviour as well as restrictions on the
advertising of certain types of products (alcohol,\textsuperscript{53} tobacco, etc.). Likewise, while it is true
that sponsors are sensitive to negative impacts on brand management across the globe, in the
wake of recent scandals concerning doping and personal conduct involving household-name
athletes, these issues are potentially more injurious in the UAE, so robust morality clauses are
commonplace inclusions in sponsorship contracts.

In respect of statutory provisions, sponsors should be aware of the rights of registered
agents for sales and distribution under the Commercial Agencies Law\textsuperscript{54} where they are
involved in exclusive arrangements. This law exposes sponsors to significant extra-contractual
obligations, which can result in the imposing of protective measures for agents that can
effectively hinder termination rights, lead to significant unplanned costs and even permit
restrictions on importation to the country in the event of a dispute.

V  PROFESSIONAL SPORTS AND LABOUR LAW
i  Mandatory provisions
UAE Federal Law No. 8 of 1980 and its amendments (the Labour Law) sets out the basic
employment requirements for private sector employees, including professional athletes.

\textsuperscript{52} At the federal level, advertising is largely regulated by Federal Law No. 15 of 1980 concerning publications
and publishing; Federal National Media Council Resolution No. 35 of 2012 concerning the standards of
advertisement content in mass media; and Federal Decree No. 5 of 2012 on combating cybercrimes.
\textsuperscript{53} In each of the two largest emirates, there are additional (albeit consistent) applicable statutes: the
Abu Dhabi Liquor Law (Law No. 8 of 1976) and the Dubai Liquor Control Law (of 1972) expressly
prohibiting the advertising of alcohol.
\textsuperscript{54} Federal Law No. 18 of 1981 on commercial agencies.
Given the relatively short careers of top-level athletes, the high risk of premature career-ending injury and the sports specificity, the vast majority of athletes are employed on fixed-term contracts. This is also the case with managers and head coaches.

According to the Labour Law, fixed or limited-term contracts can be renewed as many times as required, but should be for a duration of no more than two or four years each. If the employment continues beyond the expiry of the fixed term, the contract will generally automatically convert into an unlimited-term contract (depending on the location of the employer). All other terms of employment (e.g., salary, vacation allowance) will remain the same. In practice, several athletes sign limited duration-contracts up to five years.

There are no express laws surrounding salary protection; however, those employers located onshore (or within certain free zones) are required to pay salary via the UAE Wage Protection System (WPS). The WPS is a clearing system that ensures that employees’ wages are paid in full and on time.

If an employer wishes to reduce an employee’s salary (irrespective of where they are based in the UAE), consent must be obtained from the employee in writing. If the employer decided to implement changes in any event, without obtaining the written consent, the new terms would be rendered unenforceable and would likely result in an employee commencing proceedings for breach of contract or ‘constructive dismissal’, or both.

In relation to the termination of a limited-term contract, if an employee’s contract is terminated during the term for reasons other than gross misconduct, he or she is entitled to three months’ full salary (or to the salary due for the remainder of the unexpired term – whichever is less) by way of compensation (in addition to his or her contractual entitlements, including notice, if provided for). There is no defence to a termination claim other than for gross misconduct.

Conversely, in respect of an unlimited-term contract, if the employee’s contract is terminated for reasons other than gross misconduct, he or she can file a claim for unfair dismissal and claim up to three months’ salary (again, in addition to his or her contractual entitlements). A defence to the claim (and associated compensation) can be mounted if there is a documented disciplinary process.

Clubs and sporting organisations typically have a list of gross misconduct grounds under which an employee may be terminated summarily, including:

- bribery and match-fixing;
- adverse media exposure and commitments;
- injury where incapacity is unconnected with the player’s employment;
- disparagement of sponsors and usage of a club’s or sponsor’s logo; and
- use of performance-enhancing drugs.

The threshold for a gross misconduct dismissal is extremely high and can require a criminal conviction prior to dismissal. As such, while a club or sporting organisation may include examples of gross misconduct in their contracts of employment, ultimately the Labour Court will only consider conduct to be gross if it matches the definition in the Labour Law, and even then would expect to see criminal findings to uphold certain allegations (e.g., dishonesty or bribery). From a practical perspective, therefore, a sporting organisation or employer may not be minded to wait for a judicial process to reach completion (including appeals), so in certain cases the decision is made to terminate the employee in the knowledge that there is a legal risk of a compensation claim.
ii Free movement of athletes

Given that the population of the UAE is approximately 90 per cent expatriate, it is no surprise that there are few internal restrictions on foreign athletes taking part in all the major sports. Some sports do impose a cap on the number of non-nationals who can be included on a team.

In June 2018, UAE Cabinet Resolution No. 27 was issued to allow certain categories of non-UAE nationals to participate and compete in official domestic sports competitions, offering the non-UAE nationals, mainly children of Emirati mothers, expats born in the UAE and expats resident in the UAE for at least the past three consecutive years, to become professional athletes.

iii Application of employment rules of sports governing bodies

Despite the Labour Law stating that limited-term contracts should be restricted to two to four years, certain national sports governing bodies set limited term contracts up to five years as enforced by the international federation to which it is affiliated. Despite the five-year contract being contrary to the provisions of the Labour Law, the question has never been raised before local courts.

VI SPORTS AND ANTITRUST LAW

The UAE Competition Law came into force in February 2013, although generally speaking, substantive guidelines have not been provided to date by either the authorities or the courts regarding the interpretation and application of the Law (we are not aware of any cases in respect of this Law to date). Further in this regard, the Law contemplates the promulgation of implementing regulations that will provide further clarity on the application and enforcement of the Law.

The enforcement of competition law to the sports sector is very restricted; at this stage, we do not feel that there are concrete concerns that directly impact sports rights holders or governing bodies.

Broadly, the Competition Law aims to protect consumers by regulating any activity that attempts to curb competition, including:

a price-fixing;
b conditions on sale;
c collusion in tenders and bids;
d freezing commercial activity;
e curbing the free sale of goods or agreeing not to purchase products from a trader;
f market segregation and geographical allocation or client allocation; or

g any measures that curb market access to competitors, drive them out of the market or constitute a barrier to joining existing agreements and associations.

VII SPORTS AND TAXATION

There is presently very light taxation in the UAE, including that which may affect sports events hosted therein.

From a direct tax perspective, there is no personal income tax. There is corporate income tax at the emirate level, but it is not enforced in practice except on businesses engaged in upstream oil and gas activities. Further, certain emirates levy a tax on the income obtained
by branches of foreign banks. In addition, there is no domestic obligation to withhold tax. Therefore, sports events that take place in the UAE currently should not result in UAE direct tax implications.

From an indirect tax point of view, there is value added tax (VAT) and excise tax. VAT has applied at the federal level since 1 January 2018. It is imposed on supplies of goods and services, and on imports of goods and services at the standard rate of 5 per cent, unless the supply or import is subject to VAT at the rate of zero or exempt from VAT.

While persons with no place of residence for VAT purposes in the UAE are generally not required to register for VAT therein, they may be required to register if they make supplies that are subject to VAT, and no other person in the UAE is required to account for or pay the VAT to the Federal Tax Authority. As each case is unique and dependent on many factors, specific advice should be sought in all instances to determine whether foreign persons may have an obligation to register for VAT in the UAE.

Excise tax has also applied at the federal level since 1 October 2017. It is imposed on the production, import, release or stockpiling of certain goods as set out in legislation, including but not limited to carbonated and energy drinks. Similarly, detailed advice should be sought in every case to ascertain whether any envisaged activities in the UAE may result in excise tax implications.

VIII SPECIFIC SPORTS ISSUES

i Doping

The UAE National Olympic Committee has a broad mandate to improve standards in respect of UAE sports and to enable participation in accordance with international practices. In particular, the National Olympic Code was adopted by the National Olympic Committee in 2013, which, inter alia, empowers the Committee to apply international conventions as they relate to sports (e.g., including the International Olympic Committee’s medical regulations). Even prior to the adoption of the National Olympic Code, the UAE ratified the International Agreement on Anti-Doping55 and established the UAE National Anti-Doping Organization, which, subject to coordination with the GAS and the National Olympic Committee, is responsible for overseeing the implementation of the UAE National Anti-Doping Code. The UAE NADO is a signatory to the WADA Code and is recognised by the WADA.

The UAE NADO is cognisant of the WADA’s efforts during the past decade to harmonise testing and sanctions in comparable cases across international sports, and the continued recognition of those standards is anticipated in the UAE. This expressly extends to the procedural conduct of hearings, and the range and imposition of sanctions against transgressor athletes.

Recently, framework legislation has been enacted in the UAE that criminalises doping in horse racing and equestrian events.56 The objective of the law is to combat the trading or use of banned substances in those sports in the UAE to further develop detection and preventative strategies, and to educate owners, horse trainers, vets, stable workers and any other persons dealing with horses.

56 Federal Law No. 7 of 2015.
ii  Betting
Gambling is prohibited by the Penal Code and punishable by up to three years’ imprisonment. For those who open or manage a gambling establishment, a prison term of up to 10 years may be imposed. In terms of online betting, the Cyber-Crimes Law57 specifically addresses content distribution via the internet, and includes significant fines and prison terms among its range of sanctions.

iii  Manipulation
Where financial incentives are used as part of a match-fixing scheme, subject to the specific facts, this would likely constitute bribery, which is addressed by the Penal Code.58 Passive and active bribery occurring in both the public and private sectors are criminalised, with bribery in the private sector carrying a penalty of up to five years’ imprisonment. Additionally, the Resolution removes a measure of self-regulation from sporting bodies and brings it under federal law.

Moving forward, it will be interesting to monitor the interpretation and scope of enforcement of this provision within the Resolution, to see whether its application could be used more broadly to address some of the issues surrounding match-fixing and cheating that have plagued international sports in recent times.

iv  Grey market sales
Most ticket sales for events are subject to commercial contracts between the event organisers and the ticket resellers, so sales in contravention of agreed parameters would be punishable under civil law. In the case of high-profile events where branding is involved, copyright and trademark misuse can come into play, which can provide sufficient grounds for cease-and-desist requests. Whether the sales could constitute a crime under the Penal Code would depend on the particular circumstances (e.g., whether there were elements of fraud or misrepresentation involved). If and to the extent there are civil or criminal breaches, auctioning on the grey market online would not be a barrier to enforcement, as the Cyber-Crimes Law would potentially apply.

IX  THE YEAR IN REVIEW
In May 2018, the Al Ain Court of Appeal issued a judgment related to an employment dispute between a football trainer and a football company stating that UAE employment courts do not have jurisdiction over disputes arising between members affiliated with the UAE FA since Articles 119 and 120 of the UAE FA statute forbid any affiliated member to bring a dispute before a local court, and that the dispute shall be resolved internally through the competent body.

This is the first time in the UAE that a court of appeal declined jurisdiction in such a matter.

57  Federal Law No. 3 of 1987 as amended by Law No. 5 of 2012 concerning combating information technology crimes.
58  Federal Law No. 8 of 2014 concerning sports facilities and events security at Article 21.
OUTLOOK AND CONCLUSIONS

Interest in sport is not a new phenomenon in the UAE. Its sporting calendar is becoming increasingly packed with events that have included, inter alia:

- the annual F1 race in Abu Dhabi;
- top-class professional cycling events in both Dubai and Abu Dhabi;
- the Annual Horse Racing World Cup;
- well-established professional tennis and golf events;
- FINA swimming tournaments;
- FIBA basketball tournaments;
- marathons; and
- ocean yacht racing.

We anticipate this growth will persist as sponsors continue to identify these events as key opportunities to invest in brand building, with major insurance and financial institutions joining others in determining that there are sustainable returns on their investment or credible corporate social responsibility initiatives, or both, in doing so.

Sport has also been identified as a key lifestyle factor capable of improving the health of the UAE’s citizens. For example, there are ongoing concerted efforts to tackle the region’s diabetes epidemic (e.g., the establishment of the Diabetes Centre for prevention, treatment and research in the UAE, and annual events such as the Imperial College London Diabetes Centre walkathon in Abu Dhabi and the Train Yas weekly fitness event sponsored by ActiveLife programmes to encourage public participation) and to implement some of the strictest measures against tobacco advertising and consumption\(^{59}\) to date. This national push to promote health by building on the existing cultural attachment to sport in the UAE by encouraging public activity suggests that the growth in sports will continue and the legal framework will need to grow alongside that.

