THE SPORTS LAW REVIEW

SECOND EDITION

EDITOR
ANDRÁS Gurovits

LAW BUSINESS RESEARCH
THE
SPORTS LAW REVIEW

Second Edition

Editor
András Gurovits

Law Business Research Ltd
THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW
THE RESTRUCTURING REVIEW
THE PRIVATE COMPETITION ENFORCEMENT REVIEW
THE DISPUTE RESOLUTION REVIEW
THE EMPLOYMENT LAW REVIEW
THE PUBLIC COMPETITION ENFORCEMENT REVIEW
THE BANKING REGULATION REVIEW
THE INTERNATIONAL ARBITRATION REVIEW
THE MERGER CONTROL REVIEW
THE TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS REVIEW
THE INWARD INVESTMENT AND INTERNATIONAL TAXATION REVIEW
THE CORPORATE GOVERNANCE REVIEW
THE CORPORATE IMMIGRATION REVIEW
THE INTERNATIONAL INVESTIGATIONS REVIEW
THE PROJECTS AND CONSTRUCTION REVIEW
THE INTERNATIONAL CAPITAL MARKETS REVIEW
THE REAL ESTATE LAW REVIEW
THE PRIVATE EQUITY REVIEW
THE ENERGY REGULATION AND MARKETS REVIEW
THE INTELLECTUAL PROPERTY REVIEW
THE ASSET MANAGEMENT REVIEW
THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW
THE MINING LAW REVIEW
THE EXECUTIVE REMUNERATION REVIEW
ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ADVICE LAW FIRM
ADVOKATFIRMAN NORDIA
AKD
ALLEN & GLEDHILL LLP
ALLENDE & BREA
AL TAMIMI & COMPANY
ALTIOUS
CASTRÉN & SNELLMAN ATTORNEYS LTD
CHARLES RUSSELL SPEECHLYS LLP
COZEN O’CONNOR
CUATRECASAS, GONÇALVES PEREIRA
GOLDENGATE LAW FIRM
GUARDAMAGNA E ASSOCIATI
JOFFE & ASSOCIÉS
MARTENS RECHTSANWÄLTE
MINTER ELLISON RUDD WATTS
NIEDERER KRAFT & FREY LTD
P&A GRUPO CONSULTOR
PINHEIRO NETO ADVOGADOS
PINTÓ RUIZ & DEL VALLE
# CONTENTS

<table>
<thead>
<tr>
<th>Editor's Preface</th>
<th>András Gurovits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 1</td>
<td>ARGENTINA</td>
</tr>
<tr>
<td></td>
<td>Pablo A Palazzi and Marco Rizzo Jurado</td>
</tr>
<tr>
<td>Chapter 2</td>
<td>BELGIUM</td>
</tr>
<tr>
<td></td>
<td>Sven Demeulemeester</td>
</tr>
<tr>
<td>Chapter 3</td>
<td>BRAZIL</td>
</tr>
<tr>
<td></td>
<td>Adolfo Julio Camargo de Carvalho</td>
</tr>
<tr>
<td>Chapter 4</td>
<td>DENMARK</td>
</tr>
<tr>
<td></td>
<td>Lars Hilliger</td>
</tr>
<tr>
<td>Chapter 5</td>
<td>ENGLAND AND WALES</td>
</tr>
<tr>
<td></td>
<td>Jon Ellis, Ian Lynam, Paul Shapiro and Ben Rees</td>
</tr>
<tr>
<td>Chapter 6</td>
<td>FINLAND</td>
</tr>
<tr>
<td></td>
<td>Pia Ek and Hilma-Karoliina Markkanen</td>
</tr>
<tr>
<td>Chapter 7</td>
<td>FRANCE</td>
</tr>
<tr>
<td></td>
<td>Romain Soiron and Aude Benichou</td>
</tr>
<tr>
<td>Chapter 8</td>
<td>GERMANY</td>
</tr>
<tr>
<td></td>
<td>Dirk-Reiner Martens and Alexander Engelhard</td>
</tr>
<tr>
<td>Chapter 9</td>
<td>ITALY</td>
</tr>
<tr>
<td></td>
<td>Maria Laura Guardamagna</td>
</tr>
<tr>
<td>Chapter 10</td>
<td>NETHERLANDS</td>
</tr>
<tr>
<td></td>
<td>Kees Jan Kuilwijk</td>
</tr>
<tr>
<td>Chapter</td>
<td>Title</td>
</tr>
<tr>
<td>----------</td>
<td>--------------------------------------------</td>
</tr>
<tr>
<td>11</td>
<td>NEW ZEALAND</td>
</tr>
<tr>
<td></td>
<td>Aaron Lloyd</td>
</tr>
<tr>
<td>12</td>
<td>PARAGUAY</td>
</tr>
<tr>
<td></td>
<td>Gerardo Luis Acosta Pérez</td>
</tr>
<tr>
<td>13</td>
<td>PORTUGAL</td>
</tr>
<tr>
<td></td>
<td>Luís Soares de Sousa</td>
</tr>
<tr>
<td>14</td>
<td>SINGAPORE</td>
</tr>
<tr>
<td></td>
<td>Ramesh Selvaraj, Tham Kok Leong, Daren Shiau and Sunit Chhabra</td>
</tr>
<tr>
<td>15</td>
<td>SPAIN</td>
</tr>
<tr>
<td></td>
<td>Jordi López Batet and Yago Vázquez Moraga</td>
</tr>
<tr>
<td>16</td>
<td>SWEDEN</td>
</tr>
<tr>
<td></td>
<td>Karl Ole Möller</td>
</tr>
<tr>
<td>17</td>
<td>SWITZERLAND</td>
</tr>
<tr>
<td></td>
<td>András Gurovits and René Fischer</td>
</tr>
<tr>
<td>18</td>
<td>UKRAINE</td>
</tr>
<tr>
<td></td>
<td>Anton Sotir</td>
</tr>
<tr>
<td>19</td>
<td>UNITED ARAB EMIRATES</td>
</tr>
<tr>
<td></td>
<td>Steven Bainbridge, Ivor McGettigan and Laila El Shentanawi</td>
</tr>
<tr>
<td>20</td>
<td>UNITED STATES</td>
</tr>
<tr>
<td></td>
<td>Steve Silton and James Minor</td>
</tr>
<tr>
<td>A1</td>
<td>ABOUT THE AUTHORS</td>
</tr>
<tr>
<td>A2</td>
<td>CONTRIBUTING LAW FIRMS’ CONTACT DETAILS</td>
</tr>
</tbody>
</table>
This second edition of *The Sports Law Review* 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. It puts specific emphasis 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, such 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, as well as in respect of local mandatory provisions that may prevail over or invalidate certain provisions of regulations enacted by sports governing bodies.

Each chapter of this second 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.

This second edition of *The Sports Law Review* covers 20 jurisdictions. Each chapter has been provided by renowned sports law practitioners in the relevant jurisdiction and as editor of this publication I would like to express my greatest respect for the skilful contributions of my esteemed colleagues. I trust also that each reader will find the work of these authors informative and will avail themselves at every opportunity of the valuable insights contained in these chapters.

**András Gurovits**
Niederer Kraft & Frey Ltd
Zurich
November 2016
Chapter 1

ARGENTINA

Pablo A Palazzi and Marco Rizzo Jurado

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 chapter.

In that attempt, we have made a first 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 last edition of the global competition.

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

It is worth noting, however, that the Sports Law\(^1\) (the Law) regulated the promotion of sporting activities throughout the country. The stated purpose of the law is to promote sports in all its forms.

The 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 Law further creates a Registry of Sporting Institutions. Registration in said registry is a requirement to participate in organised sports, both amateur and professional.

---

1 Pablo A Palazzi is a partner and Marco Rizzo Jurado is a senior associate at Allende & Brea.
2 Law 20,655, Article 16.
Organisational form
Each particular sport is regulated by its own governing body. At the national level, only in football are the individual clubs associated to the governing body. For rugby, field hockey, basketball and volleyball, clubs are associated to a regional federation or association, and the regional federations or associations are then associated to a national confederation.

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

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, volley is regulated by the Argentine Volleyball Federation (FeVA), further related to the International Volleyball Federation.

The regulatory entities and associations, both at 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.3

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.

---

3 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. It is worth noting that sports entities are not corporate entities (in the sense that corporate entities are commercial entities). As mentioned above, sports entities are associations which are not for profit.

In that sense, in general, there are no specific regulations relating to sports which attach liability for managers and officers for the simple fact that the individual occupies such 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.4

It is important to keep in mind that 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. As described in more detail below, the 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.5

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.6

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.

It should be noted that 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.7 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.8

---

4 See Section III for further clarifications.
5 See, for instance, AFA Regulations of Transgressions and Penalties, Chapter XVI.
6 See Section VIII.i, infra for more details.
7 See AFA By-laws, Article 13 and Regulations of Transgressions and Penalties, Article 40.
8 See AFA By-laws, Article 5.
Argentina

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 in cases where the plaintiff is a player, the action that caused the damages would exceed ordinary play and disciplinary action taken by the sport’s governing entity.

For rugby, field hockey and basketball 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.

ii 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.

iii 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, 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.

III ORGANISATION OF SPORTS EVENTS

i 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.

9 UAR regulations of procedures, sanctions and recourses of the Argentine Rugby Union, Article 38.
10 CAH Regulations of the Disciplinary Tribunal, Articles 15 et seq.
11 CABB Penalty Code, Articles 52 et seq.
12 FeVA Procedural Code of the Disciplinary Tribunal, Articles 79 et seq.
13 See, for instance, AFA Regulations of Transgressions and Penalties, Article 75.
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 will be described later, organisers of sports events must be very clear in the promotion and publicity 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-time 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 case of individual athletes, it should be noted that sometimes these contractual provisions may be considered labour provisions and subject to labour regulations. However, this has to 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 damages which 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 damages that may occur during the event.

In general, and other than the violation of the riot prevention regulations indicated above, 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 damages 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 damages that go beyond ordinary actions of play, athletes may be liable for damages.14

In 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).

It should be noted that the intervening judge may impose on the spectator the additional penalty of being banned from all sporting events or that particular stadium, or even 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, either in the stadium or arena and the surrounding areas, both before, during and after the event. For instance, among the prohibited matters are 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. Amongst the misdemeanours are the actions which are usually considered riots and incitement to rioting. In that sense, for instance, inciting violence, throwing objects (even lit or that may cause substantial damages), 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.

14 For instance, in the case Santero, Santiago Fabián c. Lobato Juan Guillermo y otros c/ daños y perjuicios (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.
IV COMMERCIALISATION OF SPORT EVENTS

i Types of and ownership in rights

The commercialisation of rights to sporting events can be divided, mostly, into official matches and events, and unofficial matches and events.

First it should be noted that, as will be further explained in Section V, infra, 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 entity 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 broadcast of official competitions at the national level. The governing entities then execute commercialisation agreements with different entities regarding sponsoring, merchandising and broadcast 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.

It should be further noted that in Argentina the most pertinent of broadcast rights relates to football. Currently, the Argentine state owns the broadcast rights to the national first division football tournament. However, the position adopted by the new administration of the AFA and the current government is to gradually terminate the agreement that allows the government to broadcast football matches at no charge via state broadcast (the state programme called Futbol para Todos) and a possible return of the previous privately owned scheme where the AFA grants their broadcast rights to private companies. Moreover, there are projects that contemplate the creation of a tournament similar to Spain's, with a parallel broadcasting scheme.

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, such 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 are rarely violated. The most relevant continuous sporting event in Argentina is, undoubtedly, the local first division football tournament, where all matches are broadcast live, free of charge, either on television or online. President Mauricio Macri’s government has promised that despite the decision to terminate the agreement with the AFA and the TV programme Futbol Para Todos, spectators will still be able to watch football matches on TV free of charge until 2019.

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

It should be remembered that the 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 in 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.

Argentine courts recently 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.  

In this particular case, the advertisement campaign objected showed Javier Mascherano, one of the major players of the Argentine soccer 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 himself appears wearing a blue t-shirt with ‘No. 14’ on his back (his number as a player in the 2014 Brazil

15 This ruling was issued in the case Asociacion del Fútbol Argentino y Otros c. Unilever de Argentina S.A. s/ medidas cautelares (Federal Court Division III, 06/10/2014). For more information on this ruling, we recommend reading the article ‘Argentine court validates first claim of ambush marketing’ by Pablo A Palazzi and Marco Rizzo Jurado published in the Journal of Intellectual Property Law & Practice (Oxford Journals) on 19 September 2014.
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.’

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’.

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).\(^\text{16}\) 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.\(^\text{17}\) In these cases, the players are paid by the relevant governing entity, and not affiliated to 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.

---

\(^\text{16}\) See UAR by-laws, Article 5, where it states that the member entities must ‘exclusively’ promote the sport between amateurs. This is the reason why the SuperRugby team was created within the UAR, as the governing entity is not forbidden from creating and supporting professional athletes.

\(^\text{17}\) Rugby is particularly well known, having created first the High Performance Plan and now a franchise of the world’s Super Rugby Los Jaguares.
ii Free movement of athletes
The laws do 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 per club may be foreign nationals.18 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 (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 supra, clubs and entities are civil associations and not for profit, and, 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-time 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, it should be noted that when both the club or athlete and the organising entity (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 provides for an exemption for income obtained by sports associations that do not have a lucrative purpose. Such 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.

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.19 The law refers to an annex that lists the prohibited substances and methods. Such 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: (1) suspension of the practice of regulated sports between three months up to two years; and (2) 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.20

It should further be noted that 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, 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.

---

19 Law 24,819, Article 2.
20 Said listings can be found in Law 17,818 (groups I through IV), Law 19,303 and the updated listing of the International Narcotics Control Board of the United Nations.
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.\textsuperscript{21}

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.

iii Manipulation

The Sports Law establishes the fixing of matches as a criminal offence. The Law 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 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 at players, officers of the entities and referees and match officials both for offering and accepting payments to benefit or harm 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 between four months and two years.\textsuperscript{22}

iv Grey markets sales

The only sport that has sufficient following for grey market sales to occur and potentially be worthwhile for resalers 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, since it is not a crime but a misdemeanour.\textsuperscript{23} The sanctions are fines, which are not very significant.

\textsuperscript{21} Law 25,295, Article 19.
\textsuperscript{22} AFA Regulation of Transgressions and Penalties, Article 74.
\textsuperscript{23} In the city of Buenos Aires this is prohibited under Article 91 of the Contraventional Code of the City of Buenos Aires.
IX 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 currently has no president elected (interim president Luis Segura was removed) and the FIFA appointed in June 2016 a ‘normalising committee’ presided by Armando Perez to help the AFA move beyond the crisis that has engulfed it for months. The AFA’s president election is likely to happen on 30 July 2017.

Furthermore, the Argentinian government is investigating the AFA for alleged irregularities in the Futbol Para Todos programme.

X THE YEAR IN REVIEW

In general, there have been no recent significant decisions, which is a marked change from the practice of previous years. Perhaps most relevant from the standpoint of the practice of sports is the creation of a Super Rugby Argentine franchise called Jaguares, which started participating this year in the Super Rugby Tournament.

With respect to football, the most important issue in 2016 was the decision of the AFA and Mauricio Macri’s administration to terminate the broadcast licence agreement that allows the government to broadcast football matches at no charge through the programme Futbol Para Todos, in principle from January 2017, and to return to the previous privately owned scheme where the AFA grants its broadcast rights to private companies. In addition, the project of creating a local football tournament (the Super Liga) was another relevant issue in 2016.

XI OUTLOOK AND CONCLUSIONS

Argentine sports, at least those that are the focus of this article, 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.

The most important issue on sports law in Argentina in 2016 was the decision to terminate the licence agreement between the AFA and the government over the broadcasting of the TV programme Futbol para Todos, as mentioned in Section X, supra. The government opened the bidding process for the television rights of 2016/2017, but owing to the local soccer crisis and the division within the AFA, the bidding process was temporary halted.
Chapter 2

BELGIUM

Sven Demeulemeester

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

Belgian law clearly supports the autonomy of sports clubs and sports governing bodies to organise themselves as they see fit. The principle of freedom of association is set out in Article 27 of the Belgian Constitution – ‘Belgians have the right to associate; this right cannot be made subject to any preventative measure’ – and Article 27 forms the basis upon which sports federations are established.

Freedom of association is further guaranteed under Article 2 of the Freedom of Association Act of 24 May 1921, which states that ‘Anyone who, at his or her demand, becomes a member of an association, undertakes, through his or her membership, to submit to the rules, decisions and sanctions taken in accordance with such rules; any rule waiving such freedom, is null and void’.

i Organisational form

Belgian laws do not specifically regulate the organisation or legal form of clubs or sports governing bodies.

In practice, the majority of Belgian clubs and sports governing bodies, with the exception of certain more commercially developed professional clubs or leagues, take the form of a non-profit association. Although a non-profit entity may pursue a commercial activity, seek to make a profit (only profit-sharing is prohibited) or hold a stake in a commercial company (e.g., a company operating merchandising or catering activities), a number of clubs have developed commercial activities that are hardly compatible with their legal form.¹

¹ Sven Demeulemeester is a partner at Altius.
The tax authorities are known to target sports clubs for that reason, and they do not hold back from disqualifying a sports club as a commercial undertaking if such undertaking has falsely taken the form of a non-profit association. In addition, over the past few years, a large number of clubs have changed their legal form to that of a regular limited liability company, which is often more suited to their economic reality.

At present, no club or association is stock-listed.

ii Corporate governance

Belgian law does not provide for specific corporate governance rules for sport clubs or sports governing bodies.4

Based on the principle of freedom of association, the respective articles of association form the basis of a club or sports governing body’s internal governance, while the club or governing body may specify further rules in internal regulations and decisions. In some cases, Belgian law and the sports governing bodies’ rules and regulations may impose the inclusion of specific rules in a club or sports governing bodies’ articles of association.

In addition to laying down the rules of the game, sports federations as a rule specify the administrative, financial and governance requirements of their members.

iii Corporate liability

Belgian law does not provide specific statutory provisions for the liability of a sports organisation’s managers and officers. The general liability rules apply.

There are several grounds upon which an action concerning the liability of a sports organisation’s managers or officers, or both,5 can be based. Furthermore, a distinction should be made between civil and criminal liability.

Further distinctions are drawn within the category of civil liability, such as contractual liability,6 liability claims based on breaches of the articles of association and corporate law provisions, and general tort liability. The joint liability of the managers or officers, or both, may also be considered in some cases.

Although the applicable rules may differ depending on the legal form of the sports organisation and the type of civil liability under consideration, as a general rule, three factors

4 Sports federations must of course also comply with the applicable legal rules, such as the legal rules relating to their type of legal organisation (e.g., the rules for non-profit associations).

5 In cases where a legal entity is appointed as the director, its permanent representative will be personally liable for the performance of the directorship as if he or she carried out the directorship in his or her own name and on his or her own behalf. Moreover, the director (legal entity) and its permanent representative will be jointly and severally liable.

6 Managers and officers are liable towards the sports organisation for any shortcoming in the performance of their duties. A company can only bring a lawsuit based on contractual liability (actio mandati) provided that no valid discharge of liabilities was granted to the directors by the shareholders’ annual general meeting. Third parties may also initiate actions if the liability claim is based on breaches of the articles of association and corporate law provisions. The discharge by the shareholders’ annual general meeting of liabilities put on the directors is not a bar to third-party action in this case.
must be proved to establish liability: fault, damage, and a causal link between the fault and damage. Specific liabilities are foreseen by law for unpaid social security contributions and unpaid withholding tax.

Criminal offences, which may give rise to a director’s personal liability, include breaches of general criminal law, such as fraud and the unlawful seizure of corporate assets. In addition, directors are subject to the specific criminal law provisions contained in, and related to, corporate law. The Belgian Company Code sets out various offences that are criminally sanctioned by fines or jail sentences. Some of these breaches require fraudulent intent.

II THE DISPUTE RESOLUTION SYSTEM

Sports organisations set down the rules and procedures for resolving disputes.

Sports federations set out internal procedures to verify compliance with their rules and to settle disputes regarding the application of these rules. As a result, each sports federation has its own sports justice system, some more elaborate than others, and arbitration procedures complement those internal procedures.

Sports federation-imposed disciplinary measures must comply with public order legislation, and a fair trial must be guaranteed. This obligation means that a defendant must have the right to be heard and the right to receive objective treatment. It is generally accepted that Article 6 of the European Convention on Human Rights (ECHR) applies to justice handed down by sports federations. Sports associations must also comply with their own articles of association, rules and regulations.

While sports federations must comply with their own articles of association, rules and regulations, they often have to strike a balance between retaining their autonomous right to take disciplinary measures and avoiding a defendant having the measures annulled or suspended by a civil court, as the latter damages the association’s credibility. This balance means that associations have a real interest in devising disciplinary procedures that respect the fundamental rights of all the parties involved.

i Access to courts

In Belgium, there are no national courts that deal specifically with sports cases, as this is considered to be both financially and politically unachievable.

8 The right to be heard is considered to be a matter of public order (Supreme Court decision of 29 September 1967).
Defendants have the right of recourse before a civil court. As a result, clauses in sports associations’ rules that state that their members can never have their case heard by a civil court are null and void, because a private association can never act as a court of last instance.\textsuperscript{12}

As sports federations must operate within both their own powers and the Belgian legal system, an interesting interaction takes place between sports dispute resolution and ordinary justice.

First, sports federations’ decisions are subject to ordinary courts’ ‘limited judicial review’.\textsuperscript{13} Courts can reassess decisions made by sports federations if these decisions breach public order legislation or other mandatory legislation or fundamental (procedural) rights.\textsuperscript{14, 15}

These rights include, but are not limited to:

\begin{enumerate}
\item the right to a fair trial;
\item the right of appeal;
\item the right of defence;
\item the right to privacy;
\item the freedom to work; and
\item anti-discrimination laws.
\end{enumerate}

It is important to note that civil courts cannot be seen to act as an appeal court\textsuperscript{16} and that, under the principle of subsidiarity, recourse to the civil courts requires that all other remedies available within the association have already been exhausted.\textsuperscript{17}

Secondly, litigation in criminal courts can interfere with\textsuperscript{18} or run in parallel\textsuperscript{19} to sports justice. Examples in this respect include allegations of match-fixing, assault and battery, money laundering and human trafficking.

Thirdly, when dealing with the relationship between ordinary justice and sports justice, it is equally important to note that for some kinds of disputes, mandatory law provisions impose exclusive jurisdiction on the ordinary courts. This happens most notably in labour dispute cases.

Finally, the Belgian Council of State may have a role to play, especially in doping matters. More precisely, when a public authority gives decisions, that body’s decisions can be challenged before the Council of State.\textsuperscript{20}

\textsuperscript{12} C Coomans, ‘Het sportrecht: een stand van zaken’, 64.
\textsuperscript{13} Brussels Employment Court, 28 November 2008.
\textsuperscript{14} In Belgium, it is generally accepted that Article 6 ECHR likewise applies to sports justice.
\textsuperscript{15} Namur Employment Court, summary proceedings, 7 September 2007; R Blanpain, \textit{De gladiatoren van de sport. In de ban van de sportmaffia}, Brugge, Die Keure, 1992, 149.
\textsuperscript{16} Mechelen Court of Appeal, 2 October 2001; Brussels Court of Appeal, 28 November 2000.
\textsuperscript{17} J De Herdt and S Verhelst, \textit{oc}, 24.
\textsuperscript{18} Regarding the Belgian Football Association, the applicability of the \textit{adagium} has already been accepted (Brussels Employment Court decision of 28 March 1977).
\textsuperscript{19} As a rule, the \textit{non bis in idem} adagium does not apply, as criminal law and disciplinary law have a different scope and purpose.
\textsuperscript{20} For example, the principle of strict liability in doping affairs was challenged in a Council of State judgment of 28 June 2012.
ii Sports arbitration

Arbitration, whether or not in the sense of arbitration as defined in the Belgian Judicial Code, complements the internal sport justice systems of sports federations. The Belgian Court of Arbitration for Sport (BCAS) deals with a wide array of sports cases.

Sports federations, their member clubs, and individual athletes and players, may not be coerced into submitting to arbitration. Under Belgian law, any decision to submit to (international) arbitration must be freely made and, as in many other countries, the issue of what constitutes 'free choice or consent' has been debated at great length by legal scholars,\(^\text{21}\) in case law\(^\text{22}\) and by the sports arbitration panels themselves.\(^\text{23}\)

Belgium has a fairly long-standing track record of 'forum bashing',\(^\text{24}\) especially when it comes to foreign forums such as the Court of Arbitration for Sport (CAS). This track record can be illustrated by a number of cases.

For example, in the Malisse/Wickmayer case, the Brussels court issued an injunction based on a procedural argument that the proceedings \textit{prima facie} did not offer the athletes concerned the minimal procedural guarantees required by Article 6 ECHR: ‘Ms Wickmayer and Mr Malisse rightly raise the question of whether the appeal possibility against the FDC’s 5 November 2009 decision at the CAS sufficiently guarantees the procedural requirements of Article 6 ECHR,’ questioning the fact that ‘the appeal against a decision of a non-purely disciplinary court is entrusted to a private law entity, where athletes are not judged in their own language, where third parties (read the World Anti-Doping Agency) intervene for the first time in the degree of appeal with a view to claiming higher sanctions, and the decisions are in no way whatsoever submitted to the control of a Belgian judge’ and that ‘the CAS, having its seat in Lausanne, uses French or English as its procedural language, whereby translation and interpreter costs are borne by Ms Wickmayer and Mr Malisse.’

In the Keisse case, the CAS banned a Belgian track cyclist for two years because of an adverse analytical finding.\(^\text{25}\) As a result, the cyclist began summary proceedings before the Brussels civil courts seeking an injunction suspending the execution of the ban. As requested, the Brussels Court of Appeal\(^\text{26}\) issued an injunction, and added a clause fining the Union Cycliste Internationale (UCI) €100,000 should it challenge the injunction.\(^\text{27}\)

\(^{22}\) For example, Brussels Employment Court, summary proceedings, 29 June 1982.
\(^{23}\) For example, Belgian Arbitration Commission for Sports, decision of 10 August 1999.
\(^{24}\) It is no coincidence that the Bosman ruling arose from a Belgian case.
\(^{25}\) CAS/2009/A/2014, overruling the Royal Belgian Cycling Federation’s disciplinary committee decision in which the allegations against Mr Keisse were shown to be unfounded as the forbidden substance was found in a polluted food supplement that had been supplied by the team sponsor.
\(^{26}\) Brussels Appeal Court Decision of 10 November 2010.
\(^{27}\) Moreover, the Court gave the ruling worldwide applicability. In a (criticised) ruling, the Brussels attachment judge ordered the UCI to pay Mr Keisse compensation of €100,000 for having prevented him from participating in the ‘Six Days of Bremen’ event.
III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator

Organisers of sports events must take precautionary measures to avoid foreseeable harm towards spectators, and must respect specific duties depending on the particular type of sport and the particular circumstances.

Considering the circumstances, the duty of care can imply that organisers may call upon the public authorities. However, this right does not exempt organisers from observing their personal duty of care.

Access to locations with a particular, foreseeable risk for spectators must be prohibited. Besides taking precautionary measures, organisers must oversee spectators to ensure that they respect these measures. This is a ‘best efforts’ obligation. For certain sports, a safety area or fence between athletes and spectators must be prepared in advance.

ii Relationship between organiser and athletes or clubs

Specific duties apply in the relationship between organisers and athletes or clubs. For instance, an organiser must ensure the quality of the material that is placed at the athletes’ disposal, and must take safety measures to guarantee the safety and appropriateness of the infrastructure.

The organiser must:

a) take into account the athletes’ skill and experience;
b) provide first aid;
c) properly communicate about any risks;
d) properly monitor the event; and
e) if required, call upon the police and other emergency services.

iii Liability

In Belgium, although a person is deemed to accept the normal risks linked to the playing (or, for that matter, the watching) of sport, both civil and criminal liability claims still frequently occur.

Damages before a civil court can be claimed for injuries inflicted on one player by another player to the extent that the latter failed to meet the general standard of due diligence. The action of the player causing the injury is measured against the behaviour that would have been displayed by another reasonable sportsperson placed under the same conditions. Both the injured player and his or her club could claim damages, and both the ‘attacker’ and his or her club could be held responsible. However, arbitration clauses may in some instances hinder the right to bring a tortious liability case before a civil court.

29 Brussels, 26 June 1990.
30 Liège, 15 February 1999.
31 Vred Westerlo, 26 July 1995.
32 Antwerp, 12 December; Mons, 21 December 1995.
33 S Demeulemeester and G Ernes, ‘Civil liability for sports injuries and why courts compete with arbitration in Belgium’, Lausinstorf, 2014.
Unintentional assault and battery is a good example of criminal liability. It is deemed to be proved when the accused has committed a fault that shows a lack of prudence or of taking all necessary precautions (which infringes the duty of care), and if there is a causal link between the fault and the bodily injuries. The practice of sport is not exempt from the application of the Belgian Criminal Code. Belgian case law and doctrine stipulate that, like any normal, careful and reasonable organiser, a sports event organiser has the duty to take all necessary safety measures regarding the factual context, and to avoid bodily injuries to athletes, spectators and third parties.

Spectators frequently cause bodily injuries to other spectators during sports events. Case law and doctrine have discussed several situations, such as when a ball goes out of the play area into the area where the public is seated, and a spectator tries to kick the ball back on to the sports field but instead hits the back of the head of another spectator. This situation has been held to be a fault because of a lack of prudence.

### iv Riot prevention

Two major events have triggered the adoption of specific legislation aimed at preventing riots at football games. The 1985 Heysel disaster and the (co-)organisation of the European Championships in 2000 led to the 21 December 1998 Law on safety on the occasion of football games (Football Law). The Football Law and its implementing legislation together impose a string of obligations on football match organisers and football’s governing body, including:

- an obligation to take precautionary measures;
- respecting certain security requirements;
- appointing a security coordinator; and
- the hiring and training of stewards.

In addition, national match organisers must enter into an agreement with the local public authorities and the police and other emergency services.

### IV COMMERCIALISATION OF SPORTS EVENTS

#### i Types of and ownership in rights

In addition to sponsoring and naming rights, broadcasting rights are the best-known rights to be exploited in Belgium regarding sports.

There is no specific legal framework for the exploitation of broadcasting rights. In professional football, for example, rights usually are sold collectively. This means that each football club does not sell the broadcasting rights to their matches individually, but ‘transfers’...
those rights to a mutual organisation, such as the Pro League, who will then sell the rights of all the clubs (thus, for the whole competition) to one or more television broadcasting companies, mostly on an exclusive basis.

Broadcasting companies have a right to exploit their broadcasts through the mechanism of the neighbouring rights resting on these broadcasts. Article XI.215 of the Belgian Code on Economic Law grants an exclusive right to the broadcasting companies for:

a  broadcasting their broadcasts (both direct and delayed);
b  reproducing their broadcasts;  
c  communicating their broadcasts in a public location accessible by a paid entry fee;  
and 
d  making the broadcast available on-demand and online.

ii Rights protection
As mentioned above, there is no specific statutory framework governing sports rights’ exploitation; these are mainly governed by contractual law and the neighbouring rights law.

iii Contractual provisions for exploitation of rights – restrictions
Restrictions on the possibility of freely exploiting these rights follow on from general competition law and the right to information. Following Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, Belgium has taken measures to guarantee the right of the public to have access to television broadcasts of high-interest sports events (e.g., the final rounds of the football World Cup).

V PROFESSIONAL SPORTS AND LABOUR LAW

i Mandatory provisions
Both Belgian labour law and specific legislation regarding the particular labour relation between athletes and clubs and associations apply.

In sports where labour contracts are not common (tennis, motorised sports, etc.), Belgian labour law does not apply.