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\(^{59}\) Cabinet Resolution No. 24 of 2013 on the Federal Anti-Tobacco Law.
Chapter 19

UNITED STATES

Steve Silton and Samuel Mogensen

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

In the United States, sports clubs typically organise themselves in one of three ways: either a sole proprietorship, a partnership or a corporation. The form a sports club decides on is dependent on factors such as potential liability, federal tax laws, flexibility of the form and ease of ownership transfer.2

A sole proprietorship is the simplest form of ownership as it is controlled by only one person.3 In light of the financial and legal complexity of modern professional sports, this is a rare form of ownership. The largest drawback to a sole proprietorship is the liability. All legal and financial liability associated with the sports club is attributed directly to the owner personally. An additional drawback is a sole proprietorship’s limited ability to borrow funds. The sports club can only borrow as much as the owner can personally receive approval for.

The most prevalent type of sports club ownership is the partnership.4 The laws regarding partnerships are very straightforward. Each partner makes a measured contribution to the partnership and, in turn, each partner receives a share of the profits and losses of the business, unless a different arrangement has been made.5 Partnerships do not require any formal documentation or legal paperwork to come into existence, though a designation can be made to protect partners from personal liability. This lack of legal work can substantially reduce the sports club’s start-up costs. Partnerships can further reduce their costs by taking advantage of pass-through taxation, which allows the partnership to file a general tax return while the partners themselves file personal returns accounting for all the profits and losses.6

Similar to a sole proprietorship, a partnership’s drawback can be the lack of liability protection. Partners are held to be joint and severally liable for the acts of the other partners and the partnership as a whole. Furthermore, partners have a fiduciary duty to the other partners and the partnership as a whole. Partnerships have other unique limiting factors.

1 Steve Silton is a partner and Samuel Mogensen is an associate at Cozen O’Connor.
3 id. at 747.
4 id.
5 id.
6 id.
Since a partnership is created by contract, a given partner cannot sell or transfer their interest to a party outside the partnership.\(^7\) This means if one partner wants out of the partnership, or if a partner should die, the partnership is dissolved.\(^8\)

There is a common subset of partnerships often used to govern sports clubs. ‘Limited partnerships’ can be thought of as a hybrid of a partnership and a corporation. In a limited partnership one or more partners control the sports club while other ‘limited’ partners supply investment money for the partnership. The limited partners have no control over the sports club; they only share in the profits and losses. Limited partnerships have the same advantages and disadvantages as general partnership, the only difference being that a limited partner is only as liable as their investment into the partnership.\(^9\) Should a limited partner become a managing partner, only then will he or she be held joint and severally liable for the partnership, just as in a general partnership. Becoming a limited partner is a common way individuals become owners in professional sports teams in the United States. While limited partners have no operational control, they are able to view ‘up close’ the manner in which a professional sports team operates. Many majority owners of sports teams in the United States started as limited partners.

Corporations are also used to govern sports clubs. Corporations are different from both sole proprietorships and partnerships in that they are legal entities separate and apart from both the owners and shareholders.\(^10\) The creation of a corporation is governed by the local laws of the state in which it is incorporated. In many ways, a corporation is treated as an individual in the eyes of the law. Just like an individual, a corporation has rights, can be sued, and must pay its own taxes. If a sports club is created as a corporation, its shareholders elect a board of directors to oversee the business and that board elects officers to manage the sports club. One advantage of using a corporation as a business model is the limited liability of its shareholders; a shareholder is only as liable as their investment.\(^11\) Corporations also have an easier time raising capital. If a corporation needs more funding, it can simply sell more stock. This diverse ownership means a corporation’s life span is not tied to a single person or a partnership, a corporation can well outlast a single lifespan.\(^12\) Still, using a corporation as an ownership vehicle for a sports club has serious disadvantages.\(^13\) A corporation’s profits are taxed twice. Once when they are earned at a corporate tax rate, and again when they are distributed to shareholders as dividends. Although a corporation’s limited liability is attractive, its tax disadvantages will be taken into account by a team’s owner when choosing the right business structure.\(^14\)

II THE DISPUTE RESOLUTION SYSTEM

Professional players consent to punishment handed out by their respective clubs and leagues through their collective bargaining agreements (CBAs) as well as personal contracts.\(^15\) Those

\(^7\) id. at 748.
\(^8\) id.
\(^9\) id. at 749.
\(^10\) id.
\(^11\) id. at 750.
\(^12\) id.
\(^13\) id.
\(^14\) id.
contracts are kept very broad and simply secure the player’s agreement to follow the rules set by the individual team or league. The standard player’s contract (SPC) will typically state that the club may create rules governing the player’s conduct, and in return, the player promises to follow those rules. Penalties for infractions come in various forms. The contracts typically explain the procedural rights the player will receive; usually in the form of notice and review by the respective league’s commissioner. The SPCs also provide a given league’s commissioner with independent disciplinary authority.

The National Football League (NFL) has a personal conduct policy that pertains to all persons associated with the league and not just the players. The policy specifically reserves the option to punish regardless of whether there is a legal conviction for a crime, stating the NFL holds its employees and club members to a higher standard. The policy forbids behaviour that undermines or risks the NFL’s integrity or reputation and if a violation is found, the commissioner is given wide latitude to discipline as he or she sees fit. The policy states the punishment is to be proportional to the infraction and take into consideration the nature of the conduct, the risk entailed in the conduct, the existence of any prior or additional misconduct and any other relevant factors.

The NFL commissioner’s disciplinary authority is governed by three documents: the Constitution and by-laws of the National Football League (the League Constitution), the CBA and the NFL’s SPC. The League Constitution is a contract that defines the authority of the league and its member clubs. In addition to empowering the commissioner, the constitution also provides the commissioner with authority to recommend punishment matters to an Executive Committee. A commissioner might do so should he or she find the punishment he or she is authorised to administer is inadequate or insufficient.

The NFL’s SPC allows for the commissioner to punish for two types of conduct: conduct on the field and conduct that is harmful to the integrity of, and the public confidence in, the NFL. The CBA limits the player’s ability to appeal the commissioner’s decision by allowing a player to only appeal to the commissioner or his or her designee directly. Although the league constitution provides the commissioner with guidance, it is the CBA that is the real authority concerning the employment relationship between the players and the commissioner; it is the CBA that determines how much authority for punishment the players will accept.

Similar to the NFL, the Major League Baseball (MLB) commissioner is provided with a wide scope of authority to punish for matters that effect the integrity of baseball and the

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16 id.
17 id.
19 id.
20 id.
21 id. at 186.
22 id. at 190.
23 id. at 191.
24 id.
25 id. at 192.
26 id.
27 id.
public confidence in it.28 However, unlike the NFL, in the MLB there are more actors with punishment authority.29 In addition to the commissioner, the league's executive vice president and the senior vice president also have the authority with regard to fines and suspensions for conduct on the field. In the MLB, an appeal can be made to the commissioner, the executive vice president, or an independent arbitrator or arbitration panel. Although technically the MLB has significant discretion and authority, many find the use of arbitration, which is provided for in the CBA, has undermined that authority.30 Historically arbitrators have overturned commissioners' decisions, including the reinstatement of players the commissioner has banned for life.31

In professional baseball, conduct violations are punished in two ways: by the player's team or by the league.32 Team-sponsored punishments are regulated by the player's contract. Although an individual's contract might be negotiated so it reads differently, generally teams have the authority to terminate the player's employment. The player's contract holds him or her to the highest level of sportsmanship and personal conduct, and infractions stemming from chemical abuse, gambling, domestic violence, fighting or illegal weapons possessions are seen as falling under the 'personal conduct' clause.33 Further, the MLB's commissioner is given the responsibility for investigating incidents, deciding guilt or innocence, and handing out the punishment. The commissioner's biases are supposedly only toward the protection of the game, where the individual owners of the teams have a financial stake in a player's punishment. In fact, even the Supreme Court of the United States has upheld the MLB commissioner's broad powers and discretion.34

In basketball, under the CBA, punishment by the National Basketball Association's (NBA) commissioner can be generally divided into two categories: suspensions of fewer than 12 games or suspensions of more than 12 games.35 In a suspension of fewer than 12 games, where the reason for the suspension was owing to concern over preserving the integrity of, or the public confidence in, the NBA, the commissioner has the final word and no arbitration is allowed. Any appeal of a suspension for fewer than 12 games must be made to the commissioner. One caveat to that rule is a player may appeal to the Player Discipline Arbitrator if the player is seeking a review owing to the financial impact of the commissioner's decision.36 However, in this case, the arbitrator may only lower the financial penalty. For suspensions over 12 games the player or the player's union may file a grievance and have an arbitrator review the discipline given.37

31 id. at 153.
33 id.
34 Flood v. Kuhn, 407 US 258 (1972); See also Charles O Finley & Co. v. Kuhn, 569 F.2d 527, 538 (7th Cir. 1978) (upholding Commissioner Bowie Kuhn's right to determine the best interests of baseball); Footnote 32, at *5.
35 Footnote 29, at 102–103.
36 Footnote 29, at 103.
37 id.
III ORGANISATION OF SPORTS EVENTS

Venue owners in the United States are open to a certain level of liability. However, using the affirmative defence of ‘assumption of the risk’ can limit that liability. Courts typically deny recovery for injuries resulting from hazards inherent to the sport under the presumption that spectators have sufficient knowledge of the sport and assume the risk of being injured; even if it is the first sporting event ever attended by the patron. To succeed in an assumption of the risk defence, venue owners must show either: the plaintiff had personal knowledge of the risk (claims of ignorance of the risk have generally failed); that the risk was obvious and apparent to a reasonable and prudent person under the circumstances; or that there was seating provided behind a protected screen that the spectator chose not to sit in. Venue owners have also tried using liability releases to limited effectiveness. Some courts have held that a liability release may be void if it is against public policy. Liability releases are also considered to be void if the court finds it is counter to a state statute or if the release was not brought to the attention of the patron. Regardless of this, professional sports leagues have put protections in place to mitigate any future liability.

After a 13-year-old girl was killed by a puck at a National Hockey League (NHL) game, the NHL made Plexiglas along the boards mandatory. The NHL further required each rink to put protective netting above the Plexiglas behind the goal nets to protect fans from flying pucks. Further, the NHL has mandated that rink operators must provide a protective area for spectators who prefer to be wholly protected from the risks of flying pucks.

In MLB, courts have held there is no duty to warn spectators of the possibility that a ball or bat may enter the stands. Baseball stadiums are only required to provide screening behind home plate. Spectators who voluntarily choose to sit in an area unprotected by a screen, even if there are no seats available behind the screen, accept the ‘obvious danger’ of being hit by a ball or other potential hazards that the average person would perceive in attending a baseball game.

In professional football, a fan is considered to be on notice that a ball may enter the stands. Given the dimensions of a football, along with the nature of the game, courts have seen the risks to patrons as being low.

Alcohol consumption is also an area of concern for venue owners. To protect players and coaches from fans running onto the field during a game, some teams employ security guards armed with tasers. The concern does not end with the games’ final score. Approximately

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38 20 COA2d § 361 (2017).
40 20 COA2d § 361 (2017).
41 id.
42 id.
44 Footnote 39.
46 id.
47 Footnote 43, at 131.
10 per cent of fans leave a sporting event intoxicated. The risk of these fans driving after the game has prompted stadium owners to hire extra security, which in turn has led to fans complaining about overzealous security enforcement outside the stadiums. Stadium owners take this liability seriously. The Minnesota Twins suspended a local legend, Wally the Beer Man, for allegedly selling beer to a minor at a home game. Even though selling alcohol to a minor is considered a serious offence, local fans were still outraged.