The labour law provisions that apply in sports may differ from those applicable to regular employees, most notably in the event of contract termination. However, in practice, players have invoked the application of the severance rules applying to regular employees, as these tend to require the payment of less compensation in lieu of notice.38

In addition, mandatory labour law provisions may trump practices that may be considered common in the world of sport. Option clauses that allow an employer to unilaterally extend a contract’s term are, for instance, considered to be null and void.39 Liquidated damages clauses in the event of a breach of contract are also unenforceable.

38  Antwerp Employment Appeal Court, 6 May 2014.
39  Mons Employment Appeal Court, 8 February 2012; contra Antwerp Employment Appeal Court, 9 February 2005.
Belgium

Belgian law bans any transfers in breach of contract for players to play in another team in the same league during the same season. Formerly, a more extensive ‘gentleman’s agreement’ existed between the Belgian clubs not to hire players in breach of their contracts with other Belgian clubs. However, this arrangement has not always been observed, and is moreover deemed to be in breach of Belgian employment and competition law.

Specific rules exist for some sports (e.g., cycling), which arise from sports associations’ by-laws and regulations. These rules should, however, comply with higher legal sources to be enforceable, which is unfortunately often not the case.

ii Free movement of athletes
The fundamental rules set out in EU primary law – the Treaty on European Union, the Treaty on the Functioning of the Union and the EU Charter on Fundamental Rights (Charter) – apply and have direct effect in Belgium. These rules mean that, inter alia, the principle of free movement applies (including the limitations on the restrictions that the Member States can impose) as well as the general principles of EU law (inter alia, non-discrimination) and the rights protected by the Charter. In addition, the Belgian Constitution and primary legislation further support the principle of non-discrimination. In the light of these rules, any limitations on foreign players as, for instance, foreseen by certain sports governing bodies, are problematic.

iii Application of employment rules of sports governing bodies
Sports governing bodies’ rules and regulations generally follow Belgian employment legislation, and they cannot deviate from it. If sports governing bodies try to impose additional clauses and requirements on athletes that are working within the framework of an employment contract, such extra rules would be unenforceable to the extent that such clauses are contrary to the (protective) Belgian employment laws, and to the extent that they would decrease athletes’ rights or increase their obligations.

VI SPORTS AND ANTITRUST LAW
Belgian sports law practice has seen an increasing number of high-profile cases based on antitrust law: whether it has concerned state aid, competition reforms, player release rules, FIFA’s third-party ownership (TPO) ban or UEFA’s financial fair play (FFP) regulations, antitrust law has been invoked. Another example is FIFPro’s challenge of the football transfer system before the European Commission.40 The Belgian Competition Authority recently dealt with different cases in sports.

VII SPORTS AND TAXATION41
Belgian tax law provides a specific tax regime for non-resident athletes. Income arising from activities performed in Belgium is subject to non-resident income tax, regardless of whether

41 Written by Daan Buylaert, an associate at Tiberghien.
the income has been paid or granted to the players themselves or to some other individual or legal entity. Tax is to be withheld at source by the taxpayer or intermediary paying the income (generally the club or event organiser) at a flat rate of 18 per cent.

The 18 per cent withholding tax is final for athletes whose activities in Belgium do not exceed 30 days in a 12-month period, unless the athlete opts to use the ‘regularisation system’. This system involves taxation at the Belgian progressive tax rates, and allows the athlete to file a tax return in which he or she can deduct the actual expenses. In contrast, the flat-rate 18 per cent system only allows the deduction of a notional lump sum for expenses. Athletes whose activities exceed the 30-day period will always be subject to taxation at the progressive tax rates. The 18 per cent withholding tax will then be deductible from the final tax due.

Domestic tax rules only apply when, under an applicable double tax treaty, Belgium has acquired the taxing rights, or where no treaty applies.42

VIII SPECIFIC SPORTS ISSUES

i Doping

The national Doping Act of 1965, which labels the use of doping in sports a specific criminal offence, was abolished by the Belgian regions when they gained legislative powers over sports competence. However, the use of doping remains a criminal offence under other, more general legislation, such as drug enforcement laws.

Furthermore, sports federations hold disciplinary powers and are entitled to take disciplinary measures, such as temporarily suspending a player.

ii Betting43

The Games of Chance Act of 1999 allows betting, except for betting on events or activities contrary to public order or public morality, or betting when the outcome of the event is already known. Bets may be placed in licensed bricks-and-mortar betting shops, mobile betting shops or online.

Bookmakers and other parties that accept bets must obtain an ‘F1’ licence, and if they wish to accept online bets, an ‘F1+’ licence. Only operators holding a land-based licence are allowed to go online. Operators of permanent or mobile betting shops must obtain an ‘F2’ licence that must be based on an existing ‘F1’ licence.

Betting is allowed on any sports events as well as on the following types of horse racing, provided that the bookmaker has been duly licensed by the competent Belgian horse racing association: mutual and fixed-odds or conventional bets on Belgian horse races organised by a horse racing association accredited by the competent federation; mutual or fixed-odds betting on foreign horse races; and horse race betting organised inside horse racing tracks.

Finally, as an exception to this rule, the following bets may be collected outside betting shops (although only by a licensed bookmaker): bets on horse or dog races, or on other sports events, taken as a complementary activity in newsagents’ shops, by an individual or a

42 For an in-depth report on Belgian tax regime for incoming professional team sports players, see Global Sports Law and Taxation Reports December 2012.
43 Written by Philippe Vlaemminck, partner at Pharum Legal.
company registered as a commercial company (but not made in pubs or bars); mutual bets on Belgian horse races organised by a horse racing organisation accredited by the competent federation placed within the grounds of horse racing tracks; and mutual betting on foreign horse races placed within the grounds of horse racing tracks.

Any operator providing sports betting to Belgian residents without holding the licences required by the laws on gambling may be subject to criminal prosecution. Furthermore, a person found guilty of any of the following activities may be liable to a fine:

- advertising illegal games of chance or illegal gaming premises;
- participation in games of chance that are known to be illegal;
- recruitment of players for illegal gaming establishments or games of chance;
- breaches of the rules on betting or breaches of the obligation to identify anyone entering a casino or gaming arcade; and
- breaches of the rules related to bonuses paid to customers.

Sanctions may be doubled for second offences, subject to certain conditions. Moreover, the courts are empowered to seize the funds, materials, tools, machines and any other means used to perform the illegal activity. Finally, the courts can also order the closing of the gaming premises or the Gaming Commission’s withdrawal of a licence.

iii Manipulation

Match-fixing as such is not a criminal offence in Belgian law. However, in spite of the fact that the Belgian Criminal Code does not provide a specific provision sanctioning match-fixing, this practice may fall under the scope of other, more general legal provisions. These provisions, for example, sanction corruption by civil servants within public functions and corruption by persons outside public functions (e.g., for bribery of or by sports companies, clubs, associations). There is the expectation that Belgium (including its three regions that hold sports competence) will ratify the Enlarged Partial Agreement on Sport convention on the manipulation of sports events. This development could facilitate further legislative initiatives.

Depending on the gravity of the offence, criminal sanctions include imprisonment, fines, or both. Furthermore, sports federations also hold disciplinary powers and are entitled to take disciplinary measures such as the temporary suspension of a sports club or a player.

iv Grey market sales

The Sale of Event Tickets Act of 2013 bans the organised sale of sports events tickets outside the channels established by the event organiser. The occasional selling-on of tickets is also forbidden to the extent that the price paid is higher than the initial ticket price, with anyone having paid more than the original ticket price being able to reclaim the excess. Criminal sanctions apply.

44 Written by Philippe Vlaemminck, co-head Altius’ sports law practice.
45 Article 246 Belgian Criminal Code.
46 Article 246 Belgian Criminal Code.
IX THE YEAR IN REVIEW

The issue of a club’s liability for the actions of its supporters remains high on the agenda, in relation to both stadium riots and banners.47

In addition, the new competition format adopted by the Belgian Football Association, which saw clubs fearing a closed league, triggered widely covered legal action.

The Belgian competition authority seemingly accepted the reviewability of an arbitral award’s conformity with EU competition law.48 The Brussels Court of Appeal considered broadcasting of superprestige cyclo-cross to be premium content for which a tendering process was deemed necessary.49 Furthermore, Belgian courts have been (and will continue to be) the battleground for many high-profile international cases occupying the attention of the world of sports law, with the legal challenges of UEFA’s FFP regulations50 and FIFA’s TPO ban51 being probably the best known.52

X OUTLOOK AND CONCLUSIONS

The tension between ‘sports’ and the ‘law’ is increasing and, more specifically, between those that consider sports to be a special case requiring a specific legal and regulatory framework, and those that consider sports to be no different from any other business activity; recent governance and ethics issues in the world of sport seem to have shifted the balance somewhat in favour of the latter.

There has been an increase in litigation between sports governing bodies and stakeholders impacted by those sports governing bodies’ regulations. Referring to the principle of freedom of association and the specificity of sport, sports governing bodies impose rules and restrictions on other sports stakeholders, frequently leaving the latter unhappy and bold enough to undertake legal action. Competition law arguments are never far away.

The sports sector is increasing in importance both economically and financially, and is thus becoming ever more globalised and complex. What sports governing bodies, sports events organisers, clubs and athletes all have in common is that they are faced with legal issues in different jurisdictions and in different fields of law, as is demonstrated throughout this publication.

47 BCAS, 10 December 2014.
48 Ruling of the Belgian Competition Authority of 14 July 2016.
49 Brussels, 7 September 2016.
52 This litigation is also a reminder of the importance of the sound application of international private law and procedural law.
Chapter 3

BRAZIL

Adolpho Julio Camargo de Carvalho

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Organisational form

Brazilian sports clubs have been traditionally organised as associations. Initially conceived as entities merely dedicated to educational and leisure aspects that sports practice could provide to a community, sports clubs did not usually have an economic activity as a purpose (let alone as their main purpose).

Law 9,615 of 1998 (also known as Pelé’s Law, after Brazil’s most famous footballer) established that sports clubs engaging in educational, amateur sports activities (as opposed to sports activities practised by professional athletes who receive payment for their performance) should organise themselves, and be managed, in the legal form of an association.

Any sports club organised as an association must primarily focus on the development of sporting practice itself, but many activities perceived as vital to the existence of a sports club (negotiating athlete transfers, media, naming and image rights, or product licensing, to name a few) may be legally pursued by sports clubs as a secondary activity.

Sports clubs primarily acting for a profit from economic activities – that is, those employing capital, workforce (professional athletes) and equipment for the sole objective of obtaining profits from sports events – must migrate from their initial organisational legal form (association) to any of the corporate organisation forms provided by the Brazilian Civil Code (namely, general partnerships, limited partnerships, limited liability companies, joint-stock companies or limited partnerships with share capital).

Sports clubs do not usually migrate to those specific forms of corporate organisation in Brazil, even though such migration is more in line with the purposes of professionally developed sports activities worldwide. This inertia is explained by the fact that most sports

---

1 Adolpho Julio Camargo de Carvalho is a partner at Pinheiro Neto Advogados.
clubs engage in several sports modalities (e.g., football, volleyball, swimming) that enjoy different levels of possible commercial exploitation, which prompts sports clubs’ managing officers to opt for an association as their ‘umbrella’ legal form of choice.

ii Corporate governance

Under Pelé’s Law, the exploitation and management of professional sports activities constitute an economic activity and are thus subject, among others, to the principles of financial and administrative transparency, sound management and accountability of its managing officers.

To keep up with such principles, the by-laws of sports clubs and sports administration bodies (such as confederations at federal level, or federations at state and municipal levels, which are defined by law as ‘sports organisations’) must provide for dismissal of a managing officer:

- if the managing officer is convicted for any felony in a final judgment;
- if the managing officer is found guilty of mismanagement of any public funds by a final administrative decision;
- if the managing officer is derelict in the accounting of a sports club or organisation’s accounts;
- if the managing officer is removed from an elected office in any sports organisation for mismanagement of its assets or for its reckless management;
- if the managing officer defaults on any social security or labour contributions; or
- if the managing officer is declared insolvent.

Upon manifest occurrence of any of the above, prompt action must be taken for removal of a managing officer, regardless of any express provision to the contrary in the by-laws of a sports club or sports organisation.

To ensure sounder governance of sports clubs and organisations, Pelé’s Law sets out minimum accounting requirements for their financial statements, while also ensuring unrestricted disclosure of management-related documents and information to all members or shareholders gathered at a club or organisation’s annual general meeting.

Further, any proceeds from the credits or assets held by sports clubs, sports management organisations or organised sports leagues must always revert solely to their own benefit. Clubs and organisations may not use their assets to pay up their own capital stock or else offer them as collateral to third parties unless the absolute majority of members or shareholders gathered at an annual general meeting decide otherwise and in keeping with the by-laws. If any damage is caused to a sports club or organisation’s assets due to culpable mismanagement, the managing officers will pay from their own assets. Besides, managing officers are jointly and severally liable for any unlawful acts of reckless management or any other acts that run against a sports club or organisation’s by-laws.

Pelé’s Law also establishes other general obligations of sports organisations taking part in any competition involving professional athletes, regardless of the legal form adopted by them. Clubs and organisations must prepare separate financial statements for each economic activity they engage in. These financial statements must separate any recreational and amateur sports activities from a club or organisation’s economic activities, as prescribed by law and in the general accounting standards and principles established by the Brazilian Federal Accounting Standards Board. The financial statements must be independently audited and published on the sports club’s own website and, if applicable, they must also be published on the website of the sports league or organisation to which the club is admitted.
Sports organisations that receive public funding must also submit their approved financial statements, together with the reports of independent auditors, to the Brazilian National Sports Council (CNE). Failure to do so will trigger the penalties set out in specific tax, labour and social security legislation, as well as civil and criminal liability, also rendering the managing officers of a sport management organisation, sports league, club or organisation ineligible for five to ten years to perform any (elected or appointed) duties in any sports club or organisation, as well as in any of the organisations, companies or associations directly or indirectly linked to professional competitions of the respective sport.

Sports clubs or organisations that breach the provisions set out in Pelé’s Law, as briefly discussed above, are subject to different levels of punishment, such as prompt removal of managing officers from any managerial position, or nullity of all acts taken on behalf of the sports club or organisation that may relate to the offence. Managing officers usually include the president of the sports club or organisation, as the case may be (or an agent who currently performs the presidential duties), and any person in a managerial position who commits an offence or fails to act to avoid the offence being committed.

II THE DISPUTE RESOLUTION SYSTEM

i Access to courts
Brazil’s exclusive jurisdiction for resolution of sports disputes rests with the Sports Justice, which does not belong to the general organisation of the Brazilian judiciary branch, and is governed by its own procedural rules. Its decisions derive from the application by its judges and courts of, inter alia, the Code of Sports Justice, enacted by Resolution 29 of 2009 issued by the National Sports Council, and of Pelé’s Law, supplemented by its own precedents.

As such, the Brazilian judiciary branch is not deemed to be the appropriate venue for starting sports disputes: it does not have the necessary practical expertise to deal with the decision-making process that the parties would expect from a ruling on sports matters, nor does it have the adequate procedures in place for analysis of such disputes under the civil law system adopted in Brazil – hence, the judiciary plays only a residual, last-resort role in respect of sports disputes (as further discussed below).

The Sports Justice formally has a private and autonomous nature, but incorporates into its rulings and decisions both state and private regulatory elements as set forth by different sports leagues. This mixture of different sources of governing law is, therefore, the single most tangible sign of state intervention in institutions and sports practices with a view to ideally safeguarding compliance with constitutional principles and legal remedies in the realms of sport practice.

The Constitution of 1988, which established the Sports Justice, states that matters solely involving sporting practices should first be brought to the attention of the Sports Justice, while not denying access to the judiciary with regard to those disputes as well. Such access, however, is defined by both the Constitution and ordinary laws as being residual in nature, and must be raised by the parties only if constitutional principles are violated by the rulings of the specialised Sports Justice jurisdiction. In other words, the parties must have exhausted all instances of the constituted competent Sports Justice before taking the dispute to the judiciary.