IV COMMERCIALISATION OF SPORTS EVENTS

Athletes are celebrities. The general public admires their fame and fortune. It is virtually impossible to avoid an advertisement that harnesses a professional athlete's celebrity status. Whereas athletes used to be 'pitchmen' for sports-related products, these days athletes endorse everything from Rolex watches to breakfast cereal. This rise in celebrity status has allowed professional athletes to increase their earnings off the field. A 1990 *Sports Magazine* issue estimated US companies spent more than US$580 million to have professional athletes promote their products. *Forbes* magazine estimated that, during 2019, Cristiano Ronaldo, LeBron James, Roger Federer, Kevin Durant, Rory McIlroy, Stephen Curry, Tiger Woods and Phil Mickelson made combined earnings of US$384 million in endorsement revenues.

i Types of and ownership in rights

Each major sports league maintains the rights to market the names and logos of the individual teams in their respective leagues. A player’s contract will typically contain provisions regarding publicity for the sports club and restrictions on a player’s ability to engage in endorsements. Often, a player’s contract will require a certain number of appearances in connection with licensing agreements made by the league. Restrictions on a player’s endorsement of a given product include what the player wears during a game, or even during a preseason or warm-up game.

ii Contractual provisions for exploitation of rights

The Federal Trade Commission (FTC) has established guidelines concerning the use of endorsements and testimonials in advertising. The guidelines require that the endorsement...
must always reflect the honest opinions, findings, beliefs or experience of the endorser.\textsuperscript{62} Furthermore, the endorsement may not contain any representations that would be deceptive, or could not be substantiated and made directly by the advertiser.\textsuperscript{63} Celebrity endorsements may only be used if the advertiser has good reason to believe that the endorser continues to subscribe to the views presented in the advertisement.\textsuperscript{64} An advertiser may only run the advertisement as long as it has good reason to believe the endorser remains a user of the product.\textsuperscript{65}

Companies often contract with professional athletes to wear or display the company’s products.\textsuperscript{66} Typically, these contracts require the athlete to use the endorsed product exclusively while participating in all athletic activities.\textsuperscript{67} For instance, if the endorsed product were shoes, the company will prohibit the athlete from wearing athletic shoes manufactured by another company.\textsuperscript{68} Given the FTC guidelines and the legal exposure an athlete might endure, athletes try to make sure the promoted materials are in good taste and do not harm the public image of the athlete.\textsuperscript{69}

Although the terms of an endorsement contract are negotiable between the company and the athlete, certain provisions are common place.\textsuperscript{70} Endorsement agreements should identify with specificity the products or services the athlete will endorse during the term of the contract.\textsuperscript{71} An overly broad or loose definition of the products to be endorsed may result in an agreement that precludes competitive endorsements with other companies even though the first company does not presently manufacture those products.\textsuperscript{72} Thus, if an athlete is endorsing a certain type of basketball, the endorsed product should not be referred to in terms of ‘basketball product’ because this term is too broad.\textsuperscript{73}

\section*{V STADIUM DEVELOPMENT}

In the United States, stadiums are a large part of professional sports. Cities and states compete with one another to become home to a professional sports stadium owing to the profitable benefits of increased revenue and spending the stadiums generate.\textsuperscript{74} Aside from the increased revenue, having a stadium allows locals to follow their home team as well as drawing people into a city’s downtown area.\textsuperscript{75}

\textsuperscript{62} id.
\textsuperscript{63} 16 CFR Chapter I, Subchapter B, Part 255.1(a).
\textsuperscript{64} 16 CFR Chapter I, Subchapter B, Part 255.1(b).
\textsuperscript{65} 16 CFR Chapter I, Subchapter B, Part 255.1(c).
\textsuperscript{66} James T Gray, \textit{Sports Law Practice} § 7.08 (Matthew Bender, 3d ed. 2014).
\textsuperscript{67} id.
\textsuperscript{68} id.
\textsuperscript{69} id.
\textsuperscript{70} id.
\textsuperscript{71} id.
\textsuperscript{72} id.
\textsuperscript{73} id.
The Los Angeles Rams and Chargers are building the largest and costliest NFL stadium in history.\textsuperscript{76} The 3 million square foot facility that will cost a projected US$2.6 billion is scheduled to open in 2020. The Oakland Raiders also started construction on a new stadium located adjacent to the south end of the Las Vegas Strip.\textsuperscript{77} The Raiders’ stadium features a translucent ceiling and retractable doors offering views of the Strip, as well as a small jail and courtroom to detain and process unruly fans.\textsuperscript{78}

The Mercedes-Benz Stadium opened its doors in August 2017 after 28 months of construction.\textsuperscript{79} The newest state-of-the-art sports facility seats 71,000 for Atlanta Falcons games, and can expand or reduce the number of seats to house the FIFA World Cup, a Final Four, Major League Soccer (MLS) football games and concerts. Super Bowl LIII is already scheduled to be played in the Mercedes-Benz stadium in 2019.\textsuperscript{80}

The year 2016 brought the US Bank Stadium home to the Minnesota Vikings. The project began in 2014 and had its ribbon-cutting ceremony in July 2016. The overall budget for the stadium was US$1.061 billion. The new stadium has resulted in an increase of revenue to the surrounding area. Super Bowl LII was played in the new US Bank Stadium in 2018 and this event brought US$370 million to the area.\textsuperscript{81} Wells Fargo relocated 5,000 employees to a new regional headquarters built next to the US Bank Stadium.\textsuperscript{82} Apartments, restaurants and shops have also opened up near the stadium, resulting in more than US$1 billion worth of additional investment in the area.\textsuperscript{83} Further, the 2019 National Collegiate Athletic Association (NCAA) Final Four was held at the US Bank Stadium, resulting in US$143 million alone.\textsuperscript{84}

These multibillion-dollar facilities do not always work out as planned. One of the most anticipated features of the new Mercedes-Benz Stadium was its retractable roof. Unfortunately, the roof caused three construction delays and was not fully functional when...
the stadium opened.85 As of July 2018, the Mercedes-Benz roof finally opened, as it should, in just over eight minutes.86 The new US Bank Stadium continues to battle ongoing issues with its moisture barrier, loose exterior panels and leaking walls.87 The building is still under warranty and the general contractor and two of its subcontractors responsible for the design and installation of the exterior panels are in arbitration to determine who will pick up the tab for repairs.88

Along with the new stadium, the Minnesota Vikings built a new headquarters and training facility in a neighbouring city. The team bought nearly 200 acres of land, which it plans to develop over the next decade. The training facility, the Twin Cities Orthopedics Performance Center, opened in 2018. The 277,000 square foot state-of-the-art training facility features cryotherapy chambers, virtual reality training technology and lockers with individual ventilation systems.89 The team also plans to develop the surrounding land, which is called Viking Lakes.90 The development is to include a hotel, a conference centre, apartments, restaurants and office space, as well as lakes and trails and a Skol Pavilion for events.91

There is currently a trend of building high-profile training facilities. The Dallas Cowboys opened their new training facility in mid-2016, naming it The Star at the Star.92 The Star is located 25 miles north of Dallas in Frisco, Texas, and serves as the Cowboys’ new headquarters. The facility includes two outdoor practice fields and a 12,000-seat indoor stadium. Football teams from the local school districts will also have access to the training facility. The area surrounding the Star also includes a retail area, an upscale hotel, a sports medicine facility and a fitness centre.93

85 Tim Tucker, ‘Plan: Stadium roof will be closed for rest of Falcons season, open for one soccer game’, AJC.com (6 October 2017, 3pm), www.ajc.com/sports/plan-stadium-roof-will-closed-for-rest-falcons-season-open-for-one-soccer-game/eFcG6uoRI3qCgAtlfwXl.
86 Tim Tucker, ‘Mercedes-Benz Stadium roof opened in about eight minutes’, AJC.com (25 July 2018), www.ajc.com/sports/mercedes-benz-stadium-roof-opened-about-eight-minutes/3FTRqVw31y64U76DDoABO.
91 id.
In September 2017, the Green Bay Packers officially opened the ‘Titletown District’ to the public. The 34-acre complex sits adjacent to Lambeau Field, home to the NFL team.94 The Titletown District provides a large park dedicated to fitness-related activities, cultural events and game-day celebrations. The complex will also provide an upscale hotel, a restaurant, town homes and a sports medicine clinic.95

The NBA’s Minnesota Timberwolves and the Women’s National Basketball Association’s (WNBA) Minnesota Lynx recently opened a new practice facility and corporate headquarters at Mayo Clinic Square, adjacent to their home stadium, the Target Center in Minneapolis, Minnesota. Aside from being a completely privately funded state-of-the-art project, this 107,000 square foot development is noteworthy for its repurposing of an existing urban structure into a full-sized arena. Before it was a training facility, the real estate housed a cinema.96 Today, it provides a training area complete with two basketball courts, one for each team. The Minnesota Lynx are now the first WNBA team to have its own court and training area.97 The facility will also be used by the area’s youth and local athletes.98 Finance & Commerce declared the facility one of the Top Projects of 2015.99

Minnesota opened the Treasure Island Center, which houses the Minnesota Wild’s new 1,200-seat practice rink.100 TRIA Rink, named after the Minnesota-based orthopaedic division of HealthPartners, opened in early 2018.101 The space is used for Wild practices in the morning, leaving the afternoon and evening slots available for schools and amateur leagues.102 Hamline University will use the space to host home games for both its men’s and women’s

97 id.
102 Mizutani, note 101.
hockey teams, and it will also be home for Minnesota’s professional women’s ice hockey team, the Minnesota Whitecaps.\footnote{103} Treasure Island Center will also house a brewing company, retail stores, the St Paul Police Department, TRIA Orthopedic Center and a donut shop.\footnote{104}

\section{PROFESSIONAL SPORTS AND LABOUR LAW}

The SPC is an outgrowth of the respective league’s CBA.\footnote{105} The SPC is written by the individual team the player is signing with; as such, any ambiguity is interpreted against the team.\footnote{106} The SPC specifies the player’s obligations, including his or her performance outside the sport, and explains the employer or team’s control over the player.\footnote{107} The SPC provides for penalties in cases of prohibited conduct.\footnote{108} In addressing the penalties the SPC explains all of the elements of a given infraction.\footnote{109} It spells out the amounts of possible fines, expected lengths of suspensions, as well as the process of instituting the punishment and the process of any subsequent appeals.\footnote{110}

\subsection{Mandatory provisions}

Generally, players have very little control over non-monetary terms of their contract.\footnote{111} The exception to the rule is a player such as LeBron James who has an exceptional talent or skill so rare that accommodating the player’s stipulations is still a bargain.\footnote{112} This sort of clout allows a player to negotiate several provisions of their contract.\footnote{113}

An average professional player still might be able to negotiate some parts of his or her contract.\footnote{114} For instance, a player might be able to negotiate his or her signing bonus, the timing of payment of any bonuses, length of the contract and guarantees in case of injuries.\footnote{115}

The SPC also incorporates collateral agreements.\footnote{116} For example, an SPC will contain a clause incorporating the league’s constitution and by-laws.\footnote{117} This means that when a player signs his or her 10-page SPC, he or she is also binding himself or herself to the 300 pages of other material usually from the league’s CBA.\footnote{118} Better known collateral agreements include the signing bonus and the no-cut clause.\footnote{119} The signing bonus is payment simply for signing

\begin{enumerate}
\item \footnote{104}{id.}
\item \footnote{105}{John O Spengler, et al., \textit{Introduction to Sport Law} 111 (Myles Schrag et al. eds., 2009).}
\item \footnote{106}{Walter T Champion Jr, \textit{Fundamentals of Sports Law} § 16:2 (4th ed. 2016).}
\item \footnote{107}{id. at § 16:3.}
\item \footnote{108}{id.}
\item \footnote{109}{id.}
\item \footnote{110}{id. at § 16:2.}
\item \footnote{111}{id. at § 16:4.}
\item \footnote{112}{id.}
\item \footnote{113}{id.}
\item \footnote{114}{id. at § 16:2.}
\item \footnote{115}{id.}
\item \footnote{116}{id. at § 16:4.}
\item \footnote{117}{id.}
\item \footnote{118}{id.}
\item \footnote{119}{id.}
\end{enumerate}
the contract and the player will get the payment once he or she shows up for the first day of
training. Once the player receives the bonus, he or she is not obliged to give it back, even if
he or she is cut later on. A no-cut clause prevents a team from cutting a player during the
life of the contract. These types of clauses are difficult to obtain given the nature of sports.120
They typically protect a player’s contract from being terminated owing to poor performance
or poor physical condition. A no-cut clause is interpreted very strictly, it will only protect a
player from termination of the type specified.121

ii Free movement of athletes
It is possible for players to negotiate a no-trade clause in their contract. A no-trade clause
gives a player the right to refuse a trade. Because a no-trade clause is so powerful, they are
typically only given to senior players or players with a large amount of clout.122 In baseball, a
player with five years on one team and 10 years of experience can veto a proposed trade.123 A
player might want a no-trade clause if he or she has substantial business ties with the location
of the signing team.124

VII SPORTS AND ANTITRUST LAW
Antitrust is a major component of sports in the United States. There are four legislative acts
that govern the majority of antitrust action in professional sports:
a the Sherman Act;
b the Clayton Act;
c the Norris-LaGuardia Act; and
d the National Labor Relations Act (NLRA).

The Sherman Act was enacted to regulate business practices among competitors so as to
promote economic competition by deterring monopolies. The US Supreme Court has held
the Act is to be analysed in two manners: the per se rule and the ‘rule of reason’.125 Per se
analysis is used when a particular labour practice has been presumed to have a negative effect
on competition, and is therefore illegal. For instance, price-fixing is a per se violation of
antitrust laws because of its negative effects on competition and consumers. Rule of reason
analysis looks at a particular practice and asks whether it is reasonable or unreasonable.
However, if a particular labour practice is found to be a per se violation, it is unnecessary to
be further examined under the rule of reason.126

The Clayton Act allows labour unions and labour activities to be exempted from the
Sherman Act. Section 6 of the Act mandates labour should not be treated as commerce. This

120 id.
121 id.
122 id.
123 id.
124 id.
126 id. at 222.
is known as the ‘statutory labour exemption’.¹²⁷ The statutory labour exemption allows labour unions to enter into agreements between themselves that might result in the elimination of competition from other unions, essentially allowing for monopolies by unions.¹²⁸

The Norris-LaGuardia Act allows employees to bargain as a collective unit (CBA). Bargaining collectively allows an employer to negotiate a contract that is binding on all parties within the collective unit. The Act, along with Section 17 of the Clayton Act, makes labour union activities exempt from antitrust laws. The Act also limits the power of the federal courts to grant injunctions in labour disputes.¹²⁹

The NLRA promotes collective bargaining between employees and employers. It requires parties to a labour negotiation to act in good faith regarding wages, hours and terms and conditions of employment. The NLRA is bilateral in that it protects both unions and employers. The NLRA requires neither party to concede on a point nor agree to a certain proposal, in the name of coming to an agreement.¹³⁰ Under the NLRA, workers reserve the right to strike if an agreement cannot be reached. The Act requires a vote in which a majority of the union votes for the strike before a strike is allowed. The union must then give the employer a 60-day notice before the strike starts. For the League’s side of the process, the NLRA allows League management to conduct a lockout, which prevents the players from playing, if a collective bargain agreement cannot be reached.¹³¹

Today, the most restrictive of antitrust infractions have been placated by players’ collective bargaining. CBAs are effective once a players’ union and league management confer and agree on labour issues. Agreements reached might breach antitrust laws in other settings; however, when they come about through the collective bargaining process they are considered ‘non-statutory’ labour exemptions and are immune to antitrust laws. The non-statutory exemption is applied where the restriction on trade affects only the parties to the CBA; where the restraint concerns a mandatory subject of the collective bargaining; and where the agreement that is sought to be exempted is a product of a true arm’s-length bargaining process.¹³²

The non-statutory labour exemption is at the heart of virtually all antitrust action in sports labour law. For years, the NFL followed what was known as the ‘Rozelle Rule’, named after an early NFL Commissioner. The rule stated that when a player’s contract ended, he or she became a free agent and could be signed by a different team than the one he or she was previously on.¹³³ If a player did switch teams, the new team was required to compensate the old team for its loss.¹³⁴ Compensation was determined by the Commissioner and was in the form of money, additional players or future draft picks, or both.¹³⁵ In 1976, a court determined the Rozelle Rule restricted players’ movement between teams, thereby constricting salaries. Therefore, the court held, the Rozelle Rule constituted a mandatory subject of collective bargaining. By not addressing the rule in the league’s CBA it was not protected as a non-statutory exemption to antitrust laws.

¹²⁷ id. at 220.
¹³⁰ id.
¹³¹ id. at 223.
¹³² See Mackey v. NFL, 543 F.2d 606 (8th Cir. 1976).
¹³³ id. at 610-11.
¹³⁴ id. at 611.
¹³⁵ id.
Conversely, in *Wood v. NBA*, the court examined a salary cap limiting the amount a team can pay its players.\footnote{See *Wood v. NBA*, 602 F.Supp. 525 (SDNY 1984).} Although the cap hampered a player’s ability to maximise his or her salary, the court determined the cap was exempt from antitrust laws because it had been bargained over by the players’ union in the CBA; it was therefore a non-statutory labour exemption.\footnote{id.} The cap only affected the parties to the CBA, it involved mandatory subjects of the CBA, and was the result of good faith negotiations.\footnote{id.}

There is a large exception to the interplay between professional baseball and antitrust laws in the United States, an exception that no other professional sport enjoys. In 1922, the United States Supreme Court decided professional baseball was not a business that involved interstate commerce and therefore issues that related to the business of baseball were immune from antitrust laws.\footnote{See *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*, 259 US 200 (1922).} Proliferation of players’ unions and CBAs have made this immunity essentially meaningless for professional players. However, for minor league players and for team owners the exemption is still meaningful. Minor league players are still bound to the original team they signed with.\footnote{David Greenberg, ‘Baseball’s Con Game’, Slate (19 July 2002, 10.36 am), www.slate.com/articles/news_and_politics/history_lesson/2002/07/baseballs_con_game.html.} League management can block a team’s attempt to relocate to a more lucrative city. There are several examples of states’ attorneys general being blocked from even investigating antitrust activity by the MLB or team owners owing to this immunity from antitrust laws.\footnote{Minnesota Twins Partnership v. State ex rel. Hatch, 592 N.W.2d 847 (Minn 1999); Major League Baseball v. Butterworth, 181 F. Supp. 2d 1316 (ND Fla 2001).}

Antitrust laws do not only apply to professional sports. In March 2015, the Ninth Circuit Court of Appeals found the NCAA rules forbidding compensation to university athletes for using their image or likeness were subject to antitrust laws.\footnote{See *O’Bannon v. NCAA*, 802 F.3d 1049 (9th Cir. 2015).} The case began when Ed O’Bannon, who played basketball at UCLA from 1991 to 1995, noticed his image was being used in a video game.\footnote{Eden Laase, ‘O’Bannon vs. NCAA Results Explored’, *The Gonzaga Bulletin* (26 October 2016, 10.38pm), www.gonzagabulletin.com/sports/article_2bcaddee-9bd7-11e6-b3dd-e7ca37a83d69.html.} His original claim argued student athletes should be paid for the use of their likeness by the NCAA upon graduation from university. The NCAA responded by arguing that paying a student athlete would contradict the amateur nature of university sports. The court ruled that the NCAA is a business, and requiring student athletes to sign over rights to their likeness in order to be eligible to play violated antitrust laws.\footnote{id.} As a result, students no longer must sign away the rights to their likeness to be eligible to play. Donald Remy, the chief legal officer for the NCAA, noted disappointment in the US Supreme Court’s refusal to review the case, but applauded the Ninth Circuit’s decision recognising amateurism’s essential nature of collegiate sports.\footnote{Associated Press, ‘Supreme Court rejects NCAA appeal of Ed O’Bannon Case’, LA Times (3 October 2016, 10.50am), www.latimes.com/sports/sportsnow/la-sp-supreme-court-ed-obannon-20161003-snap-story.html.
VIII SPORTS AND TAXATION

In the United States, one of the most fundamental aspects of taxation is determining one’s domicile or legal residence (actual physical residence and the intent of making it one’s permanent home). Domicile is important because it establishes whether a state has the ability to tax a player’s worldwide income. Even if a player is domiciled in one state, that player may still be taxed as a non-resident in another state. This requires a complicated process of apportioning income to different states based on where games are played.¹⁴⁶ To further complicate the domicile issue, in many instances players live in a given team’s state or country only during the season and live elsewhere during the off season.¹⁴⁷

State tax rates vary from state to state. The majority of US states use a bracket system to determine a player’s income tax. In California, for example, a person who earns over US$1 million per year is taxed at a rate of 13.3 per cent, whereas a person who earns less than US$18,610 is taxed at 2 per cent.¹⁴⁸ Colorado, Illinois, Indiana, Massachusetts, Michigan, North Carolina, Pennsylvania and Utah apply a flat tax rate, meaning that every individual, regardless of income, is taxed at the same percentage.¹⁴⁹ In contrast, Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming do not have any individual income tax.¹⁵⁰ State taxes are generally deductible on federal income tax returns.¹⁵¹ However, even after state tax deductions, athletes who live in states with no state income tax can maintain up to 10 per cent more of their salary than athletes who play for teams in other states with an income tax.¹⁵²

Generally, the US government uses a bracket system similar to that of many states, such as California. Similar to state taxes, US tax law allows the taxation of a US citizen regardless of where they live in the world.¹⁵³ However, under some circumstances a US citizen may qualify for exclusion of certain types of foreign earnings.¹⁵⁴

IX SPECIFIC SPORTS ISSUES

i Doping

In the United States, professional baseball and football are most heavily scrutinised when it comes to performance-enhancing drugs (PEDs).

In December 2007, a government report was released detailing the history of PEDs in the MLB. It specifically named several players who allegedly used such drugs, which in turn brought the attention of the media and fans to the epidemic. The MLB’s response was to

¹⁴⁹ id.
¹⁵⁰ id.
¹⁵² Footnote 146, at 414.
create harsh punishments for PED users. The MLB now mandates that every player will be subject to a minimum of two drug tests a year, with no cap on how many additional random tests a suspected PED user can be given. The policy dictates that a first-time offending player must sit out 50 games, second-time offenders must sit out 100 games and third-time offenders are banned from baseball for a minimum of two years.

Similar to baseball, the NFL began testing and enforcing its penalties more intensely in recent years. The NFL maintains the right to randomly test players during pre-employment (free agents and rookies), annually during the preseason, randomly during the regular season, during the postseason, during the offseason or anytime the NFL believes it has ‘reasonable cause’. Like baseball, a player may be tested as many times as the league feels necessary. In the NFL, first-time offenders are suspended for four games without pay, second-time offenders are suspended for a minimum of six games and third-time offenders are suspended for 12 months. After the third offence, the NFL must reinstate an athlete before the athlete can play again. In addition to the prescribed suspension, offenders are not allowed to be around the team or any team facilities while on suspension.

Although the NHL and the NBA have experienced less pressure from the media to regulate PED use, both leagues have established drug-testing policies and repercussions for failed tests. The NHL bans the same substances that are banned by the World Anti-Doping Association (WADA). However, unlike the NFL and the MLB, the NHL does not perform tests during the off season, and the league can only require up to two random tests during a given season. Punishment for PED users varies. All players who fail a drug test are automatically referred to the league’s substance abuse programme. The length of the punishment begins at 20 games without pay for the first violation, extends to 60 games without pay for a second violation and results in a permanent suspension from the league for a third violation.

The NBA’s CBA establishes that players may not be tested more than four times per season. Like the NHL, upon a failed test, the NBA requires automatic entrance into the

159 id.
161 Footnote 156, at 311.
league’s substance abuse programme. Punishment in the NBA for PED use ranges from a multiple game suspension for first-time offenders, to a ban from the league after a fourth failed test. The NBA does not test its players during the off season.

The prevalence of doping in professional sports led to the creation of WADA. WADA was established in 1999 as an international independent agency composed and funded equally by the sports movement and governments of the world. Its key activities include scientific research, education, development of anti-doping capacities and monitoring of the World Anti-Doping Code – the document harmonising anti-doping policies in all sports and all countries. In June 2018, WADA opened the first World Anti-Doping Global Athletes Forum in Calgary where athletes from 54 countries gathered to discuss and further the anti-doping movement in international sports. One international athlete, Beckie Scott, called doping the greatest threat to sports today. Whistleblowers and other insiders also spoke to the Forum about the Russian Doping Investigation.

ii  Betting

In the United States, there is a long history between gambling and sports. Unfortunately, players, coaches and other officials have periodically been implicit in illegal sports betting. One of the most famous instances occurred in professional baseball and is referred to as the ‘Black Sox’ scandal. In the 1919 World Series, the Chicago White Sox lost to the Cincinnati Reds. Eight White Sox players were later accused of intentionally throwing the game in return for bribery money. Although the players were exonerated, they were still banned from baseball for life. Since then there have been other occasions in US sports where players have helped gamblers by intentionally missing free throws, fumbling the football or throwing a ‘phantom’ punch.