Under this particular organisation of access to the courts, some subjects that would intuitively be placed under the radar of the Sports Justice, however, lie outside of it; for
example, a violation of rights that can be remedied only by other courts with exclusive jurisdiction. Issues directly related to labour relations between sports clubs and professional athletes, for example, must always be directed to specialised labour courts.

The principles that guide the decision-making process of Sports Justice are the same as those generally adopted by the judiciary. As such, none of the principles of full defence, expeditiousness, adversarial proceedings, procedural economy, impartiality, independence of the judge, legality, public morality, proportionality and reasonableness are excluded.

ii Sports arbitration

In Brazil, arbitration is mainly regulated by Federal Law No. 9,307 enacted on 23 September 1996 (as amended by Law No. 13,129 of 26 May 2015), and is usually perceived as a faster, more flexible and sophisticated method of dispute resolution than litigation before state courts. Sports arbitration in Brazil can, generally speaking, be practised by any parties that have civil capacity. The dispute to be settled by arbitration must involve only disposable rights (rights that may be transferred, such as property rights), and the content of an arbitral award must not be in conflict with good morals and public policy rules.

To submit a dispute to arbitration under Brazilian law, the parties must execute an arbitration agreement that may be in the form of either an arbitration clause or a submission agreement. The execution of such clause or agreement will create an arbitration commitment under which the parties irrevocably agree to waive their rights to refer the dispute to any ordinary jurisdiction.

The Brazilian Football Confederation (CBF) has appointed a sports arbitration court located in Brazil as the arbitration body that is competent to resolve any issues or disputes arising from sports competitions coordinated by the CBF. All clubs, athletes, referees, coaches, doctors, trainers, assistants, intermediate athletes and others involved in competitions coordinated by the CBF are obliged to make use only of the sports arbitration court to resolve any issues, litigation or disputes that may occur in any of those competitions, thereby being denied access to ordinary jurisdiction. The only exceptions are those specified in the FIFA regulations.

An arbitral award produces the same effect as a decision handed down by the judiciary. Such arbitral award is enforceable in the same way as a judicial enforcement instrument. A foreign arbitral award must be recognised by the Superior Court of Justice to be enforceable in Brazil.

III ORGANISATION OF SPORTS EVENTS

Sports law in Brazil has generally followed the same process of legal segmentation and specialisation as found in other areas of economic, social and political activities, opening up an era termed the ‘Era of Statutes’ conceived to address legal issues once handled through the application of general principles of civil and criminal law.

Law No. 10,671 of 15 May 2003 (Sports Fans Act) and Pelé’s Law form the legal core of the liability regime applicable to sports events, superseding the application of the Civil Code under the legal principle that a special law supersedes the adoption of general laws (lex specialis derogat legi generali).

In this sense, Pelé’s Law equates a sports fan who attends a sports event to a consumer under a consumer relation and, as such, strict liability applies as established in Law No. 8,078 of 11 September 1990, also known as the Consumer Protection Code. Under this
regime, organisers of sports events are ultimately responsible for ensuring not only that spectators and athletes alike have the necessary venue and material conditions for the organisation of a given match or sports event, but also that their safety against risks that can ultimately be traced to the organisation of the sports event itself is effectively guaranteed.

A sports event organiser is said to have strict liability because its role in the sports event itself cannot be viewed merely as a ‘best efforts’ obligation under the circumstances. Aside strict liability, the directors and officers of the organising entities are also deemed jointly and severally liable for any damage caused to spectators attending sports events organised by them.

Sports organisations must disclose the basic guidelines of their relationship with spectators, which must contain information on access routes to the stadium and to the point of sale of tickets, the organisation's financial transparency mechanisms (including provisions regarding independent audits), and the means of communication between spectators and sport organisations. Communication between spectators and sport organisations must occur through the creation of an ombudsman department, the establishment of an advisory body composed of non-member spectators, and the recognition of member spectators whose rights are more restricted than those of other partners of the sport organisation.

Sports organisations are liable for any violation of the Sports Fans Act. Sanctions imposed on such sports organisations include: suspension from office or removal of directors and officers; an organisation's disqualification for tax benefits; or six-month ineligibility for federal government funding.

Sports spectators may organise themselves into organised sports fan clubs constituted as a legal entity, which must keep a registration of all its members and managing officers. If, during a sport event, a sports fan club or any of its members or managing officers promote any kind of rioting or turmoil, encourage violence, or invade a place that is restricted to authorised people only, such sports fan club (and its members and managing officers) will be prevented from attending sport events for up to three years. Such sports fan club will also be liable for any damage caused by its members and managing officers to the sports venue, its environs, or on the way into and from the event.

IV COMMERCIALISATION OF SPORTS EVENTS

According to Law No. 12,395 of 16 March 2011, the arena rights (that is, the image rights of professional athletes during any sports event in which they participate), belong to the sports clubs and organisations, and consist of an exclusive right to negotiate, authorise or prohibit the capturing, fixing, transmission, retransmission or reproduction of images, by any means or process.

Unless there is a collective agreement to the contrary, five per cent of the revenues from exploitation of audio-visual sports rights are transferred to the professional athletes’ unions, which will redistribute these values equally to the professional athletes who participated in the specific sports event. The costs related to arena rights do not extend to occasional reproduction of the sports event for journalistic, sporting or educational purposes only.

These rights are established by the Federal Constitution, which states that protection of an individual's participation in a collective work and the reproduction of human voices and images, including in sports activities, must be as provided by law. However, the arena
rights should not be confused with image rights, given that the arena rights are owned by the sports entities, which can thus negotiate, prohibit or authorise, either for payment or free of charge, the transmission of the show or sporting event in which they participate.

V SPORTS AND ANTIMONopoly LAW

Antitrust conduct in Brazil is governed by Law No. 12,529 of 30 November 2012 (Antitrust Law), which applies to individuals and legal entities, as well as to any associations of entities or individuals, whether de facto or de jure, incorporated or unincorporated, and even if engaged in business under the legal monopoly system, including sports organisations.

As such, sports organisations engaging in economic activities that are in conflict with Brazilian Antitrust Law may be held liable for such acts. Since they also perform an economic activity, sports federations, confederations and leagues are also subject to Antitrust Law even when they are organised as non-profit organisations.

VI SPORTS LABOUR LAW

Professional exercise of any athletic activity characterises an employment relation in Brazil, and must be recorded, as any other professional activity, in the athlete's work and social security booklet, which is a personal identification document described in Law No. 5,452 of 1 May 1943, known as the Consolidation of Labour Laws (CLT). This employment relation is also specifically governed by the provisions of Pelé's Law, which affords special treatment to the career of professional athletes. However, the reality in Brazil is that employment contracts satisfying CLT requirements are generally restricted to certain sports, and mostly to football players. For the vast majority of other sports, an informal hiring model still prevails, in which amateur athletes' wages are preferably paid by general sponsors (not by the sports clubs or associations in their own name).

Specifically with regard to football (by far the most popular sport in Brazil), Pelé's Law recognises the current reality of economic exploitation of football as regards other sports modalities, and establishes express, mandatory provisions for employment contracts only when such contracts are between professional sports clubs and football players.

Professional football players must execute employment contracts with sports clubs in written form, specifying the names of the respective parties and respective remuneration. These requirements do not apply to employment contracts for other sports modalities. Professional football employment contracts must also contain a specific pecuniary fine for default capped at 100 times the amount of annual remuneration owed to the football player, which must also be provided in written form or otherwise arbitrated by specialised labour courts upon the occurrence of an event of default under the employment contract.

Other aspects specifically required for professional football employment contracts are: duration (from three months to five years); registration (football employment contracts must be filed with the national football confederation); a professional athlete's minimum age of hiring (16 years is the minimum hiring age); and mandatory provisions on contract renewal. In addition, football clubs have a right of first refusal upon first renewal of a football employment contract.

When it comes to professional athletes' employment contracts, several practitioners defend that arbitration constitutes a more advantageous method of dispute resolution than the usual submission of each and every labour dispute to the Brazilian labour courts, on
grounds that arbitration, being guided by the principles of expeditiousness and higher expertise, can provide faster and fairer decisions. Pelé’s Law does allow interested parties in sports organisations to settle disputes by arbitration, provided that such alternative has been dealt with in a collective convention or agreement between the employer and its employees, and the arbitration is only initiated on the express consent of both parties through an arbitration clause or arbitration agreement.

VII SPORTS AND TAXATION

Sports organisations may be established as non-profit entities, which are eligible for tax immunity, or as charitable, recreational, cultural and scientific institutions or civil associations, which are exempt from tax, as long as they do not engage in professional sports. In such cases, the sports organisations must follow all preset legal requirements.

Professional sports entities that do not fall into any of the categories mentioned above are regularly taxed as any other Brazilian entity. Thus, the exploitation and management of sports activities constitute professional economic activities, and, consequently, those entities must be organised as required by the Civil Code and are subject to the following taxes and contributions: corporate income tax, contribution on profits, social contribution and profit participation programme contribution.

One of the most noteworthy aspects of Brazil’s tax incentive system is Law No. 11,438 of 29 December 2006 (Sports Incentive Act), which establishes that sports and para-sports projects, once approved by the Ministry of Sports, may receive direct investments treated as allowable expenses on the taxpayers’ income tax returns.

The Sports Incentive Act establishes that corporations taxed on their book income may treat their direct contributions to approved sports projects (either in the form of a one-off donation or via sponsorship) as deductible expenses at up to one per cent of their income tax payable in any single fiscal year. For individual taxpayers, contributions are allowed as expenses at up to six per cent of their income tax payable in any single fiscal year.

Such contributions must be channelled into the development of single sports and parasports projects, as previously approved by the Ministry of Sports and falling into at least one of the following categories: educational sports, inclusive sports and high-performance sports, organised in the form of amateur competitions. However, the law imposes two important limitations on contributions allowed as deductible for corporate or individual income tax purposes.

First, contributions to projects benefiting sports or parasports initiatives promoted by individuals or sports organisations related in any way to the corporate or individual sponsor or donor are not allowed as tax deductible. For the tax authorities, the following are held to be related to a sponsor or donor:

- any legal entity in which the sponsor or donor holds a managerial position or equity interest, or in which the sponsor or donor is a partner (such limitation to apply as from 12 months before the actual contribution date);
- a spouse, relatives up to the third degree of kinship (including in-laws), and employees of the sponsor, donor or the owners, officers, shareholders or members of any legal entity linked to the sponsor or donor; and
- any entity deemed to be affiliated with, or the parent or a subsidiary of the sponsor or donor, or any entity having among its members, shareholders, directors or partners any of the above-mentioned entities.
Second, contributions cannot be deductible for corporate or individual income tax purposes if they serve for direct remuneration of professional athletes in any sport modality.

The accountability of sports projects benefiting from the tax incentive regime under the Sports Incentive Act is exercised through enforcement of the relevant standards applicable to processing, evaluation and approval by the Ministry of Sports for the framework of each sports project under scrutiny, as well as through monitoring and tracking of the implementation of duly approved projects by the Ministry of Sports.

Ministry of Sports Ordinance No. 120 of 2009 deals with compulsory accountability requirements for approved sports and parasports projects. Besides the need to prove the attainment of those objectives and goals outlined in the original project, the sports organisation must submit documents, financial statements and even photographic material to evidence that all contributions received under the tax incentive programme set out in the Sports Incentive Act were invested accordingly.

If any irregularity is detected, the experts designated by the Ministry of Sports to check into observance of accountability procedures may order a freeze of bank accounts held by the sports organisation or even arrange for blacklisting of the defaulting sports organisation before the Integrated Financial Management System of the Federal Government.

VIII SPECIFIC SPORTS ISSUES

The economic exploitation of sports activities in Brazil is governed by the principles of financial and managerial transparency, sound management, accountability of managing officers, and differentiated treatment between professional and amateur practices. Disregarding any of these principles will trigger administrative proceedings, which may ultimately result in sanctions (such as warnings, written censures, fines, suspension and disaffiliation or disassociation) being imposed on sports clubs and organisations. These sanctions apply to specific sports issues such as doping, betting and manipulation.

i Doping

The Brazilian legal system incorporated, through Decree No. 6,653 of 18 November 2008, the International Convention against Doping in Sport signed in Paris on 19 October 2005 to prevent and combat doping in sports, with the ultimate aim of eradicating such practice in Brazil.

Decree No. 8,829 of 3 August 2016 approved a new administrative structure for the Ministry of Sports, which includes the Brazilian Anti-Doping Agency, whose duties encompass the promotion and coordination of anti-doping activities in professional and amateur sports, in an independent and organised manner, both within and outside organised competitions, in accordance with the rules established by the World Anti-Doping Agency, as well as with the protocols and commitments assumed by Brazil.

There are also rules issued by the Ministry of Sports, through CNE, regulating the performance of doping tests by competent authorities during sports competitions, particularly Resolution No. 2 of 5 May 2004. Although these rules do not address the performance of doping tests by sports entities on their own athletes or any punishment on sports entities themselves for doping offences detected, the law establishes an administrative penalty on a professional athlete guilty of doping, which consists of suspension from all sporting events, in any modality, for up to 360 days (or, in case of recidivism, a lifetime ban from sports).
ii  Betting

In Brazil, games and bets are generally regulated by the Civil Code, and can be classified as permitted (authorised or regulated), prohibited (illegal), or tolerated (not illegal).

Permitted bets are those expressly allowed by specific laws and regulations, such as federal lotteries and horse race betting (in authorised clubs).

Prohibited bets are those generally known as ‘games of chance’, where chance is a decisive factor. Under Article 50 of Decree-Law No. 3,688 of 3 October 1941, such bets are misdemeanours punishable with fines and even imprisonment.

Tolerated bets are those for which results do not depend exclusively on chance, but also on the intellectual or physical skills or ability of players. They are not considered misdemeanours, but any obligations arising from them are unenforceable.

In general, sports bets in Brazil are regarded as games of chance and, as such, are not allowed unless authorised by a specific law in this regard. One of the currently authorised types of sports betting is the Federal Sports Lottery. A form of lottery run by the federal government, the Federal Sports Lottery was created by Decree-Law No. 594 of 27 May 1969, and is regulated by Decree No. 66,118 of 26 January 1970, which establishes the allocation of its revenues. The rules and regulations applicable to the Federal Sports Lottery allow the exploration of all types of games related to sports results.

There are currently two betting modalities in the Federal Sports Lottery for football, which remains the sole sports modality in Brazil that is capable of providing enough betting revenues to justify its implementation. These are ‘Loteca’, which is the traditional sports lottery where betters can bet on the results of football matches, and ‘Lotogol’, where bettors can bet on the exact result of up to five different football matches. The revenues from such games are channelled into family and juvenile welfare programmes, sports activities, and physical education and literacy programmes.

No sports betting in Brazil, as currently regulated, can pose any kind of risk to the state. Because of this, betters can only be awarded 46 per cent of the total betting amount collected. Any other form of award disregarding this proportion between the betting amount collected and the amount awarded to betters will not be approved or authorised under prevailing laws, and such sports betting will thus be automatically held to be an illegal game of chance (and, by extension, a misdemeanour).

iii  Manipulation

Any competitors, referees, inspectors, managing officers, organisers or individuals who are involved in a sports organisation or a sports event and contribute to manipulation of results will be held liable in the civil and criminal spheres for their acts and implications. Rigging of sporting event results may also be prosecuted on charges of ‘loss of chance’, by which the injured party may obtain recovery of damages from the offender that engaged in or was accessory to the rigging conduct.

iv  Grey market sales

The sale of sports events tickets through channels other than those established by the event organiser is forbidden in Brazil as it is held to be detrimental to spectators.

The Sports Fans Act establishes that practices related to grey market sales, such as selling sports event tickets for a price higher than that printed on the ticket, or providing,
diverting or facilitating the distribution of tickets for a selling price above that printed on the ticket, are criminal offences. Sanctions can vary from one to four years' imprisonment plus a fine.

IX THE YEAR IN REVIEW

Undeniably, 2016 was Brazil's year in sports as the host nation for the Olympics and Paralympics Games for the first time in its history. To make it possible, regulations were issued or amended to adapt Brazilian sports infrastructure and incentive programmes to international standards, as well as to adapt its legal framework to host the world's biggest sporting event. These adjustments were phased in 2009, when Brazil was chosen to be the host country.