Professional coaches have also been caught up in gambling scandals. Former NHL assistant hockey coach, Rick Tocchet, was found to be financing a nationwide gambling ring. In baseball, Pete Rose was betting daily on MLB games while managing a team. The reason for the concern is that when managers and athletes bet on the game, their decisions are made based on the chance to win money, which may be counter to the team’s best interest. To this day, Pete Rose has not been inducted into the Hall of Fame (even though many argue he should be) and is banned from baseball.

In May 2018, the Supreme Court of the United States struck down a 1992 law known as the Professional and Amateur Sports Protection Act, which effectively banned commercial sports betting in most states. This decision allows states to legalise an estimated US$150 billion in illegal wagers on professional and amateur sports that Americans make.
each year. In *Murphy v. National Collegiate Athletic Association*, No. 16-476, Justice Alito wrote in his majority opinion, ‘Congress can regulate sports gambling directly, but if it elects not to do so, each state is free to act on its own.’ Since May 2018, 12 states have joined Nevada in offering legal sports betting. In 2019, Montana, Washington, DC, Tennessee, Illinois, New Hampshire and North Carolina passed bills legalising sports betting that have yet to take effect as at the time of writing.

### iii  Manipulation

Analytics are a major part of baseball and sports. The ‘Moneyball’ era has made statistics king and analysed information a premium in baseball and sports generally. Today, professional sports view every action in a game as a bit of data to be used for a more successful analysis and prediction.

Some forms of manipulation receive criminal attention from government authorities. In 2015, members of the St Louis Cardinals were investigated by the Federal Bureau of Investigation (FBI) for possibly hacking a database owned by the Houston Astros. The Astros had reported cybersecurity breaches going back to 2014. The FBI investigation focused on persons employed by the Cardinals management who had gained access to passcodes owned by the Astros.

### iv  Grey market sales

In the United States, the resale of tickets for sporting events is referred to as ‘scalping’, and is controlled by individual states’ laws. Some states such as Minnesota allow for the unregulated resale of tickets. Other states have laws against reselling tickets but upon a closer examination of the law shows the prohibitions are very nuanced. For instance, in Arizona, reselling tickets is only illegal within 200 feet of the venue. Other states, such as Georgia, New Jersey and New York, require a licence to sell or resell tickets.

Regardless of the state jurisdiction, anti-scalping legislation is directed at the seller of the tickets and not the buyer. Patrons that buy tickets should be alerted to the fact that the tickets themselves might be forgeries. It is not uncommon for scalpers to sell tickets for seats that do not even exist in a given venue. Patrons that purchase their tickets on the grey
market also need to consider whether the tickets were originally bought with a stolen credit card. In 2006, Ticketmaster invalidated 1,000 Barbra Streisand concert tickets because they were bought with stolen credit card information.  

**X THE YEAR IN REVIEW**

i Concussion suits

More than 4,500 former NFL players sued the NFL (beginning in 2011) alleging the league concealed the long-term dangers of concussion. Before the start of the 2013 season, a settlement was reached providing any former NFL player showing symptoms consistent with long-term concussion-caused damage would be eligible for awards of up to US$5 million. The presiding US District Judge, Anita B Brody, would not approve the settlement. Her concern was over the amount of money, US$765 million, not being enough to cover all the possible claims. Eventually a settlement was reached in April 2015. The most notable change included uncapping the amount of the settlement, which ensures damages for affected retired NFL players and their families.

However, many former players opted out of the 2015 settlement and instead sued the NFL separately, alleging the earlier settlement did not adequately include all former players with varying concussion-related symptoms. Those players challenged the 2015 settlement based on the fact that the settlement only covers former players diagnosed with Alzheimer’s or Parkinson’s disease and players who have already died from chronic traumatic encephalopathy (CTE), a degenerative brain disease that was, until very recently, only diagnosable posthumously. The settlement did not address former players currently exhibiting possible symptoms of CTE. The Third Circuit Court of Appeals denied those players’ challenge to the settlement. Certain players objected further, petitioning the United States Supreme Court for writ of certiorari. The Supreme Court declined to review the settlement, making...

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184 id.


188 id.

the settlement final. It is estimated the uncapped deal will provide more than US$1 billion to a class of over 20,000 retired players. Although the settlement was finalised in January 2017, a number of players have encountered difficulties collecting their settlement funds.

The concussion lawsuits did not stop with the settlement. Former New England Patriots player Aaron Hernandez committed suicide in April 2017 while serving a life sentence for the murder of Odin Lloyd. Following his death, Hernandez’s family sent his brain to Boston University’s CTE Center for further study. At only 27 years of age, Hernandez was diagnosed with Stage III CTE, a level typically seen in players with a median age of death of 67 years. Hernandez’s family sued the NFL and the Patriots seeking US$20 million in damages claiming the NFL was ‘fully aware of the damage that could be inflicted from repetitive impact injuries and failed to disclose, treat or protect him from the danger of such damage’. There is a question as to whether Hernandez is part of the concussion class action settlement. If he is, the settlement could preclude his family’s claims. The NFL intends to vigorously contest Hernandez’s claim.

The NFL has implemented new protocols to address concussion concerns. In July 2016, the NFL and the NFL Players Association agreed to enforce new concussion protocols to include disciplining clubs with fines and future draft picks. Further, the NFL orchestrated several rule changes in 2018 to reduce the risk of concussions. One change was meant make the kick-off safer by removing running starts and wedge-blocking. Another change was the added ability for referees to take players off the field who are showing concussion symptoms. Finally, the NFL implemented the controversial helmet-hit rule. The helmet-hit rule made it a penalty for players to initiate contact with the helmet by lowering the head. A violation of

191 id.
194 id.
195 id.
196 Footnote 190.
198 Footnote 187.
this rule can lead to player disqualification based on the severity of the violation. Following these rule changes, the NFL reported a 29 per cent drop in reported concussions during the 2018 regular season. In May 2016, the NCAA revised a settlement first proposed in 2013 with a number of student athletes creating an opportunity for students suffering from concussion-related injuries to sue their universities. The previous US$75 million settlement raised concerns it might do away with otherwise-valid injury claims. The new agreement would enable students to sue their school directly, but only on behalf of fellow players in a given sport.

Federal courts are also addressing claims by former NHL players. In October 2016, a federal judge allowed former hockey players to amend a previously filed class action suit adding the estate of player Lazarus Zeidel, who was posthumously diagnosed with CTE. The suit alleges the NHL hid the harmful effects of head injuries. In June 2018, Minnesota Federal Court Judge Susan Nelson denied the hockey players’ motion for class certification, which means former players will not be automatically added to the lawsuit, but instead will have to file individually. Shortly after that decision, Judge Nelson ordered the parties to attempt mediation.

ii Premier football

In 2015, the NBC Sports Network acquired the TV rights for the English Premier League from the 2016/2017 season to the 2021/2022 season. The deal cost the NBC Sports Network US$1 billion and provided NBC with the rights to broadcast 380 live matches every year. Although the network admitted the deal itself is not profitable, NBC Sports Network stated it adds to its profitability overall.

iii Daily fantasy sports and other sports betting

In 2015, the Minnesota Wild of the NHL and Emil Interactive Games LLC, parent of DraftOps, a daily fantasy sports (DFS) operator, entered into a sponsorship agreement.

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200 id.
203 id.

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May 2016, the Wild filed suit alleging breach of contract and unjust enrichment, seeking US$1.1 million, plus 1.5 per cent interest per month, along with US$50,000 in damages. Emil proffered an unexpected response, claiming the contract is void because the state of Minnesota has not legalised the relevant type of gaming. The court denied Emil’s motion to dismiss in part because Emil failed to cite any legal authority addressing whether online DFS activities were unlawful in Minnesota. Unfortunately, Minnesota will have to continue to wait for clarification. Although legislation aimed directly at DFS gaming was introduced again in 2018, the bill did not pass the house. The courts are also at a standstill because, shortly after the denial of Emil’s motion to dismiss, Emil filed for Chapter 11 bankruptcy, which then stayed the litigation in Minnesota.

In April 2018, a draft sports betting bill was circulated in the Minnesota legislature. The bill would have authorised sports betting including mobile sports wagers, and created an overseeing commission. The Minnesota legislature, however, did not make any official action on the draft bill before adjournment. In March 2019, the Minnesota Senate tax committee voted 5:2 to send a bill that would allow sports betting at Minnesota’s tribal casinos and at the state’s two horse-racing tracks. The bill also allowed sports betting through mobile applications linked to authorised sites. Minnesota legislators, however, have raised concerns that the bill does not do enough to reduce the negative externalities of widely available gambling. As a result, the sports gambling bill is a long shot to pass.

**University sports and compensation**

In contravention to long-standing NCAA rules, California governor Gavin Newsom signed a bill that will allow students playing university sports to make commercial use of their identities. The Fair Pay to Play Act, which takes effect in 2023, makes it illegal for California universities to deny student athletes the right to compensation for the use of the students’ names, images and likenesses. One limitation is that a student athlete’s endorsements must not conflict with the universities’ endorsement deals. For example, a student may not be sponsored by Nike if the school already has a deal to wear Adidas apparel. The law also allows students playing university sports to engage sports agents to represent them professionally.

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210 Minnesota Wild Hockey Club, LP v. Emil Interactive Games, LLC, et al., No. 16-cv-01545 (WMW/TLN), Doc. 32 at pp. 6–7 (D Minn 28 December 2016).

211 Minnesota Wild Hockey Club, LP v. Emil Interactive Games, LLC, et al., No. 16-cv-01545 (WMW/TLN), Doc. 33 (D. Minn. 3 January 2017).


214 id.


217 id.
The NCAA argues that the California law would create competitive imbalance as more student athletes will be drawn to California schools so that they can monetise their identities, thus giving California schools an advantage in recruiting. As a result, in what many commentators consider to be an empty threat, the NCAA threatened California universities with possible disqualification from NCAA championships if the Fair Pay to Play Act is implemented.218

XI OUTLOOK AND CONCLUSIONS

Concussions

The NFL is approximately a US$12 billion-a-year industry.219 Fallout from concussion litigation will continue to impact the NFL decisions going forward. Players suffered 281 concussions in the 2017 season – the highest in six years.220

NFL Commissioner Roger Goodell has stated that making the game safer is the NFL’s number-one priority.221 In an open letter, Goodell outlined the NFL’s new initiative ‘Play Smart, Play Safe’, which comprises several new steps the league intends to take to address concussion-related injuries and their long-term effects.222 The initiatives include an additional US$100 million for medical research, engineering advancements and the creation of an independent, scientific advisory board to advise and steer scientific research regarding concussions. Further, in the next league labour negotiation, Goodell intends to address what the league can do to better serve retired players. In 2017, 25 NFL teams purchased new high-tech helmets that are designed to lower the risk of concussions.223 The NFL has implemented new safety regulations, including one that penalises players that lead with the crown of their helmets to initiate contact against an opponent on any play.224 These rule changes in the 2018 season contributed to a 29 per cent drop in the concussion rate.225


Until recently, it was thought CTE could only be diagnosed through a brain autopsy after a person had died. However, researchers at Brown University and VA Boston Healthcare System believe they have developed a method that could help diagnose CTE in living patients. The ability to test for CTE during one’s life could impact the talent pool. Several players have left NFL citing concerns for their health and safety, including Husain Abdullah, Chris Borland and John Urschel. The ability to test for CTE could also implicate the terms of the NFL class action settlement. The settlement did not address former players currently exhibiting possible symptoms of CTE. While the NFL would not be required to add CTE as a recognisable condition, the settlement does require the NFL meet with retired players every 10 years to evaluate whether the changes are warranted. If science continues to progress and players can be diagnosed with CTE while alive, it would be reasonable to request an amendment to the settlement.

ii Football

Football is the world’s most popular sport, and its fan base is still growing. The top 20 football clubs in the world are worth an average of US$1.6 billion dollars and earned an average of US$428 million in revenue during the 2016/2017 season, an increase of 40 per cent from five years ago. Football’s popularity is also rising in the United States with a 27 per cent increase in interest since 2012. In 2016, the average MLS team was worth US$185 million, up 80 per cent from 2013 estimates. In 2013, the MLS averaged 18,600 attending fans per match; in 2017, that number increased to 22,112 fans per game. Those numbers put MLS attendance ahead of both the NBA and the NHL.