As an example of these changes, Law No. 13,555 (Sports Tax Accountability Act) of 5 August 2015 set out principles and practices regarding tax and financial accountability, as well as transparent and democratic management, of football sports organisations.

A more recent, structural and significant change made to the legal framework for sports in Brazil was the posting of Decree No. 8,829 on 3 August 2016, which approved a new administrative structure for positions of trust at the Ministry of Sports and consolidated a new organisational structure for all its administrative bodies.

As a measure intended to foster the development of national sports and professional athletes, the Ministry of Sports issued Resolution No. 43 on 27 October 2015 approving the criteria for the granting of awards to athletes who dedicate themselves to the practice of non-Olympic and non-Paralympic sports. Such initiative shows that, although the Brazilian authorities have focused during the past few years on preparations to host the Olympic and Paralympic Games, the new legal framework necessary to do so will enable further growth and encourage the practice of different sports modalities, adding up to the direct legacy of Rio 2016.

X OUTLOOK AND CONCLUSIONS

The themes discussed above are some of the most relevant concerning the application of sports law in Brazil today.

Much was expected of 2016 regarding sports regulation in Brazil, as the year in which Brazil successfully hosted the XXXI Olympic Games. The event itself received international acclaim but, from a legal perspective, regulatory development seemed limited at best. One of the reasons for the general impression that the regulatory framework has not undergone substantial changes is the fact that such changes were implemented during the past seven years. As noted throughout this chapter, some specific situations and rights were indeed regulated during this period, such as taxation and arena rights. The second reason for the timidity of such changes is that the incentive that they could have brought to professional and amateur sports around the country seemed to focus on the Olympic Games themselves. Only football, the most prominent national sport, seems to have benefited from these changes.

Given how recent these events are, though, a longer period of observation of their outcome may be necessary to ascertain the true legacy of the XXXI Olympic and Paralympic Games in terms of improvements to the legal and regulatory framework for sports in Brazil.
Chapter 4

DENMARK

Lars Hilliger

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

Denmark has a long tradition of voluntary and self-governing clubs, societies and associations, both in the world of sport and in a broad spectrum of other important areas of life.

The Danish Ministry of Culture has overall responsibility for matters relating to sport, both regarding elite-level sports and the numerous community sports activities executed nationwide.

Under the Elite Sport Act, the Ministry of Culture established Team Danmark as an independent institution with the aim of developing Danish elite sport in a socially responsible manner. In cooperation with the National Olympic Committee and Sports Confederation of Denmark (DIF), the federations affiliated with DIF and other relevant partners, Team Danmark launches, coordinates and enhances common measures taken in the interests of elite sport practice in Denmark.

Generally, the government seldom interferes in sports matters and the sports sector therefore benefits extensively from being covered by the principle of freedom of association, enjoying a high degree of independence and autonomy.

i Organisational form

Overall, there are three major sports organisations in Denmark.

The National Olympic Committee and Sports Confederation of Denmark (DIF), organises 61 sports federations, more than 9,000 sports associations and, through their membership, over 1.9 million active athletes at all levels.

1 Lars Hilliger is a partner at Advice Law Firm.
2 Act No. 1155 of 25 September 2013.
3 www.dif.dk/en.
The Danish Gymnastics and Sports Associations (DGI) organises over 1.5 million people actively involved in voluntary community sport, while the Danish Federation for Company Sports (DFIF) represents about 80 local company sports associations and some 370,000 members, and encourages workplaces to engage in company sport and healthy lifestyle promotion.

The vast majority of Denmark's non-professional sports associations are organised as voluntary associations run by a team of unpaid volunteers. This does not apply, however, to most of the sports clubs that undertake professional sports activities on a comprehensive scale, as these typically operate in corporate form (i.e., either as a public limited company (A/S) or as a private limited company (ApS) under the rules of Danish company law).

For instance, all football clubs currently in the Danish Superliga (the Danish football championship tournament) operate in corporate form, and some have their shares traded in public marketplaces, with the effect that these companies are owned by a group of shareholders or investors whose affiliation with a company does not necessarily extend beyond the investment aspect.

ii Corporate governance

No separate code applies to the corporate governance of sports organisations in addition to the rules that generally apply to, for example, associations and companies, and any resolutions that may have been adopted by the individual federations.

Given the role of sport in society, including the sector's interplay with other stakeholders, and not least potential investors, sponsors and other financial partners, it is evident, however, that a considerable number of stakeholders in the world of sport, and particularly at the professional level, have increased their focus on corporate governance, including the wider community’s perception of the management and operation of the relevant clubs and organisations. Listed companies are subject to various special rules and recommendations on corporate governance.

iii Corporate liability

Under Danish law, the members of the management of associations, companies, etc., may incur liability for damages if, in the performance of their management duties, they

---

4 www.dgi.dk.
5 www.firmaidraet.dk.
6 Pursuant to Act No. 1,089 of 14 September 2015 – the Companies Act – the share capital of a limited liability company must be at least 50,000 Danish kroner, whereas a public limited company is required to have a minimum share capital of 500,000 Danish kroner. However, the management of the company is responsible for assessing from time to time the appropriate size of the financial strength, which estimate must be based on the company's activities and resulting capital structure.
7 For instance, the company behind football club FC Copenhagen (Parken Sport & Entertainment A/S) has been admitted to listing on NASDAQ OMX Copenhagen A/S: see www.nasdaqomxnordic.com.
intentionally or negligently cause loss or damage to a company or association.\(^8\) The same applies in circumstances where the loss or damage was caused to, \textit{inter alia}, a third party or shareholders in the company.

Management liability is basically individual; however, the entire management team or individual members of the management team may incur joint liability through their joint decisions or omissions. Liability is personal and unlimited, and a member of management may consequently incur liability for damages that, in terms of amount, far exceed the registered share capital of the limited company in question, for instance.

Whether a management team or individual members of a management team incur liability is basically independent from whether it is an organisation or company operating in the sports sector. However, it may be possible to weigh the specific circumstances of the individual case.

In a case\(^9\) concerning the possible liability of a board of directors of a minor Danish handball club in connection with the bankruptcy of the club, the Danish High Court emphasised in its assessment, among other factors, that this was a board of an ordinary sports association, that the work of the board was unpaid and served no commercial purpose, and that the board members’ work was socially desirable. Nevertheless, the High Court also emphasised that these conditions did not imply that general commercial considerations should not be taken into account in the board’s decisions.

\section*{II THE DISPUTE RESOLUTION SYSTEM}

As a general rule, an association or federation is allowed to organise its dispute resolution system at its own discretion.

The 61 sports federations affiliated with DIF basically each have their own dispute resolution body, but all the federations have delegated the authority to make final decisions on appeals to DIF’s Appeals Body. The starting point therefore is that all decisions made by a federation’s dispute resolution body, for instance through a code of conduct committee or the like, may be brought before DIF’s Appeals Body for final decision-making.\(^10\)

This does not apply, however, to decisions made by the arbitration tribunal of a federation.

\subsection*{i Access to courts}

As a general rule, athletes, clubs and other sports stakeholders may have a sports law dispute settled by the ordinary courts of law unless express provisions have been made to preclude such access to the courts.

The DIF by-laws contain no rules precluding court proceedings, and even in the event of a contrary provision in the statutes or by-laws of a federation or association, it is uncertain whether the Danish courts would dismiss the case if a party decides to bring the matter before the courts of law.

\begin{footnotesize}
\begin{enumerate}
\item This requires, however, that the general conditions for awarding damages (i.e., loss, causal link and foreseeability) are met and that no grounds for excluding liability are present.
\item Case No. B-1602-09 decided by the Eastern Division of the Danish High Court on 18 October 2010.
\item See the DIF by-laws, Articles 24–25, and DIF Regulation II.
\end{enumerate}
\end{footnotesize}
It must be presumed, however, that the courts in such cases, where appropriate, will attach considerable importance to a sports organisation's own code and regulations as well as the organisation's practice that might have arisen in the light of these.

If an association's by-laws or other regulations allow for an opinion, the court – in the case of court proceedings – will be expected to verify that the relevant decision falls within the legal criteria and framework, whereas the actual opinion underlying the decision, in the affirmative, will typically not be challenged by the court.

Legal proceedings concerning disputes that, by agreement between the parties, must be settled by arbitration, will be dismissed by the court if a claim for dismissal has been submitted unless the arbitration agreement is invalid or the arbitration cannot be conducted for other reasons.

ii Sports arbitration
Disputes concerning legal relationships in respect of which the parties have an unrestricted right of disposal may be submitted to arbitration unless otherwise provided, and the parties may agree to submit to arbitration disputes that have already arisen or that may arise between them, whether contractual or not.

A range of sports federations, for instance the Danish Football Association (DBU), have established their own arbitration tribunals to hear specific types of cases.

The DBU’s arbitration tribunal, the Arbitration Tribunal for Football acts as an arbitration tribunal in all cases of civil disputes between one of the organisations, clubs or third parties affiliated with DBU on the one hand and a player, leader or coach of the relevant organisation, club or third party on the other, or between such individuals, in the case of disputes connected with or arising out of matters related to football. The Arbitration Tribunal for Football also acts in all internal civil law disputes between the organisations, clubs and third parties affiliated with DBU in the case of disputes connected with or arising out of matters related to football.

iii Enforceability
A valid arbitration award made by a Danish arbitration tribunal in Denmark has a binding effect within the borders of the country, and is enforceable under the same rules as those applying to the enforcement of judgments and orders rendered by the ordinary courts of law.

Refusal of recognition or enforcement of an arbitration award is allowed only if the party against whom the award is invoked so requests and proves that one or more formal defects in the proceedings have been specifically identified, or if the recognition or enforcement would be manifestly incompatible with the national legal order.

---

12 See the Danish Arbitration Act.
13 See Section 39 of the Danish Arbitration Act.
III ORGANISATION OF SPORTS EVENTS

Organising and conducting sports events, whether large or small, in reality involves the formation of a large number of legal relationships and agreements (express as well as implied), including, among many others, agreements on the venue, conditions of participation, participants’ fees or prizes, and spectator access.

According to the Danish law of damages, liability in tort (non-contractual liability) may be incurred where a third party accused of wrongdoing has exhibited actionable conduct, which typically requires a culpable act or omission according to the governing principle of fault, whether deliberate or negligent, as a result of which the injured party has suffered a loss. In addition, a causal link must exist between the act or omission and the loss, the loss must be foreseeable and no grounds for excluding liability must be present. In addition, the injured party must observe a general duty of mitigation.

Where a contractual relationship exists between the parties, the actionable conduct will typically be a party’s failure to comply with the agreed terms of the contract.

If a criminal offence has been committed, on the other hand, the offence will, in by far the majority of cases, be liable to public prosecution, whereas acts contravening the privacy and libel provisions of the Criminal Code14 are liable to private prosecution.

i Relationship between organiser and spectator

The relationship between organisers and spectators is essentially governed by the general rules of contract law and the specific contractual relationship between the parties, which has typically been established merely by the spectators’ acceptance of the offer to purchase the tickets concerned on the terms offered by the organiser.

For example, in connection with international football matches, the organiser may choose to impose ticketing restrictions on fans so that the organiser can reserve the right to prevent a spectator from gaining access to the match venue, even if he or she purchased a valid ticket, if such spectator, through his or her clothing or general behaviour, demonstrates his or her support of the away team and does not present a ticket for the spectator sections reserved for such fans for safety reasons.

As explained in Section VIII.iv infra, the resale of tickets above face value (the price fixed by the organiser) is explicitly regulated.

ii Relationship between organiser and athletes or clubs

As is the case in the relationship between the organiser and spectators, the relationship between the organiser and athletes or clubs is essentially governed by the general rules of contract law and the specific contractual agreement between the parties.

In many cases, the organiser itself will participate in the event concerned and general agreements will, to a large extent, have been concluded on the basis of the type of event in question; for example, the scheduling of matches in the best Danish football leagues. Furthermore, international rules may be applicable to international sporting events.

15 See Section VIII.vii, infra.
iii Liability of the organiser

Depending on the type of event, it obviously cannot be ruled out in all cases that certain risks may be associated with either participating in or attending an event.

Danish case law in this area is extremely scarce, but it must be assumed\(^\text{16}\) that the organiser will typically not be considered liable for damages if it has taken the usual precautions, met the minimum standards prescribed by the relevant sports federation and, in addition, complied with any statutory standards and requirements.

This also applies to, for instance, the use by athletes of sports requisites that are made available directly or indirectly by the organiser or by the municipality. The Supreme Court has held that, in addition to overall supervisory responsibility, an extended duty exists to exercise thorough supervision to ensure that all equipment and requisites are in a proper and safe condition when, as in a relevant case regarding electrical measuring equipment,\(^\text{17}\) the equipment can otherwise be expected to pose a significant danger to the users.

iv Liability of the athletes

Overall, athletes are naturally obliged to observe and respect any contracts they have entered into with organisers, sponsors and other parties, and any failure to comply with such contract terms will, as a general rule, consequently be treated as actionable conduct under the general rules of Danish law.

Another question is whether an athlete will be considered liable, and whether the athlete should be punished under the provisions of the Criminal Code if he or she inflicts injury on an opponent through an act during competition that, outside the world of sport, must be deemed to constitute a criminal offence – and that, in the specific case, does not fall within the framework of the sport in question (e.g., boxing and other combat sports).

The starting point must still be assumed to be that an athlete will only rarely incur liability for an injured opponent unless the wrongdoer caused the injury deliberately or by the use of reckless force, and provided that the wrongdoing has no reasonable link to the specific sporting competition.

The question of criminal liability has been dealt with by the courts in a number of lawsuits,\(^\text{18}\) including, \textit{inter alia}, lawsuits regarding excessively rough (and severely harmful) football tackles, punches during football matches resulting in concussions and broken jaws, and blows to the head with a hockey stick.

Against the background of such lawsuits, it must be assumed (with caution) that the courts’ assessments will not, as a general rule, differ because a specific criminal offence has been committed only because an incident occurred during the practice of a sport. However, we have, to some degree, seen a tendency of the courts in their sentencing to take into account the passion, excitement and intensity that exist during sports practice as partially


\(^{17}\) U.1980.205/2H.

excusable factors. However, notwithstanding their tendency to take into account that these factors exist during sports practice, the courts have not regarded these as excusable factors in cases of violence against referees.

v Liability of the spectators
While the courts in their sentencing have to some degree taken into account the passion, excitement and intensity that exist during sports practice as an excusable factor in cases of violence perpetrated by athletes during sports, such tendency is not seen in cases of acts of violence perpetrated by spectators.

For example, it has been established in Danish case law that ticket takers, ushers and security guards and other such staff at sporting events fall within a group of specially protected people who, on account of their work, must be assumed to be particularly exposed to the risk of violence. In cases of violence perpetrated against people acting in this capacity, the Criminal Code provides a legal basis for increasing the normal maximum penalty for violence by up to half again.

The possibility that spectators may be found liable in accordance with the general rules of law is illustrated by, for example, a case popularly known as the Pitch Invader case.

During a European Championship qualifying match in Copenhagen between Denmark and Sweden, a Danish spectator jumped the barricade and attacked the referee, who then cancelled the match. The DBU, which was responsible for the match, was ordered by UEFA to pay a penalty and legal costs, and it was decided that the next two home matches were not allowed to be played in Copenhagen, which resulted in a substantial reduction in the potential number of spectators. The Danish High Court concluded in this case that the spectator’s conduct was actionable and the direct cause of the cancellation of the match. Since it must have been foreseeable by the spectator that sanctions, such as those imposed by UEFA, could be imposed as a result of his actions, which had inflicted a loss on DBU, and since the DBU was not found guilty of contributory negligence, the spectator was found liable for the loss suffered by the DBU.

In addition, the spectator was found guilty of attempted violence against the referee of the match, which constitutes an offence under Danish criminal law.

20 See also Baumbach U.2009B.12 and Lasse Lund Madsen U.2009B.183 for additional information on the matter.
21 For instance, U.1996.4V (football referee headbutted during match) and U.2006.379Ø (referee punched in the face during match).
22 See Section III.iv, supra.
24 U.2012.1367Ø.
vi  Riot prevention
The Security at Certain Sporting Events Act\textsuperscript{25} aims to prevent disturbances and increase the security and safety of spectators and others attending particular sporting events such as football matches, including all football matches played by teams from the Danish Superliga and the first and second divisions, as well as international UEFA matches played in Denmark.\textsuperscript{26}

Under the authority of the Act, a person may receive a general suspension if there are reasonable grounds to believe that the person concerned, in connection with one of the above-mentioned sporting events, has violated one or more specific provisions of the Criminal Code or various private statutes, including rules on weapons and explosives, and if there are specific reasons to presume that the person concerned will otherwise commit new criminal offences within the area covered by the suspension, or if such a measure is warranted by the gravity of the offence in special circumstances.

In the assessment of whether a general suspension should be imposed, foreign judgments, orders and other rulings and decisions may be taken into account.

A general suspension implies a ban from attending particular sporting events and staying within an area of up to 500 metres around the venue, and the ban applies from six hours before and until six hours after the sporting event. In the case of an away match, the suspension area is expanded to up to 3,000 metres. A general suspension is imposed for a specified period of up to two years.

Under the Act, the police are entitled to issue mandatory injunctions concerning the security and safety aspects for particular sporting events, and also have statutory authority to order that the scheduling of particular sporting events\textsuperscript{27} be moved if necessary for the protection of essential public interests, including the safety of individuals.

\section*{IV  COMMERCIALISATION OF SPORTS EVENTS}

In recent years, the importance of being able to commercialise sports as well as the value of intellectual property rights in the world of sport has increased dramatically in Denmark.

As such, a wide array of people that are not directly active participants in the world of sport in Denmark nonetheless (whether for justified or unjustified reasons) try to take advantage of the intangible values associated with clubs, athletes and events. One effect of this is that there is an increasing awareness of the importance of protecting one’s rights, if necessary by taking legal action, in the world of sport.

i  Types of and ownership in rights

In addition to the ordinary (whether statutory or non-statutory) protection of trademark rights\textsuperscript{28} under Danish law, mainly the protection of ‘image rights’ (the rights associated with a person’s name, photographs and other special characteristics), plays a major role in the world of sport.

\begin{itemize}
\item \textsuperscript{25} Act No. 1216 of 27 October 2016.
\item \textsuperscript{26} See Order 2008 650. The scope of the Act may be extended to other sporting events.
\item \textsuperscript{27} See footnote 26, supra.
\item \textsuperscript{28} Under Act No. 192 of 1 March 2016 – the Danish Trademarks Act – a trademark in Danish law is defined as a ‘distinctive sign for goods or services being used or intended to be used by a commercial enterprise’.
\end{itemize}
While the media will still be entitled to make use of press photographs from a sporting event in the context of such media’s news coverage, a wide range of decisions have established that no business has unlimited rights to use an athlete’s name or photograph in connection with the marketing of its own or other businesses’ products and services, unless by prior agreement.

In the DBU’s standard players contract, it is a condition that clubs, as a general rule, have the right to use, for instance: ‘ […] the Player’s image, likeness, name and autograph in connection with the Club’s/Clubs’ – individual or joint – merchandising activities, in connection with the Club’s/Clubs’ marketing and promotional activities and in connection with the Club’s/Clubs’ signing of advertising contracts and sale of sponsorships.’

Sporting events and sporting achievements are, as such, not protected by copyright under Danish law.29 However, the Danish courts30 have developed a concept known as event protection, which thus establishes a form of ownership of the rights associated with an event. This right not only entitles the organiser to lay down rules and conditions for spectators and others, but also establishes and contains the overall framework for determining the guidelines to be used for news coverage purposes, including the transmission of sound and images from the event in question.

It is widely assumed that the right to a number of events, for instance Danish Superliga football matches, is jointly owned by the clubs and the relevant federation (in this case, the DBU).

ii Rights protection
The protection and enforcement of intellectual property rights in the world of sport is generally ensured through the courts; in particular, the Copenhagen Maritime and Commercial Court is specialised in the handling this type of case.

The vast majority of these cases are subject to private prosecution. Moreover, when and as appropriate, an aggrieved party may apply for a preliminary injunction for an infringement of his or her rights31 if he or she is capable of proving to the satisfaction of the court that he or she holds the right to be protected by the prohibitory or mandatory injunction; that the infringer’s behaviour necessitates the prohibitory or mandatory injunction; and that the ability of the applicant to enforce his or her right will be lost if he or she is has to await a decision on the dispute in a court trial. The court may also decide that the granting of a prohibitory or mandatory injunction is conditional upon the provision of security for any detriment and disadvantage inflicted on the opposing party as a result of the injunction.

The Danish Customs and Tax Administration also assists to a certain extent in the enforcement of rights, either on request or on its own initiative.

iii Contractual provisions for exploitation of rights
On the basis of the freedom of contract, agreements on the exploitation of intellectual property rights in the world of sport are governed by general rules of contract law and the specific contractual relationship between the parties.

Overall, however, a number of rules must be complied with in connection to the exploitation of such rights for marketing purposes. Hence, the Marketing Practices Act\textsuperscript{32} provides, \textit{inter alia}, that traders engaged in marketing directed at Denmark, regardless of whether the business is Danish or not, ‘[…]
shall exercise good marketing practice with reference to consumers, other traders and public interests’.

With reference to this general provision, various guidelines for ‘fair trading practices’ have been drawn up, and any violation of these guidelines will essentially be tantamount to a violation of the provisions of the Marketing Practices Act.

To give an example, AlkoholReklameNævnet (the alcohol advertising board) stipulates in its guidelines that marketing is not allowed to link alcoholic\textsuperscript{33} beverages to the active practice of sports.

\textbf{V \ PROFESSIONAL SPORTS AND LABOUR LAW}

The Danish employment law system is governed by various statutes\textsuperscript{34} containing both mandatory and non-mandatory provisions that, together with general legal principles, set the framework for the formation, management and termination of an employment relationship, based on the freedom of contract existing between the parties, including collective agreements. These rules and provisions basically apply to sporting contracts of employment in the same manner as they govern other employment relationships.

Furthermore, various sports federations have concluded collective agreements governing a wide range of terms and conditions of employment.

In relation to the conclusion of contracts (of employment), it is important to underscore that under Danish law, as a general rule, young people under 18 years of age cannot validly enter into such contracts unless consent is obtained from a custodial parent.

\textbf{i \ Mandatory provisions}

As an example of mandatory provisions, the Act on an Employer’s Obligation to Inform Employees of the Conditions Applicable to the Employment Relationship\textsuperscript{35} lays down minimum requirements\textsuperscript{36} for the amount of information that an employer must give in writing to an employee at the time of the formation of the employment relationship,\textsuperscript{37} thereby ensuring that documentation is available to prove with sufficient certainty what has been agreed between the parties.

\begin{itemize}
\item \textsuperscript{32} Act No. 1216 of 25 September 2013.
\item \textsuperscript{33} Defined as alcoholic beverages containing 2.8 per cent alcohol by volume or more.
\item \textsuperscript{34} For instance, Act No. 240 of 17 March 2010 – the Danish Act on an Employer’s Obligation to Inform Employees of the Conditions Applicable to the Employment Relationship; Act No. 202 of 22 February 2013 – the Danish Holiday Act; and Act No. 81 of 3 February 2009 – the Danish Employers and Salaried Employees Act.
\item \textsuperscript{35} See footnote above.
\item \textsuperscript{36} For instance, information about the names and addresses of the parties, place of work, work description, working hours, duration of employment and terms of notice.
\item \textsuperscript{37} The Act applies to all employees whose employment continues for more than one month and whose average weekly working hours exceed eight hours.
\end{itemize}
However, in addition to the minimum requirements set out in the Act, the employer is obliged to inform the employee in writing of all important conditions that, in the world of sport, could include, *inter alia*, agreements on future transfers, rights and internal disciplinary sanctions.

Non-compliance with the requirements of the Act is punishable by a fine.

In addition to the Act on Employers' Duty to Give to Employees a Written Statement of Particulars of Employment, the Holiday Act, among other legislation, also contains a series of mandatory provisions that cannot validly be derogated from, not even by express agreement between the parties, to the detriment of the employee unless otherwise specifically provided by the Act.

ii Free movement of athletes

As a member of the European Union, Denmark is subject to EU rules on matters such as the free movement of labour and cross-border competition.

In its rules regulating the Danish Superliga and the first division, the DBU has introduced the ‘home-grown’ rule, which means that a club, in order to have the maximum number of players accepted on its player list for the tournament in question, is required to register at least eight ‘home-grown’ players, four of whom must have been trained at the club, while the other four players must have been trained at another Danish club. If a club fails to comply with these rules, the number of players on the club’s player list will be reduced by the number of missing home-grown players.

iii Application of employment rules of sports governing bodies

To a great extent, subject to the mandatory employment rules described in Section V, *supra*, the parties’ freedom of contract provides a foundation for incorporating current international rules into contracts of employment.

VI SPORTS AND ANTITRUST LAW

The national antitrust rules are, in essence, based on EU antitrust law, and the professional world of sport is, as a general rule, subject to exactly the same rules as any other type of business operating in Denmark.

To determine whether a relationship should be regarded as being governed by national or EU antitrust rules, it is crucial to establish whether the relationship in question can be regarded as having a cross-border effect, which means that there is or may be an actual or potential impact on cross-border trade in the single European market.

It should be noted in this respect that various triviality thresholds have been set depending on whether the relationship is governed by national or EU antitrust rules.

---

38 Conditions for the Denmark Tournament (men’s national football championships).
39 Twenty-five players on Player List A.
40 ‘Trained’ is understood to mean that the relevant player must have been eligible to play in the club for at least 36 months (in total) between the ages of 15 and 21.
Within the borders of Denmark the competition authorities have, particularly in the world of sport, addressed the question about the purchasing and selling of rights to events, and particularly the right to broadcast events.

VII SPORy AND TAXATION

The general tax rules apply to athletes, coaches and clubs, as well as to organisers, etc.

However, the Danish Tax at Source Act\(^\text{41}\) contains provisions under which certain persons, including in particular foreign persons, may choose to be taxed on particularly favourable terms\(^\text{42}\) when entering into a Danish contract of employment, provided that a number of special conditions have been satisfied.

The scheme was originally established with a view to attracting foreign researchers, scientists and other key employees to Danish companies on particularly favourable tax terms for a limited period of time.

However, it is also possible to apply the scheme to, inter alia, athletes and coaches provided that they satisfy the qualifying conditions. One requirement is that the employee, within the calendar year, must receive a monthly salary of at least 62,300 Danish kroner (2016 level) before deduction of ATP (the Danish pension fund) contributions.

VIII SPECIFIC SPORTS ISSUES

i Doping

Under the Anti-Doping Act\(^\text{43}\), any production, import, export, sale, delivery, distribution or possession of particular doping substances\(^\text{44}\) is an offence punishable by a fine or imprisonment for a term not exceeding two years.

Moreover, the Criminal Code\(^\text{45}\) provides that the following are liable to imprisonment for a term not exceeding six years: any person who, in contravention of the provisions set out above, supplies doping substances to a considerable number of persons in return for a large sum of money or in any other particularly aggravating circumstances; or any person who, with the intent to supply, produces, imports, exports, delivers, distributes or possesses doping substances.

\(^{41}\) Act No. 117 of 29 January 2016 – the Danish Tax at Source Act, Sections 48E and 48F.

\(^{42}\) The possibility of submitting to taxation at a rate of 26 per cent plus a labour market contribution for a period of 60 months, in total 31.92 per cent of the remuneration without any deduction, instead of ordinary income taxation.

\(^{43}\) Act No. 232 of 21 April 1999 – Danish Anti-Doping Act.

\(^{44}\) Specified in the Danish Anti-Doping Act, for instance anabolic steroids, testosterone and derivatives, and growth hormones.

\(^{45}\) See Act No. 1052 of 4 July 2016 – the Danish Criminal Code, Section 191a.
Anti Doping Danmark (ADD) is a non-profit organisation\(^{46}\) that has been set up to promote the fight against doping in sport. Both ADD and DIF have accepted and implemented the World Anti-Doping Agency’s World Anti-Doping Code and, in 2015, the two organisations adopted the National Anti-Doping Rules.\(^{47}\)

The National Anti-Doping Rules generally apply to all athletes under DIF who engage in competitive sports. They do not apply to athletes who exclusively engage in fitness sports under the auspices of DIF, DGI and DFIF\(^{48}\) since these athletes are instead covered by the Danish Anti-Doping Rules for Fitness Sports, which were adopted by DIF, the DGI and the DFIF and came into effect on 1 January 2015.

\section*{ii Betting}

On 1 January 2012,\(^{49}\) the Danish betting and gambling market was slightly liberalised, with the effect that Danske Spil A/S\(^{50}\) no longer has a complete monopoly over the market.

It is a crucial aspect of the new rules that a licence is required to provide and organise games where participation in such games is subject to the payment of a stake, unless otherwise specified in the Act.

The Act also applies to ‘online gambling’, which is defined as gambling activities between a player and a gambling provider through the use of ‘remote communication’.

It is also noteworthy that ‘lotteries’\(^{51}\) are exempt from the liberalisation, which means that Danske Spil A/S, with very few exceptions, still – and until this may be deemed contrary to EU law – has a monopoly on the provision of lotteries, including the national lottery and scratch-card gambling.

\section*{iii Manipulation}

Match-fixing and other unethical manipulation of sporting events and results also present a growing problem in Denmark.

Overall, unethical manipulation in the sports sector can occur on three levels: manipulation by an individual, manipulation organised within the world of sport and manipulation organised outside the world of sport (the last of these typically also involves stakeholders from within the world of sport).

\begin{itemize}
\item \(^{46}\) Act No. 1168 of 7 October 2016.
\item \(^{47}\) National Anti-Doping Rules – ADD & DIF, updated April 2015.
\item \(^{48}\) See Section I.i, supra.
\item \(^{49}\) Act No. 119 of 22 January 2016 – Danish Gambling Act. According to the wording of the Act, the purpose of the Act is to maintain the consumption of gambling services at a moderate level; to protect young people and other vulnerable people from being exploited through gambling or developing a gambling addiction; to protect players by ensuring that gambling is provided in a fair, responsible and transparent manner; and to ensure public order and to prevent gambling as a means to support crime.
\item \(^{50}\) The state owns 80 per cent of Danske Spil A/S, and DIF and DGI each have a 10 per cent interest in the company.
\item \(^{51}\) Section 5(ii) of the Gambling Act defines lotteries as ‘Activities in which a participant has a chance of winning a prize and where the probability of winning is solely based on chance’.
\end{itemize}
Cases of manipulation conducted on the two first levels may typically be referred to the ordinary criminal courts for trial as well as to the sports federation’s own disciplinary system.

In Denmark, the manipulation of sports results and events in relation to betting will be covered by the general fraud provisions of the Criminal Code, as the requirement of ‘loss of property’ in the Act is met in this case.

In 2013, DIF adopted a general code to fight the manipulation of sporting competitions. The code applies to everyone who is a member of or, in any other fashion, represents DIF, a sports federation under DIF or a club or association that is a member of a federation under DIF – or who participates in a sports activity under the auspices of one of the organisations set out above.

The Code prohibits match-fixing, where an attempt is made to obtain a direct or indirect economic benefit or gain. Match-fixing to obtain a strictly sports-related benefit or gain, for instance a victory in a lower-ranking amateur class, will consequently not be prohibited under the Code, but perhaps under supplementary rules that may have been adopted by the relevant sports federation.

As a supplement to DIF’s regulations, the DBU decided in 2014 that ‘It is prohibited to bet on the course or result of football matches in a tournament where the person concerned has close ties with one or more of the teams or with the tournament as such’. This prohibition is independent of whether there is any specific suspicion of manipulation of the match concerned and may, accordingly, be seen as a preventive prohibition designed to show zero tolerance in this regard to football players, and to avoid situations where there may be doubt about the credibility of football matches under the auspices of the DBU.