Football’s growing popularity is being met with new stadiums. Minnesota’s MLS team, Minnesota United FC, played its first season in the brand new Allianz Field in 2019.
site preparation for the US$200 million stadium, Allianz Field, began in late 2017.\textsuperscript{236} The stadium seats nearly 20,000 fans.\textsuperscript{237} While the stadium is privately funded by the team and its investment partners, the city and other public sources contributed more than US$18 million in infrastructure and funds to clean up the surrounding area.\textsuperscript{238}

\section*{iii University sports}

With California’s new Fair Pay to Play Act enacted in 2019, other states are looking to pass similar legislation.\textsuperscript{239} In 2019, proposals have been made from state lawmakers in Colorado, Florida, Illinois, Kentucky, Minnesota, Nevada, New York, Pennsylvania and South Carolina for laws that allow student athletes to be compensated from their names, images and likenesses.\textsuperscript{240} A broad NCAA response is anticipated, but the organisation has some time to plan as the Fair Pay to Play Act will take effect in 2023.

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\textsuperscript{237} id.
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Chapter 20

VENEZUELA

Pablo Roberto García Pacheco

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

Year after year, Venezuela’s individual and team sports do the opposite of its economics and politics.

This chapter will guide you through its system, and try to simply and easily explain how Venezuela’s sports law system is built up.

i Organisational form

First, the Sport, Physical Activity and Physical Education Act (the Sports Law Act), which is our current sports law, grants organisational autonomy to professional and amateur clubs. Therefore, they can decide on their organisational form. The criteria that classify different types of organisations distinguish between associative organisations and organisations of the People’s Power; professional and non-professional clubs are considered associative organisations.

The Act specifically talks about organisational autonomy, under which clubs can dictate and sanction their statutes and internal regulations, and define their structure, on the basic content established in this law.

Non-professional clubs – which are conceived as organisations outside federative sports focused on promoting sports activities for educational, training, recreational, social and health purposes – have the support of public sector sports bodies and entities.

Professional sports clubs are the most popular expression of the associative sports system and are constituted under non-profit private law forms or by registration in the National Sports Registry, carried out in each municipality where the club is formed.

The National Sports institute is the sports governing body. Its organisational form consists of a main authority called the Directory. The Directory is formed of:

- a president, named by the President of Venezuela;
- five directors designated by the Ministry of Sports;
- a representative of the workers of the National Sports Institute;
- a representative of the National Athlete Commission;
- a representative of the Venezuelan Olympic Committee;

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1 Pablo Roberto García Pacheco is a junior partner at Hoet Pelaez Castillo & Duque.
2 http://www.asambleanacional.gob.ve/leyes/sancionadas/ley_orgánica_de_deporte_ actividad_p%C3%ADsica_y_educación_p%C3%ADsica#.
3 The Sports Law Act, Article 27.
a representative of the Venezuelan Paralympic Committee;

a representative of the National Federations; and

a representative of the sports legends of Venezuela.

ii Corporate governance

There are no specific laws that regulate sports organisations; however, we are of the opinion that sports organisations for profit and private law that carry out an economic management of sport would be subject to the Antitrust Law, which regulates the exercise of economic competition and sanctions actions that favour unfair competition.

Article 3 of this law states that natural and judicial organisations, either private or public, national or international, with profit or non-profit activities within Venezuela, are subject to this law.

iii Corporate liability

The Sports Law Act contains a chapter that lists violations of the law and their respective sanctions. It establishes the subjects of the disciplinary regime and its jurisdiction; among those subjects, are managers and technical staff of sports organisations. In these cases, the responsibility corresponds to natural subjects and can be attributed by social organisations promoting associative sport and by the Sports Justice Commission; the latter has prevalence.

The Sports Law obligates any sports organisation to establish within their by-laws a section of disciplinary regulations that covers at least the following:

a a detailed system of infractions, in accordance with the rules of the corresponding sport modality, graduating them according to their severity;

b principles and criteria that ensure differentiation between the mild, serious and very serious nature of the infractions;

c a detailed system of penalties, in accordance with the rules of the corresponding sports modality;

d a detailed system of gradation of sanctions corresponding to each one of the infractions, as well as the causes or circumstances that exempt, attenuate or aggravate the responsibility of the offender or infringer, its form of application and the requirements of extinction of responsibility;

e prohibition of double sanctions for the same facts, the application of favourable retroactive effects and sanctioning for non-typified infringements prior to the time of their commission; and

f application of the principles governing the exercise of disciplinary and sanctioning powers.

The process by which a responsibility is attributed is contemplated in the Organic Law of Administrative Procedures, with exception of any infractions made by a person in the developing of a sports meeting or a training session. No one may be sanctioned for life or for

5 The Sports Law Act, Article 74.
6 www.oas.org/juridico/PDFs/mesicic4_ven_ley_org_proc_adm.pdf.
an indefinite period, and every person sanctioned shall have the right to an appeal before an instance higher than the body that ordered the sanction. Article 767 of the Sports Law Act states that:

*The National Sports Institute is empowered to apply suspension or cancellation penalties for recognition, licenses and registrations to the leading and directing entities of social organizations promoting sports and professional sports when they incur violations of the law and its regulations or when the sports hierarchical entity of said organizations so requests it to the governing body, as a consequence of the violation of the statutory and regulatory provisions and once the administrative procedure has been fulfilled, in accordance with the Organic Law of Administrative Procedures, or the that is applicable in accordance with the legal system.*

II  THE DISPUTE RESOLUTION SYSTEM

i  Access to courts

The Sports Law Act anticipated the Sports Justice Commission,8 which is entitled to rule the decisions referred to clubs, athletes and other sports stakeholders, when facing severe infractions such as contractual matters, doping, technical arbitration or electoral disputes controversies. The Commission is composed of a Sports Dispute Resolution Chamber, and a Mediation and Education Commission, in addition to a Lawyers Commission. These rulings are only appealable in the state courts.

The Commission’s creation was approved in 2018 by the Venezuelan Olympic Committee and is now functioning.

ii  Sports arbitration

Besides the Sports Justice Commission, is the Conciliation and Arbitration Business Centre9 (CEDCA), ‘a non-profit civil association, founded in 1999, dedicated to promoting conciliation and arbitration as alternative methods for the economic and effective resolution of commercial disputes, within the framework of national and international legal system’. The CEDCA is an independent centre, linked to the Venezuelan-American Chamber of Commerce and Industry, to which natural or legal persons, public or private, can go to solve their commercial conflicts.

Among the members of this organisation, there are many experts in sports law matters who could eventually constitute an arbitral court on sports-related conflicts.

Before the Sports Justice Commission and the CEDCA, any sports stakeholder can decide its sports-related matter to either local courts, the correspondent federation or arbitration courts.

iii  Enforceability

As in many other areas of the law in Venezuela, while the legal framework is enough, the enforcement system is very weak. Once a decision is ruled by a sports governing body or an arbitral tribunal in Venezuela, it will be executed through the sports entity corresponding

7 The Sports Law Act, Article 76.
8 The Sports Law Act, Article 77.
and is only appealable to the courts as an administrative dispute, in accordance with the provisions of the Sports Law Act. In this case, the actors will be facing a factual problem instead of a legal problem.

III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator

Article 79 of the Sports Law Act states a list of violations of the law, in which No. 12 explicitly talks about the obligation of a sports event organiser to provide all security measures to grant safety and prevent any type of violence within the sports facilities. The most common example, unfortunately, is how the violence in south American football has obligated organisers to develop programmes to prevent encounters between opposite teams’ fans; the lack of these types of measures is considered a direct violation of this law.

ii Relationship between organiser and athletes or clubs

The same article mentioned in subsection i, but under item No. 13, establish how organisers must provide all security measures for the practise of the physical activity. More specifically, a literal interpretation of this Article could exempt event organisers as it talks about employers and workers of a sports organisation; however, a broader interpretation could arise when a club host a sports event such as a football game, where it is fully responsible for its own workers, from players to technical staff, and also is responsible for the visiting team; notwithstanding, this Article clearly states the obligation to an organiser of granting safety to any athlete or club involved in the event.

iii Liability of the organiser

In Venezuela, there are no regulations that refer especially to the organisation of sporting events. However, the infractions and sanctions referred to in the Sports Law Act are applicable. Organisers also have civil and criminal responsibility.

Article 1.185 of the Civil Code\footnote{www.oas.org/dil/esp/Codigo_Civil_Venezuela.pdf.} states as follows:

\begin{quote}
The one who intentionally, or through negligence or recklessness, has caused harm to another, is obliged to repair it. Reparation must also be made by those who have caused harm to another, exceeding, in the exercise of their right, the limits set by good faith or by the object in view of which this right has been conferred.\end{quote}

Likewise, any subject that has a right that links it to the event organiser, whether legal or contractual, may require it.

In criminal law, the exercise of criminal action will depend on the nature of the crime. In general, it will be exerted \textit{ex officio} by the Public Ministry, unless it is a crime of private instance.

Article 24 of the Penal Act\footnote{www.oas.org/juridico/spanish/mesicic3_ven_anexo6.pdf.} states that: ‘the criminal action must be exerted \textit{ex officio} by the Public Ministry, unless it can only be exercised by the victim or at his request.’ Also,
it is stated in the Penal Act that any crime of private instance can only be exercised by the victim, the actions that arise from the crimes that the law establishes as a private instance and their prosecution will be done according to the special procedure regulated in the referred act.

iv Liability of the athletes

In this case, when talking about liability of an individual athlete, a distinction must be made between a situation that arises from normal sports activity, versus a situation that derives from an action that clearly does not come out of what you can consider normal playing action. Think of a foul committed during a football game. According to its level of severity, the action could finish in a disciplinary sanction executed by the team or the sports governing body. If, instead, the action committed is not a severe foul but an actual physical attack towards another player, outside of game action, or a punch against a spectator, the athlete will be liable for criminal or civil actions as the case may be.

v Liability of the spectators

There are no specific laws that regulate the liability of a spectator; thus, civil and criminal liability will rely on any persons that commit a fault during the realisation of any sports events as it would be if the action were committed elsewhere.

vi Riot prevention

As there is no specific law to prevent riots during sports events, cases must be analysed exactly as detailed in Section III.i. Article 79 of the Sports Law Act, under item No. 12, explicitly talks about the obligation of a sports event organiser to provide all security measures to grant safety and prevent any type of violence within the sports facilities.

Among these measures, the hosting club will have to sustain a cooperative relationship with the local police to act in case of a possible riot. Depending on the level of risk, determined by the nature of the match itself, a club will always evaluate the possibility of increasing the actions to be taken to grant the security of all actors involved in the event.

IV COMMERCIALISATION OF SPORTS EVENTS

i Types of and ownership in rights

Among the definitions contained in the Sports Law Act, there is one called ‘economic management sports organisations’. These organisations are defined as public or private entities created under private law dedicated to the production and commercialisation of goods and services associated with sports.

In Article 61 of the Act, it clearly specifies what sports-related rights can be exploited in Venezuela, as follows:

a the provision of the public service for the promotion, development, training and administration of sports, physical activity and physical education;
b the organisation of professional sports practice, including professional clubs and leagues;
c the production and commercialisation of goods and services associated with sport, physical activity and physical education; and
d the intermediation of professional contracts, sponsorship or representation of athletes, professional or not.

12 The Sports Law Act, Article 6(11).
ii Rights protection

Venezuela does not have a specific law to protect sports-related rights; all rights established by law are those listed in the Sports Law Act, specifically in the article explained in Section IV.i of this chapter.

The principal issue for a right holder to seek protection of its right is to fully comply with the requirements listed by the law, mainly the registration in the National Sports Registry to be recognised as a sports entity.

Article 9 of the Sports Law Act\(^{13}\) establishes that all actors involved in the sports business must file for registration before the National Sports Registry to gain legal recognition and to eventually be a legal right holder. The business can therefore seek its protection from:

- any social organisation that promotes sports;
- professional sports entities, agents and scouts working within Venezuela;
- companies directly or indirectly managing any sports facility;
- companies dedicated to the direct or indirect managing of a social or recreation club;
- companies that manufacture, import, store, distribute or commercialise sports equipment; and
- any other entity indicated by the Directory of the National Sports Institute.

iii Contractual provisions for exploitation of rights

Venezuela does not have any mandatory provisions to be included in a licence agreement or in a right purchase contract. While the object of the contract is lawful, as would be the case with sports rights, there are no restrictions established by law for the conclusion of contracts of this kind. Regarding licence agreements, the main topics to address within the contract are territoriality, duration and limitations to the exploitation for the rights.