The codes and regulations of both DIF and the DBU provide for a range of possible sanctions, such as an indefinite or temporary ban, fine or other economic sanction as well as cancellation of results achieved. It has also become possible to ban an alleged violator for a temporary period while the case is being investigated.

iv Grey market sales

Tickets for cultural and sporting events in Denmark must not be offered or resold at a price higher than the original purchase price (including handling fees, etc.) unless otherwise agreed

---

52 See Act No. 1052 of 4 July 2016 – the Danish Criminal Code, Section 279: ‘Any person who, for the purpose of obtaining for himself or for others an unlawful gain, by unlawfully bringing about, corroborating or exploiting a delusion, induces any person to do or omit to do an act which involves the loss of property for the deceived person or for others affected by the act or omission, shall be guilty of fraud.’

53 DIF – Regulation VIII on prohibition against manipulation of sporting competitions (match fixing) and similar unethical behaviour, May 2013.

54 Defined as ‘Actions involving an arrangement or irregular alteration of the course or result of a sporting competition or any of its particular events in order to obtain a benefit or gain for oneself or for others and remove all or part of the uncertainty normally associated with the course and outcome of sporting competitions’.

55 DBU Circular No. 86 (2014).
with the event organiser. Any violation of the provisions of the Act is punishable by a fine, and violation occurs at the time when tickets are offered for sale in contravention of the provisions, regardless of whether such an offer results in a sale.

On the other hand, nothing prevents such tickets from being given away for free, for instance in connection with customer events, or from being offered or sold at a price lower than or equal to the original purchase price paid.

IX THE YEAR IN REVIEW

Within the past year, two sport cases have particularly attracted Danish media interest.

In the Hvidovre case, the police charged four football players from the Danish football club Hvidovre IF, which plays in the second-highest Danish league, for having participated in match-fixing. According to the police charge, the four players had allegedly entered into an agreement with two friends to engineer the results of two of the club’s matches, both of which the team lost. According to the police charge and based on the facts and information available, these results had allegedly produced major economic gains for a number of gamblers in Asia, to whom one of the accomplices owed a substantial amount of money.

The police received a clue in the case when one of the players’ friends gave a statement to the police about the agreements concluded since he apparently felt threatened by the Asian gamblers. This statement was later modified, however, and eventually the statement was completely withdrawn as the friend now claimed that the police had allegedly obtained the statement by undue coercion. Neither the District Court nor the High Court believed this explanation, though, and a suspended sentence of imprisonment for a term of one year was consequently imposed on the relevant person for his role in the case.

Notwithstanding this court sentence, the police subsequently found that there was insufficient evidence against the four players to support their conviction for participating in match-fixing, and the police therefore dismissed the charges. Nevertheless, the DBU later announced its intention to examine, in cooperation with DIF, whether – in spite of the decision of the police to dismiss the charges – they still have valid grounds for taking disciplinary action against one or more of the players concerned.

In another case in the world of football, DIF’s special Match-Fixing Board issued a ruling pertaining to former football player Carsten Hemmingsen, who, in his capacity as coach of a Danish league club, was found guilty both of failing to observe the match-fixing rules and of exhibiting unethical behaviour. There were two instances of non-observance where the coach had played his own team’s matches (as a winner and a loser, respectively) as well as further 16 instances where the coach had played other matches in the same league as his own team.

The ruling banned the coach from participating in any activity under the DBU for a period of six months and also ordered the coach to pay a penalty in the amount of 25,000 kroner. This was an aggravated sanction, taking into account factors such as the special position and responsibility of the coach.

---

56 See Act No. 458 of 23 May 2007 – the Resale of Tickets for Cultural and Sporting Events Act.
57 Such transfers may, in specific cases, carry tax implications.
It is noteworthy that the proceedings were instituted after a call to the telephone ‘Hotline’ set up by DIF and after the implementation of the ‘Stop Match-Fixing’ campaign targeted at the stakeholders of sport, which merely proves that it is worth making efforts to combat match-fixing and other types of unethical behaviour in the world of sport.

X OUTLOOK AND CONCLUSIONS

As mentioned in Section I, supra, Denmark has a long tradition of sports clubs, societies and associations based upon the work of unpaid volunteers.

As significant economic interests have gradually emerged in the broad spectrum of sports, internationally as well as nationally, this has engendered a movement towards more professionalism and more overarching regulation, which has created a series of challenges both at the association and company level.

Moreover, both the Hvidovre case and the Hemmingsen case illustrate perfectly that, besides this regulation, it is unfortunately essential to keep focusing on the prevention, regulation, investigation and sanctioning of unlawful and other unethical activities that are fundamentally contrary to the spirit of sport. Furthermore, and in spite of overarching regulation by statutes and the comprehensive codes and regulations of individual sports federations, considerable focus should still be given to the specific agreements that are concluded in the world of sport; and that the special conditions inherent in the sports sector put ever increasing demands not only on active athletes, but also on those stakeholders working to make things succeed, whether in terms of sporting achievements, finances or organisational planning.58

58 For more on Danish sports law, see, for instance, Evald & Halgreen, Sports Law in Denmark (2012), Evald & Halgreen, Dansk & international Sportsret (2014) and Halgren, European Sports Law (2009).
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:

a unincorporated associations;

b companies limited by shares;

c companies limited by guarantee; or

d 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

1 Jon Ellis and Ian Lynam are partners, and Paul Shapiro and Ben Rees are associates, at Charles Russell Speechlys LLP.
from Sport England or UK Sport\textsuperscript{2} 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.\textsuperscript{3} The Sport and Recreation Alliance also maintains a Voluntary Code of Good Governance that it encourages sports bodies to adopt.

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 law of England and Wales does 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, \textit{supra}), 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, \textit{inter alia}:

\begin{itemize}
  \item[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;
  \item[b] to promote the success of the company for the benefit of its members;
  \item[c] to exercise reasonable care, skill and diligence; and
  \item[d] to avoid conflicts of interest.
\end{itemize}

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 of 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.


\textsuperscript{3} Premier League Rules, 2016/2017, Section I.
Where a party seeks to challenge a disciplinary decision, the courts do not apply a \textit{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.'

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

\begin{itemize}
  \item[(a)] is outside of its powers;
  \item[(b)] is procedurally unfair or contrary to natural justice;
  \item[(c)] takes into account irrelevant considerations or fails to take into account relevant considerations;
  \item[(d)] has no factual basis;
  \item[(e)] is contrary to legitimate expectation; or
  \item[(f)] is unreasonable in the sense of being irrational, perverse, arbitrary or capricious.
\end{itemize}

\textbf{ii} Sports arbitration

Parties are free to resolve their disputes through arbitration. The relevant legislation, the Arbitration Act 1996, provides that in order 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 (FA), the Premier League or the Football League.

While there is no one standard arbitral process, many sports utilise the arbitration rules of Sports Resolution (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.

\textbf{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 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).

---

5 Victoria Park Racing v. Taylor (1937) 58 CLR.
6 Consumer Rights Act 2015, Section 64.
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 their ‘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’.8

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 imports various obligations on the part of 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.9

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, 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.

**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

---

8 Occupiers’ Liability Act 1957, Section 2(2).

9 The foundations of which are found in Donoghue v. Stevenson [1932] AC 562.

The damages that may be awarded in sport can be significant, particularly where a professional athlete suffers a career-ending injury. For example, in the *Collett v. Smith* case, 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) and prohibiting the sale (or resale) of football tickets by unauthorised persons. Football supporters can also be the subject of banning orders pursuant to the Football Spectators Act 1989 (see Section III.v, supra).

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 are 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.

---

12 Football Spectators Act 1989, Section 11.
14 Police Act 1996, Section 25.
16 Copyright Design and Patents Act 1988 (CDPA), Section 9.
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 other criteria, a trademark must be capable of distinguishing the goods or services of one undertaking from those of another. Therefore, it is not possible to register marks that are, *inter alia*, non-distinctive, generic or primarily descriptive.

The EU Trade Mark Regulation currently affords protection for European Union trademarks (previously known as Community trademarks) throughout the UK but this may change once the UK leaves the EU (see Section IX, *infra*).

**Copyright and database rights**

Copyright arises automatically and can provide protection for 70 years for literary, dramatic, musical or artistic works and 50 years for broadcasts and sound recordings. Not all unauthorised use of a copyrighted work will amount to infringement. The ‘fair dealing’ exceptions allow copyright protected works to be used for the reporting of current events, provided sufficient acknowledgement is given.

---


18 Trade Marks Act 1994 (TMA), Section 1.

19 TMA, Section 3(1)(b) and Rugby Football Union and another v. Cotton Traders Ltd [2002] All ER (D) 417 (Mar).


21 CDPA, Section 12.

22 CDPA, Section 14.

23 CDPA, Section 13A.

24 See CDPA, 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). However, in *Football DataCo*, the courts confirmed that the SGDR subsists in a database of live match data if there has been a substantial investment in obtaining, verifying or presenting its contents.

**Image rights**

English law does not recognise a proprietary right in a person’s image or a specific right of privacy. There is a web of laws, however, which can be stitched together to protect an individual’s ‘image rights’. If a sportsperson’s image is used to endorse goods or on merchandise, 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 the result of the misrepresentation. When a sportsperson is photographed in circumstances that were obviously private and the photograph is offensive or is not being used fairly and lawfully, safeguards against their 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 or infringements under the Data Protection Act 1998.

**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?

---

30 *Edmund Irvine & Tidswell Ltd v. Talksport Ltd* [2002] 2 All ER 414.
31 *Robyn Rihanna Fenty and others v. Arcadia Group Brands Ltd (t/a Topshop) and another* [2013] EWHC 2310 (Ch).
34 European Convention on Human Rights, Article 8.
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 of 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.

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 (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.36  

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*,37 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 below.

---


This area is shaped by EU law and European jurisprudence, most notably the *Bosman*\(^{38}\) and *Kolpak*\(^{39}\) 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*,\(^{40}\) the claimant (a footballer) successfully argued that the then rules of the Football League, 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, 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 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 system\(^{41}\) provides for automatic granting of a visa 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 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.\(^{42}\) 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.

---

40 [1964] Ch 413.
42 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).
Article 101 of the 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 of the 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\(^{43}\) 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\(^{44}\) and the accompanying staff working document,\(^{45}\) 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*,\(^{46}\) 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.\(^{47}\) Is trade between Member States affected? And does the rule meet the conditions of Article 102?

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 test\(^{48}\) 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.

---

44 See footnote 7, *supra*.
48 See *Nordenfelt v. Maxim Nordenfelt* [1894] AC 535.
VII SPORTS AND TAXATION

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.

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.

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.

49 The authors extend their thanks to Peter Hackleton, a tax partner at Saffery Champness, who contributed this section.


52 www.bbc.co.uk/sport/0/34653817.
ii  Betting
Betting is governed by the Gambling Act 2005 (Gambling Act). 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 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 of 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.

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 Kieran 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 horseracing’, the High Court upheld the BHA’s suspension. Mr Fallon was not convicted in the criminal courts, and he returned to horse racing.

---

53 See, for example, Gambling Act, Sections 30 and 88.
54 See Rule E8 of the Rules of the FA.
55 See Regulation 17 of the RFU Rules and Regulations.
iv Grey market sales

Aside from where event-specific legislation has been passed (as was the case with the London 2012 Olympics\(^5\)), 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.\(^6\) 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, \textit{supra}) to prevent the secondary sale of tickets. Legislation has recently been passed in the form of the Consumer Rights Act 2015, which introduces new disclosure requirements for those reselling tickets and the marketplaces where such tickets are resold. Online secondary ticket platforms must now, \textit{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.\(^6\) This gives 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.

IX THE YEAR IN REVIEW

i Brexit

On 23 June 2016, the UK voted in a referendum to leave the EU. This referendum was not binding but the UK government has signalled its intention to abide by the result and therefore withdraw the UK from the EU. The procedure for doing this is set out in Article 50 of the Lisbon Treaty which requires the UK to notify the European Council of its intention to withdraw. Following this notification, the EU and UK will negotiate the terms of withdrawal and Article 50 specifies that this should take into account the framework for the UK’s future relationship with the EU. EU treaties will cease to apply to the UK from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to above. The UK government has stated that it intends to send this notification by the end of March 2017, which means the UK looks set to leave the EU by the summer of 2019. In preparation for this, the UK government has proposed a Great Repeal Bill, which will repeal the European Communities Act 1972 (ECA) (the Act that incorporates EU treaties into UK law). However, at the time of writing many questions remain unanswered. In particular what the position will be regarding the free movement of persons to and from the UK and the extent to which the UK will continue to have access to the single market. These issues are likely to be heavily negotiated in the two-year period following notification. In addition, although the UK government has stated that the Great Repeal Bill will convert existing EU law into domestic law,\(^6\) at the moment it is unclear what the position will be with regard to EU Directives that have been implemented by way of secondary legislation (such as a statutory instrument), as these may not apply when the ECA is repealed.

\(^{5}\) London Olympic Games and Paralympic Games Act 2006, Section 31.
\(^{6}\) Criminal Justice and Public Order Act 1994, Section 166.
\(^{6}\) Consumer Rights Act 2015, Section 90.
How Brexit will impact sport will very much depend on the terms of the UK’s withdrawal from the EU, particularly with regard to the free movement of persons. If 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 sports persons (in a similar manner to the way in which non-EU nationals are currently treated – see Section V, supra). Governing bodies could also consider introducing quotas based on nationality – thereby limiting the number of foreign players that can appear in match day squads. Furthermore, 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/EEA aged between 16 and 18. On withdrawing from the EU (and absent a change of these regulations), UK football clubs may 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 years old.

ii A Code for Sports Governance

On 31 October 2016, UK Sport and Sport England published ‘A Code for Sports Governance’ (the Code). The Code is intended to provide a gold standard for governance for the UK’s sports sector and will apply to the organisers of both grass roots and elite sport which receive public funding. It forms one part of the UK government’s ‘New Strategy for an Active Nation’ released in December 2015. In that strategy the then UK prime minister, David Cameron, stated that he wanted to establish a new governance code that would be enforced rigorously at home and set a new standard internationally.

Underlying the entire Code are five principles of good governance, namely: governance structure, people, communication, standards and conduct, and policies and processes. The Code adopts a flexible three-tiered approach to compliance based on the level and duration of funding. Tier 1 contains the basic standards that are mandatory for all organisations in receipt of public funding. If an organisation receives less than £250,000 of funding it will only need to comply with Tier 1. Organisations in receipt of over £1 million and where funding is granted over a number of years on a continuing basis, will need to comply with both Tier 1 standards and the far more stringent standards in Tier 3 (see below). Tier 2 is a broad sector and funding will fall into this Tier where UK Sport or Sport England require organisations to go further than the Tier 1 standards but not as far as compliance with Tier 3.

Tier 1 standards are broad and not overly prescriptive; thereby giving sports organisations discretion while offering guidance on best practice. Tier 3 contains significantly higher and more prescriptive governance standards including requirements:

- for a maximum board size of 12 persons;
- for a maximum time limit of nine years for which a director can serve on a board (subject to limited exceptions);
- to maintain a skills matrix for directors;
- for 25 per cent of the board to be independent non-executive directors (INED);
- to appoint an audit committee and nominations committee (the majority of which should be INEDs);
- for the organisation to identify appropriate actions to be taken to support or maintain a minimum of 30 per cent of each gender on its board and a strong and public commitment to progressing towards achieving gender parity and greater diversity generally on its board; and
for organisations to publish director and senior management pay figures (in the latter case only where the organisation employs 50 or more staff).

iii Selection for the Rio 2016 games

Much of the build-up to the Olympics Games in Rio 2016 was focused on the question of participation of Russian athletes. Allegations of systematic doping of Russian athletes first came to the fore in a German television documentary first broadcast in December 2014. Subsequently, the WADA produced reports into these and other related allegations that led to calls for Russian athletes to be barred from competing in Rio.