V PROFESSIONAL SPORTS AND LABOUR LAW

i Mandatory provisions

The Labour Law Act\(^{14}\) contains a chapter dedicated to workers of professional sports. This chapter touches topics that must be addressed in every contract between an athlete and a club. A labour contract between an athlete and its club must be in writing and it should address all conditions towards the relation of work as well as the regime of transfers from one entity to another. Unless expressly stated, the relationship will be considered indefinitely. According to local legislation, every worker must have a day to rest within every week. This day is Sunday according to Article 184 of the Labour Law Act; however, due to the nature of the sports activity, when a professional sports worker does not enjoy his or her Sunday as a rest day, the employer will be obligated to compensate with the granting of another day within the week as a day for rest.

ii Free movement of athletes

Neither the Sports Law Act nor the Labour Law Act prevents a limit on foreign players in professional teams; however, depending on each sport, a different rule will apply towards the presence of foreign players in each competition.

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Using baseball as an example, Chapter V of the Venezuelan Professional Baseball League by-laws explicitly regulates the presence of foreign players participating in each club. Article 5.1 states that each team participating in the championship must not exceed seven imported players. Also, if an imported player gets disincorporated or replaced from the weekly active roster by a team at any time or under any circumstance, he or she will not be allowed to be reinstated until the next 14 continuous days from the day of his or her disincorporation.

### Application of employment rules of sports governing bodies

Article 218 of the aforementioned Labour Law Act defines a sports worker as any athlete that with professional character acts per a salary, under the dependence of an employer, constituted by an sports entity. The same article states that sports workers will be governed by the provision of the law, its regulation and international treaties with foreign sports organisations, as long as these do not conflict with local legislation.

This being said, when using football in Venezuela as an example, it is regulated by the Federation of Venezuelan Football, which is duly affiliated to the South American Football Conference and FIFA.

The Venezuelan Professional Baseball Championship goes completely in hand with the Winter Agreement, which is a treaty made between the Caribbean Professional Baseball Confederation and Major League Baseball (MLB) that regulates the participation of players that belong to any MLB organisation in the professional leagues of the countries.

### SPORTS AND ANTITRUST LAW

As indicated in Section I.iii, sports organisations for profit and private law that carry out an economic management of sport would be subject to the Antitrust Law, which regulates the exercise of economic competition and sanctions actions that favour unfair competition.

### SPORTS AND TAXATION

The Venezuelan Law of Income tax states that athletes that reside in Venezuela must pay income tax for their enrichments worldwide, and athletes not resident in Venezuela must pay income tax for enrichments from their activities in Venezuela. The income obtained by athletes residing in Venezuela is taxed with income tax according to the general regime applicable to residents in Venezuela, regardless of whether the cause or source of income is in the country. With the objective of avoiding double international taxation, when the income of the athletes comes from activities abroad or their cause is outside Venezuela, the tax paid abroad may be credited against the tax to be paid in Venezuela.

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16 [www federacion venezolanadefutbol org](http://www.federacionvenezolanadefutbol.org).
17 [www conmebol com](http://www.conmebol.com).
18 [www seriedelcaribe net](http://www.seriedelcaribe.net).
19 [www mlb com](http://www.mlb.com).
21 [www oas org juridico spanish mesicic3 ven anexo22 pdf](http://www.oas.org/juridico/spanish/mesicic3_ven_anexo22.pdf).
If the income received by the athlete resident in Venezuela for activities carried out in a country with which Venezuela has signed an agreement to avoid international double taxation, the provisions of the agreement will apply, allowing the state to tax income as the method that will be applied to avoid double international taxation.

**VIII SPECIFIC SPORTS ISSUES**

**i Doping**

Doping is not contemplated in the Penal Act as a criminal offence; however, according to Article 79(6) of the Sports Law Act, failure to comply with the controls for the detection of the use of prohibited substances is considered an offence under the Sports Law Act, punishable by fines between 1,000 tax units (TU) and 3,500 TU.

In Venezuela, the Professional Baseball League created its own anti-doping programme, with the intention of increasing control measures on the consumption of prohibited substances and thus guarantee fair competition, the health of the players and the performance of the sport to the public.

This programme establishes sports-type penalties with suspension to participate in the league from five games up to three seasons.

**ii Betting**

The law that regulates this matter is the Venezuelan Lottery Act and it does not contemplate prohibitions for sports betting. There are no restrictions within our legal framework for sports betting as it is completely legal in Venezuela, and cross-border bets are 100 per cent viable.

**iii Manipulation**

The Sports Law Act does not include the manipulation of results of a sports match; however, each sport has regulations within their by-laws, and incorporates or creates commissions to prevent match-fixing. Venezuela still needs to improve its legal measures to attack this problem, which affects all actors involved in the sport business.

**iv Grey market sales**

Equally, there is no specific prohibition within the legal system to prevent grey market sales. Sadly, the corruption involved in the business has been stronger than the desire to solve this situation that affects sports fans throughout the country year after year.

Baseball fans in Venezuela are the most affected by this practice because this is the sport in which the local tournament gets the most fans to visit stadiums during the whole season. Other than baseball, international football games involving the national team or a club competing in Copa Libertadores would be the most attractive to ticket resales.

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23 www.loteriadelzulia.gob.ve/documentos/Ley_Nacional_de_Loter%C3%ADa.pdf.
IX THE YEAR IN REVIEW

As it is internationally known, Venezuela is immersed in one of the largest economic, political and social crises in the history of the region. Currently, with a usurping regime maintaining power at all costs, most countries in the world have placed their eyes on the development of the present crisis, waiting for a resolution.

During the past few years, the United States has employed sanctions as a policy tool in response to activities of the Maduro regime. The President of the United States has issued executive orders, administrated and enforced by the Office of Assets Control (OFAC) of the United States Department of the Treasury, which prohibit trade or financial transactions and other dealings by US persons, unless authorised by OFAC. US persons must comply with OFAC regulations, including all US citizens and permanent resident aliens regardless of where they are located, all persons and entities within the United States, all US-incorporated entities and their foreign branches.

As a result of these sanctions, MLB has stated as follows:

MLB has been in contact with the relevant government authorities regarding the Executive Order issued by President Trump on Venezuela. MLB will fully adhere to the policies implemented by our government. With respect to the Venezuelan Winter League, MLB will suspend its involvement in that league until it receives direction from the relevant agencies that participation by affiliated players is consistent with the Executive Order.24

The scope of this decision taken by MLB in adhesion to the sanctions imposed by the United States on the Venezuelan regime, significantly compromises the development of the professional baseball championship, since practically 95 per cent of the players who are members of Venezuelan teams belong to these MLB organisations, either in minor leagues or at the highest level.

Venezuelan regime authorities have declared, after knowing MLB’s position on sanctions and its decision, that the championship should be developed in any way and at any cost. The Venezuelan Professional League typically starts in the second half of October; at this point, the schedule has not yet been published and so it remains to be seen how this year’s championship will take place.

X OUTLOOK AND CONCLUSIONS

It is incredible how the players in the national women’s football team continue to face high levels of discrimination, very little economic support and a highly differentiated treatment compared with men’s sport despite having achieved so much.

This being said, countries such as the United States, Colombia, Australia, Venezuela and Sweden lead all the tables related to incoming and outgoing transfers of players, which reflects the significant growth of women’s football and, interestingly, these countries are not usually among the countries most involved in transfers of the men’s football. According to the study published by FIFA entitled ‘Women’s transfers in ITMS’,25 eight of the 10

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associations whose clubs were reflected in the top of international transfers participated in the FIFA World Cup in Canada in 2015, and seven of them were in the top 15 of the FIFA’s Women’s World Rankings. The development of discipline in different latitudes has led to the substantial growth and development of their athletes.

The case of Venezuela is interesting; although it has not yet participated in a women’s football competition, its under-17 and under-20 categories always achieve outstanding performances in international competitions, which places them in the global focus. In 2018, Venezuela, after the United States, was the country with the most transferred players with a total of 64. After the under-17 South American Championship, held in Barquisimeto, Venezuela, in 2016, Venezuelan Daniuska Rodríguez was nominated for Puskas Award at the Best Gala. The following year, after his brilliant participation in the Jordan World Cup 2016, Deyna Castellanos, also Venezuelan, was nominated again for the Puskas Award and was among the three finalists for the Best Player Award of the season with Lieke Martens and Carli Lloyd. Similarly, players such as Sandra Luzardo, Nayluisa Cáceres, Verónica Herrera, Michelle Romero, Gabriela García, Lourdes Moreno and Oriana Altuve are already beginning to take great steps in their professional development.

In October 2017, FIFA made a historic decision in favour of the development and growth of women’s football when, in an amendment to the statutes, women’s football was included in the obligations that all international transfers of players be carried out under the International Transfer Matching System. However, FIFA is still indebted to women’s football because when women’s football was excluded from the solidarity mechanism and training rights compensations, a significant void was created that exempted female junior football development schools from receiving monetary incentives after the training of a player. FIFA’s application of the mechanisms without distinction from men’s football could have created an obstacle for the transfer of players from one country to another; however, the solution is to create a system that encourages transfer, without forgetting the junior football schools that are currently feeding the world of women’s football.
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He is a mediator of six years’ standing, and is accredited by the judiciary of Kenya to mediate employment, civil, commercial and family disputes, and has recorded remarkable success in the settlement of disputes assigned to him.

He is published in various legal international, regional and local journals of repute. He is currently the editor in chief of the TripleOKlaw Advocates Above Standard publication, which is a peer-reviewed quarterly legal magazine. He was also ranked as the overall ‘second runners up best young lawyer of the year 2017–2018’ in Nairobi, effectively being the best specialist dispute resolution advocate in that year. In February 2014, he was the best advocate in Kenya in an all-Kenyan law schools moot court competition. In September 2014, he was ranked eighth in Africa in an all-African law school human rights moot court competition. In 2016, he was top of his graduating class in the Kenya School of Law in legal writing and drafting.

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Mr Lloyd is ranked as a Band 1 Sports Lawyer by *Chambers and Partners* (Asia-Pacific), and is also recommended by *Who’s Who Legal* as one of the world’s leading sports lawyers. He acts as judicial officer for New Zealand Rugby League and Netball New Zealand. He regularly defends rugby union players and has appeared as counsel at over 100 rugby judicial hearings, including at iRB/World Rugby and SANZAAR levels. In 2019, Mr Lloyd was appointed as counsel for 11 of the 20 teams participating at the 2019 Rugby World Cup in Japan, including all 10 ‘Tier 2’ unions as part of World Rugby’s support programme for those nations. He has worked with a number of elite-level athletes and organisations, including the Volvo Ocean Race, board-sailor JP Tobin, rugby players and officials Ma’a Nonu, Jean de Villiers, Bakkies Botha, Sergio Parisse, Sir Graham Henry, Sir John Kirwan, Daniel Carter and James Haskell, the Australian Grand-Prix Corporation, the AUT Millennium Institute (New Zealand’s National High Performance Training Centre) and national sports organisations, including Athletics NZ and Tri NZ.
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Prior to joining Al Tamimi & Company, Daniel practised sports law in the UAE for approximately four years, and before that his practice included handling cross-jurisdictional matters between Egypt and France.

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Mitch has acted in large-scale, high-value disputes in the Supreme Court of Queensland; acted for a financial institution in relation to the Royal Commission into Banking, Superannuation and Financial Services; and advised on complex contractual disputes.

Mitch holds a Bachelor of Laws and a Bachelor of Business (Management) from Bond University in Queensland.

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John M Ohaga is currently the managing partner of TripleOKlaw Advocates, LLP. He has been involved in numerous complex domestic litigation as well as high-value domestic and international arbitrations particularly in commercial law. He advises many leading companies listed on the Nairobi Securities Exchange, numerous private companies and some of Kenya’s largest state corporations.

In the course of his career, he has appeared regularly before the Kenyan Superior Courts, including the Court of Appeal and the Supreme Court.

He is a chartered arbitrator and a trustee of the Chartered Institute of Arbitrators (Kenya Branch), a board member of the Nairobi Centre for International Arbitration, the Convener of the Law Society of Kenya’s Committee on Alternative Dispute Resolution, chair of the Kenya Sports Dispute Tribunal and a member of the Mediation Accreditation Committee.

PABLO A PALAZZI

*Allende & Brea*

Pablo A Palazzi obtained his degree at the School of Law of the Catholic University of Argentina and an LLM from Fordham Law School (New York City, US). Mr Palazzi is admitted to practise law in both Argentina and New York. He has provided clients with advice on all matters related to intellectual property and internet law (including copyright, trademark and patent prosecution, intellectual property litigation, ambush marketing and
image rights, and domain name dispute resolution). His clients include international and
national organisations related to sports, brands interacting with sports players, internet
companies, social networks and online retail companies.

Allende & Brea and Pablo Palazzi have worked for the following sports-related clients
and matters: River Plate, FIFA, La Liga, City of Buenos Aires (the unit in charge of organising
the 2018 Summer Youth Olympics), the Adidas/Reebok merger, Fox Sport (TV rights issues),
Mastercard (sponsorship agreement with AFA and agreement with Boca Juniors) and Ambev
(advertising of football player Diego Maradona). Mr Palazzi was also a panellist in the case
Futbol Club Barcelona v. Javier Garcia de Leániz (WIPO Case No. D2017-1308) related to
the domain name ‘barça.com’, and leading counsel for the plaintiff in the judicial case Paenza
v. Chilavert (related to the legal standard applicable to the use of the pseudonym CHILA – a
well-known football player – for blocking a trademark application).

JANE RAHMAN
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Jane Rahman is an English-qualified solicitor and senior counsel in the arbitration team at
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BEN REES
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Ben Rees is a managing associate at Northridge. He works with sports governing bodies,
clubs, players, broadcasters and other commercial parties in contentious matters before the
English courts, arbitral panels (including before the Court of Arbitration for Sport), and
disciplinary panels (including before UEFA and FIFA bodies). He also has considerable
experience in leading investigations (on both governing body, and club or athlete sides) and
in drafting, and advising on, sports rules and regulations. His recent experience includes
redrafting the rules of the BHA and the FA’s Disciplinary Regulations, acting for the French
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Edoardo Revello is a managing director and co-founder of SportsGeneration. He is an
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PÉTER RIPPEL-SZABÓ
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Péter Rippel-Szabó advises broadcasters, agencies, sports gear manufacturers, state bodies, sports federations, clubs, athletes and agents on broadcasting matters, organisation of events, enforcement of rights, marketing and player contracts, regulatory issues, disciplinary procedures and day-to-day operations, as well as internal regulations of sports federations. Péter has particular experience in esports-related legal, business and regulatory issues, leading a team of lawyers to set up the full regulatory framework of an esports federation and advise on the organisation of esports events. He is often invited to speak at national and international conferences and expert workshops on sports law. He contributed to the ‘Study on sports organisers’ rights in the EU’ and the ‘Study on assessment and management and prevention of conflicts of interest in the prevention and fight against betting-related match-fixing’ for the European Commission. He is co-author of the textbook *Sports Law – The Civil Law of Sports*. According to *The Legal 500* (2016): ‘Péter Rippel-Szabó is a key name for broadcasting and sports law.’ Péter is the editorial board member for LawInSport’s Europe division. In addition to his extensive sports sector experience, Péter is an experienced adviser on commercial agreements. He graduated from the University of Pécs in 2008 having completed the LLM programme at the University of Erlangen-Nüremberg as a DAAD scholarship holder, where he studied German law and sports law in 2008 and 2009.

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Antonio Rocca, a former professional football player and beach football player, is the managing director and founder of AR Sports & Law. He is a national judge for the Italian Federation of Equestrian Sports, an assistant coordinator on the postgraduate course ‘sports law and sporting justice’, held at the University of Milan, and a co-founder of the Scientific Sports Law Centre. Antonio regularly provides assistance to football players, coaches and other athletes, as well as to professional and amateur football clubs.

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Michał Sałajczyk is an associate in the intellectual property and data protection team at Bird & Bird’s Warsaw office. Michał is an attorney-at-law.

Michał specialises in intellectual property, advertising, and gaming and gambling law. He also advises on matters concerning e-commerce and unfair competition. His experience includes advice on athletes’ image rights as well as drafting and negotiating sports sponsorship agreements, including the agreement between a leading Polish football club and its main sponsor – a sports betting company. He advises individuals and businesses from the creative industry, such as advertising, and interactive agencies, production houses, artists and entertainers. He also has extensive experience in providing comprehensive legal services regarding film and TV production.
His practice also includes preparing terms and conditions for e-commerce services, regulations for contests and promotions, and advising on aspects of their organisation. In addition, he has experience in IT-related issues.

**SABRINA SAXENA**  
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Sabrina Saxeena is an English-qualified associate at Al Tamimi & Company's employment and incentives practice. She is also the employment representative within the Al Tamimi sports and event management sector group, the healthcare sector group, and the innovation and efficiency sector group. Sabrina advises clients on contentious and non-contentious employment law matters onshore and within the various free zones, including the DIFC and the ADGM. She advises foreign and local companies on all aspects of employment law in the UAE ranging from recruitment, drafting and advising on [drafting] employment contracts, company policies and procedures, ESOPs and incentive plans, company restructures – including mergers and acquisitions – end of service payments, pensions and employee entitlements under UAE laws, as well as employment-related litigation. Sabrina has successfully represented a number of clients at the DIFC Small Claims Tribunal and at the ADGM Court as well as at the onshore Labour Court.

Sabrina obtained a degree in pharmacology, subsequently obtaining a second degree in law and qualifying as a solicitor. Prior to joining Al Tamimi & Company, Sabrina worked as a solicitor in the United Kingdom. During this time, she advised multinational corporations on a wide variety of matters, including claims brought before the UK Employment Tribunal.

**PAUL SHAPIRO**  
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Paul Shapiro is a managing associate at Northridge. His experience includes acting for athletes, brands and rights holders on sponsorship, licensing and merchandising programmes. He also regularly advises on governance issues and financial regulation in sport, and on player contracts, football transfers and image rights structures. In addition, he has particular expertise in establishing new sports competitions and tournaments. He has also spent time on secondment at Nike, where he advised on the merchandising programme for Nike's key football assets, and the FA, where he advised on the FA's commercial rights programme. Paul has completed the BASL/De Montfort Law School diploma in sports law and practice with distinction and has returned to lecture on the course. He speaks at conferences and on university courses, and has appeared as a legal commentator in *The Telegraph*, *The Independent*, Sky Sports News and BBC Sport. Paul is also a non-executive director of England Handball. Paul is recommended in *The Legal 500* for sports law.

**STEVE SILTON**  
*Cozen O'Connor*

Steve Silton is a partner at Cozen O'Connor and focuses his practice on sales, and professional athletes and sports franchises, financing, securities placements and related work for medium-sized corporations, banks, credit unions, financial groups and purchases of businesses. Steve also applies his corporate experience in the representation of professional
athletes, agents and franchises, documenting everything from endorsement contracts to secured financing deals. He also works with distressed businesses in their reorganisation efforts. Steve serves on Cozen O’Connor’s board of directors.

Steve is a frequent author and lecturer, and most recently taught a class at the University of Miami Law School called ‘Representing a Professional Sports Franchise’. His co-instructors included Danna Haydar, associate general counsel at the Tampa Bay Lightning and Kevin Warren, COO of the NFL’s Minnesota Vikings. Additionally, Steve serves as an advisory board member of the University of Miami School Sports and Entertainment Law LLM. The firm is nationally recognised for its work in sports law and was recently recognised by Holt Hackney Publications as one of their Top 20 Law Firms in the Professional Sports Team Industry.

Cozen O’Connor held its fourth Sports Law CLE and Players Panel with representatives from professional and amateur sports, owners and executives, agents and agencies, athletes, venues and arena management companies, corporate sponsors and sporting equipment manufacturers attending. Steve led the programming for this day-long CLE event featuring speakers from all facets of pro and amateur sports, including the Olympics, university programmes and the major leagues.

PRUDENCE J SMITH
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Prudence J Smith is a partner in Jones Day’s Sydney office. Prudence is a highly experienced competition and antitrust law practitioner who advises clients on a full range of competition regulatory law issues and has experience in a range of matters in Australia, New Zealand and throughout ASEAN. Prudence has a particular interest in complex litigation involving expert evidence and regulatory bodies. She has been involved in disputes in the Federal Court of Australia, the Australian Competition Tribunal, state supreme courts and also in regulatory matters involving the Australian Competition and Consumer Commission, the Therapeutic Goods Administration, the Australian Energy Regulator and the Department of Health.

Prudence holds a Bachelor of Arts, Master of Commerce, Master of Arts and Bachelor of Laws from the University of New South Wales. She is also presently studying for a Master of Law at the University of Melbourne. Prudence holds practising certificates in New South Wales and The High Court of Australia.

LUÍS SOARES DE SOUSA
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Luís Soares de Sousa has been a partner at Cuatrecasas since 2001; his career in law spans more than 30 years. His practice focuses on corporate and commercial law and M&A, in sectors such as transport, infrastructure, construction, energy, financial services, leisure gaming, entertainment and sports.

He has been a legal adviser on privatisation operations, cross-border leasing transactions, business restructurings, the structuring and developing of real estate investments, public procurement and project finance.

Besides Portugal, his legal expertise also encompasses Portuguese-speaking African countries, particularly Angola and Mozambique.

He is recommended by several directories, including Chambers and Partners.
Luís Soares de Sousa has a law degree from the Lisbon Universidade Livre (1984), and has been a member of the Portuguese Bar Association since 1985.

ROMAIN SOIRON

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Romain Soiron is a partner at Joffe & Associés' sports law department.

As a lecturer on the master's degrees of sports law at the University of Aix-Marseille, Romain is widely known for his substantial sports-related work. According to clients quoted by Chambers Europe, Romain Soiron receives glowing reviews from clients, who praise his ‘availability and responsiveness’: ‘we can trust his advice and his knowledge, and we know we are going to have a perfect job when we work with him.’ He is recommended for handling media and broadcasting rights as well as event organisation and contractual agreements.

XAVIER SOLANES

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Xavier Solanes is an associate at the tax department at Al Tamimi & Co, the first law firm in the Middle East to implement a dedicated tax practice. Xavier specialises in advising on international tax structuring and tax aspects of cross-border M&A and investments, relocation of tax residence for individuals and companies, and real estate transactions, as well as providing ongoing tax advice on corporate income tax, VAT, excise tax, withholding tax, transfer-pricing, customs duties and any other tax-related matters. Xavier advises and represents foreign law firms, individuals, family offices, corporate entities, governing bodies and institutions on any tax and customs matters across 17 offices in nine countries.

FEDERICO VENTURI FERRIOLO

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Federico Venturi Ferriolo is a qualified lawyer based in Milan. He is founder of Olympialex.com and a co-founder of the Scientific Sports Law Centre. As part of his academic career, he obtained an LLM degree in international sports law at the Higher Institute of Law and Economics in Madrid. He focuses on sports and media law, including advising athletes, agents, coaches, clubs, leagues and companies on a range of commercial, regulatory and contentious issues. As part of this advice, he regularly assists in proceedings brought before arbitral tribunals and sports-related bodies, such as UEFA, FIFA, the Basketball Arbitral Tribunal and the Court of Arbitration for Sport.

MARCO VITTORIO TIEGHI

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Marco Vittorio Tieghi is a managing director and co-founder of SportsGeneration. His years spent working in Milan in sports, media and entertainment law, while at the same time working as a FIFA-licensed agent, helped him to obtain experience in business and sports marketing. Marco has extensive expertise in professional sports contracts for players, coaches and sports executives, as well as domestic and international transfers of athletes and coaches.
Marco also works as an assistant coordinator on the postgraduate course ‘sports law and sporting justice’, held at the University of Milan and is a co-founder of the Scientific Sports Law Centre.

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Yago Vázquez Moraga was admitted to the Barcelona Bar Association in 2003. He has been a partner at the Spanish law firm Pintó Ruiz & Del Valle since 2014, and is one of its leading lawyers in the litigation and arbitration practice. He holds a master’s in advanced studies in law (DEA) from the University of Barcelona. He specialises in procedural and sports law, and appears regularly before the Spanish courts in matters of a civil, corporate and administrative nature. He is a member of the Licences Committee of the Spanish Football League and a professor lecturing on sports law courses and masters. He regularly participates in sports proceedings before the Court of Arbitration for Sport in Lausanne (Switzerland), assisting the court as ad hoc clerk. He also provides legal advice to clubs and professional athletes, at both a national and international level.

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He also represents clients in litigation before common and arbitration courts and advises clients on intellectual property and personal data protection issues in a variety of business transactions. He is an author or co-author of over 30 articles on intellectual property, as well as a lecturer and speaker at numerous trainings and conferences.
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