It is noteworthy that the approaches of the organisers of the Olympics and Paralympics, the International Olympic Committee (IOC) and the International Paralympic Committee (IPC) respectively, differed. In short, the IOC deferred the decision to the international federations for each of the sports competing in Rio; while a number of individual athletes were barred from competing by their international federation, only the athletics federation (the IAAF) and the weightlifting federation (the International Weightlifting Federation), imposed a blanket suspension on Russian athletes. This approach can be contrasted with that of the IPC, which suspended the Russian Paralympic Committee – preventing all Russian paralympians from competing at the Paralympic Games.

These issues resulted in a number of cases before the Court of Arbitration for Sport, to include unsuccessful appeals by the Russian Paralympic Committee against its suspension by the IPC63 and by the Russian Olympic Committee and a number of Russian athletes against the suspension imposed by the IAAF.64 It should also be noted that the CAS Ad Hoc Division, set up to hear disputes during the Rio Olympic Games, received 28 applications; setting a new record for cases heard during an Olympic Games (15 cases had been registered during Sydney 2000). Of those, 16 cases were related to the status or eligibility of Russian athletes.

The doping issues that were the source of the selection disputes led to calls for governance reform. In respect of athletics, the IAAF has made proposals for widespread reform, to include the establishment of a new independent Athletics Integrity Unit, which is to manage all integrity issues (such as anti-doping, betting and corruption, and bringing the sport into disrepute).65 It is particularly significant that this unit is intended to take over responsibility for investigating and prosecuting anti-doping rule violations of all international-level athletes (a task currently being carried out at national level by National Anti-Doping Organisations). The proposals are to be voted on at an IAAF Special Congress in December 2016.

---

63 CAS2016/A/4745.
64 CAS2016/0/4684.
X  OUTLOOK AND CONCLUSIONS

This year has seen a further focus on good governance within sporting organisations, as well as on sporting integrity and transparency. In football, FIFA has passed a number of reforms presented to it by the 2016 FIFA Reform Committee at an Extraordinary Congress in February 2016 and published ‘FIFA 2.0: The Vision for the Future’ in October 2016 (their blueprint to ‘promote the game of football, protect its integrity, and bring the game to all’). Developments on this issue have not been confined to football; as is set out in more detail in Section IX, supra, the IAAF sought to move on from recent high-profile governance and integrity issues by publishing its paper on governance reform in September 2016. Tennis is also addressing this issue; in light of media allegations in January 2016 of match fixing in the sport and of the developments in internet gambling since the formation of the Tennis Integrity Unit, the tennis governing bodies announced that an independent review panel would be appointed to undertake a review of integrity in the sport, made up of Adam Lewis QC, Beth Wilkinson and Marc Henzelin. Charles Russell Speechlys LLP has been appointed as solicitors and secretariat to that panel, which is expected to publish its interim report in the first quarter of 2017. This year has also seen the publication by the United Nations Office on Drugs and Crime of its resource guide ‘Good Practices in the Investigation of Match-Fixing’ to set out the benefits of a coordinated approach between sports governing bodies and law enforcement when dealing with match-fixing investigations.

67  http://resources.fifa.com/mm/document/affederation/generic/02/84/35/01/fifa_2.0_vision_low_neu.17102016_neutral.pdf.
Chapter 6

FINLAND

Pia Ek and Hilma-Karoliina Markkanen

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i 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 Sports Confederation, Valo. Valo is a loose service association for its 89 national and regional sports federation members. It plays a major role of advocacy for sport as well as for the promotion of sport for youth and sport for all.

1 Pia Ek is counsel and an attorney at law and Hilma-Karoliina Markkanen is an associate at Castrén & Snellman Attorneys Ltd. The authors would like to thank associate Anna-Sofia Kivi for her research assistance in preparing this chapter.

Parallel with membership of Valo, the national sports federations are also members of the Finnish Olympic Committee. Whereas Valo focuses on youth sport and sport for all, the Olympic Committee focuses on elite sport. As of 1 January 2017, these two organisations will unite as one under the Finnish Olympic Committee.

ii Corporate governance
As Finnish sport is organised on the principle of 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.

Valo has compiled principles for good governance as part of the European Commission’s Better Boards, Stronger Sport project, which most of the sports federations have acknowledged in their regulations. Given the strong autonomy of the associations, the common rules for good governance are self-regulatory by their nature and are binding on the federations only if they have specifically committed to their use.

iii Corporate liability
A member of the board and an officer of an association are liable for damage that he or she causes to the association wilfully or negligently. A board member or an officer can only avoid liability by not participating in the decision-making; for example, by recusing oneself.

A member of the board and an officer of an association are similarly liable for damage that he or she causes 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 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. By rule of thumb, 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 of the cases have involved athletes’ labour disputes or doping, and very few cases have been tried on the disciplinary measures of an association.

ii 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

---

3 Associations Act (503/1989).
4 Halila and Tarasti 2011.
sanctions. Despite its designation as an arbitration panel, it works and functions 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 Sports Arbitration Board has never in its history acted as an arbitral tribunal.

The rules of the Sports Arbitration Board provide that the arbitration board may handle appeals based on decisions made by associations regarding 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 elected to 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 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.

iii 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 observed 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.

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). The 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 breach the contract.

The Assembly Act (530/1990) 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 to the athlete's participation right, 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.5 Secondly, an organiser has contractual liability also 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.

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.

5 The 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.

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.
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 sport 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 offence 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 assaults11 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 brought.12 However, investigation of an offence may begin without a contribution by the victim, as according to the Criminal Investigation Act (805/2011), 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 (412/1974) for the damage he or

---

8 In some cases the athlete’s liability is also governed by the Finnish Employment Contracts Act. These situations are covered in Section V, infra.
9 Norros 2014.
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.
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 (530/1990) 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. 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 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 selling 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 an exclusive right to the organiser to organise the event on 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 the condition applies to. The individual athletes dispose of the 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, therefore, any direct or indirect marketing of such products is not 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 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, 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 commercialising of sports-related rights can be efficiently protected by intellectual property legislation, such as the Trademarks Act (7/1964), the Business Name Act (128/1979) and the Copyright Act (404/1961). 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 the 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. For consumer agreements the case might be different 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 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 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 last only for a rather short term. 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 resulting from 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 a reasonable, normal remuneration for the work performed. Salary protection is reserved for the trade unions in the form of collective bargaining. This possibility has been utilised only by one player association in Finland.

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.

ii Free movement of athletes

Discrimination is banned by the Constitution (731/1999), the Non-discrimination Act (1325/2014) and Employment Contracts Act (55/2001), 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.

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 (948/2011). First, the participation or organising rights and licences shall be granted on equal conditions. An equitable condition is, for example, a certain result or

---

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.
15 European Court of Justice, Bosman C-415/93.
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, 4 March 1998.

Thirdly 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, 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.16

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.

Administration of an individual top athlete’s activities and contracts may be easier to arrange in the form of a limited liability company, but therein lies the risk that income of 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.17

Double taxation problems of athletes and taxable sports clubs when they participate in sports events abroad are acknowledged in Finnish tax legislation and 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.18 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.19

---

17 Supreme Administrative Court ruling KHO 2010 T 103.
18 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).
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). 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
Organising and advertising of betting on sport events is strictly prohibited in Finland, except for three selected organisations defined in the Lottery Act (1047/2001): Fintoto Oy, Veikkaus Oy and Finland’s Slot Machine Association.20 These organisations have a statutory obligation to prevent abuse or crime, as well as 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 Court of Justice of the European Union, in which the Court found that the monopoly system can be justified, among others, in crime prevention and in preventing the harmful effects related to gambling and betting.

The prohibition on organising and advertising 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 criminalising such behaviour has been discussed in Finland, but no separate penal provision has been enacted. A penalty may be imposed for such behaviour, however, for fraud in accordance with the Criminal Code. It has been argued and assessed that 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 but where no economical loss is caused. The sentence for fraud varies from fines to imprisonment up to two years.

20 Fintoto Oy, Veikkaus Oy and Finland’s Slot Machine Association will, through legislative measures, on 1 January 2017 be merged into one new company Veikkaus Oy.
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 big 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. Also ticket quotas per customer and designating tickets for specified customers have been used to prevent grey market sales.

IX THE YEAR IN REVIEW
The news in the past year has been the fusion of Valo and the Finnish Olympic Committee, which will unite on 1 January 2017. The fusion is, however, not new in Finland, since Valo and the Finnish Olympic Committee have in fact united their operative actions, already having a common president and secretary-general.

Further, the Finnish Center for Integrity in Sports, FINCIS, was established in January 2016. FINADA has ceased its operations and now operates under FINCIS, which is responsible for advocating ethical principles in Finnish sport and carrying out anti-doping activities. FINCIS’ aim is to prevent, for example, match-fixing and spectator violence in the future.

Owing to the Act on the Promotion of Sports and Physical Activity (390/2015), which was implemented in 2015, the Ministry of Education and Culture has, during the past year, been quite active in monitoring the use of allowances it has granted to sport organisations. The Ministry supervises the use of funds allocated and has claimed for repayment from several organisations for administrative reasons.

The biggest sports event of the year, the 2016 Olympic Games in Rio, did not raise any major news or issues within Finland. Two cases were brought before the Finnish Sports Arbitration Board regarding athlete selections to the Finnish Olympic team. Both cases were rejected by the Board.

X OUTLOOK AND CONCLUSIONS
For about two decades now there has been discussion about the juridification of sports in Finland. Given the recent developments within Finnish sports, the awareness of laws affecting sports is likely to increase. Although the organisation of sport in Finland has evolved over the decades, the combining of sport for all and elite sport under one parent organisation is likely to lead to changes in the way that sports is administered. Finland, as so many other countries, will be looking at new developments in the fight against match-fixing and spectator violence.
I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

The highest governing body for sport in France is the Ministry of Sports, which is authorised to grant to the federation of any sport discipline the right to organise and regulate its 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 by the Ministry of Sports such delegation.

A federation is authorised, but not required, to create a professional league in order 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 Law of 1 July 1901.

That being said, when a club participates in events that generate revenues greater than €1.2 million annually, or employs athletes receiving a total income exceeding €800,000, then such club (i.e., the non-profit organisation) is required to create a corporation, which will manage its commercial activities.2 According to Article L.122-2 of the French Sports Code, the ‘sport corporation’ must take one of the following legal forms: (1) limited liability company with a sole member, called a single owner limited liability sport company (EUSRL);

---

1 Romain Soiron is a partner and Aude Benichou is an associate at Joffe & Associés.
France

(2) limited liability company with a sports object (SAOS); (3) professional sports limited company (SASP); (4) limited liability company (SARL); (5) limited company (SA); or (6) simplified joint-stock company (SAS).³

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

In addition, some of the sports corporations (i.e., SAOS, EUSRL and SASP) are under an obligation to comply with standard by-laws setting out various rules regarding shareholders and corporate governance.

It must be stressed that according to Article L.122-7 of the 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.

II THE DISPUTE RESOLUTION SYSTEM

i  Access to courts

Articles R.131-2 and R.131-7 of the Sports Code set out the disciplinary proceedings to be implemented by sports federations in order 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 of time;

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 Sports Code also provides for an alternative dispute resolution process before the French National Olympic and Sports Committee (CNOSF).⁴ This dispute resolution process is known as ‘conciliation’. The use of such proceeding depends on the common will of the parties involved (except in cases where 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.

³ To our knowledge, the most common structure for sport companies used in 2015 was the SAOS. All other clubs and bodies are non-profit organisations governed by the Law of 1 July 1901.

⁴ Article L.141-1 et seq. of the French Sports Code.
On the international level, certain international federations prohibit the right to seek remedies through state courts in the context of international disputes.

ii Sports arbitration

A Sport Arbitral Chamber (CAS) was created in 2007 within the CNOSF. Article 2.3 of CNOSF's statutes provides that the CAS may resolve a dispute 'through conciliation or through arbitration'.

Article 19 of the internal regulation of the CNOSF sets out the conditions under which the parties can apply 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 apply 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. The CAS thus has jurisdiction over 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 the 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 has to 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’ (e.g., that the respect of the right of defence was insured). Finally, the judge has to verify whether the decision complies with French international public policy rules. That said, some regulations of French federations specifically provide that international decisions that affect national tournaments may be enforced directly without any exequatur proceedings before a French court.

5 French Supreme Court, 7 January 1964.
6 French Supreme Court, 6 February 1985.
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 consumer rules and regulations – when 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 2016 to enforce consumer laws regarding online and in situ ticketing. The investigation has revealed several significant breaches. Many organisers failed to provide the appropriate information to the consumers, in particular, regarding the right of withdrawal. Indeed, French consumer laws impose a ‘withdrawal period’ for online sales during which the consumer may return the purchased item and be reimbursed. Although this withdrawal period does not apply to sport ticketing, the seller is nonetheless under an affirmative duty to inform buyers that they have no right of withdrawal, which the DGCCRF investigation has shown was not implemented by the sellers.

ii Relationship between organiser and athletes or clubs

A club seeking to participate in a competition organised by its 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), 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).

It is worth noting that the Sports Code also requires the subscription of an insurance policy by the federation, which covers damages 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, such fault may occur for instance in the event of:

a failure to keep the sports facilities safe and secure;

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 wants to be exonerated must demonstrate that the fault was committed in the spirit of the game, and that the potential injury was accepted by the injured player.

7 DGCCRF Press Release, 1 July 2016.
8 Article L. 121-21-8 of the French Consumer Code.
Regarding the liability to spectators, the organiser can be held liable for injuries caused during sports events because of security and safety regulations breaches. It must also be stressed that the lawmaker created specific offences applicable to behaviour of spectators during sports events such as:

a. forcible or illegal introduction of alcoholic beverages in a sports arena during a sports event;¹⁰
b. encouragement of others spectators to hatred or to the commission of violence;¹¹
c. display of insignia, signs or symbols promoting racial or xenophobic ideology;¹² or
d. possession or use of rockets, artifices or projectiles.

IV Riot prevention

Under the impulse 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.¹³ In order 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.

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.¹⁴

IV COMMERCIALISATION OF SPORT EVENTS

The originality of the French system resides in Article L.333-1, paragraph 1 of the 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 *sui generis* 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 in order to be compensated and to prevent the unauthorised use of that person’s creation.

The Sports Code does not list the ‘exploitation rights’ that are within the organiser’s portfolio. Some of the rights are specifically referred to in the Sports 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, e.g., during a moment 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’.¹⁵

¹³ Article L331-4-1 of the French Sports Code.
¹⁵ French Supreme Court, 20 May 2014.
This ‘organiser’s right’ set out by law is the most efficient legal weapon and the most commonly used before courts by organisers in order to protect their rights.

The commercialised rights by the federations are subject to limitations — mainly linked to competition law and right to information (‘news access’), as set out in the European Union regulations. For instance, the Sports Code\(^\text{16}\) 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.

A French particularity should be underlined. Federations may assign to clubs, free of charge, the audiovisual exploitation rights related to the competitions organised by the professional league; such rights being, in such a case, marketed on an exclusive basis by the professional league on behalf of the clubs. For now, this option was 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).\(^\text{17}\) The French specificity is that when audiovisual rights are assigned by the Federation to the clubs (i.e., for now, only in football), certain rules apply. Indeed, the Sports Code provides a legal framework to the marketing of audiovisual rights by the league that markets the rights (the LFP). 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 or 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 bargaining agreements set forth the applicable rules to professional athletes’ employment agreements.

However, a law that came into force on 27 November 2015\(^\text{18}\) sets out specific mandatory provisions for employment agreement of professional athletes, coaches, judges and referees. Indeed, 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. An exception is allowed for employment contracts for less than 12 months in case of replacement during the season. Those fixed-term contracts also have to comply with other mandatory provisions. For instance, contracts must provide all the mandatory information listed in Article L.222-2-5 of the Sports Code and the termination clause cannot be unilateral.

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 the European Union, the Treaty on the Functioning of the European Union  

---

\(^{16}\) Article L.333-9 of the French Sports Code.

\(^{17}\) Article R.333-2 of the French Sports Code.

\(^{18}\) Law No. 2015-1541 (protecting high-level and professional athletes and securing their judicial and social rights).
The European Union 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 the freedom of movement principle.

### iii Employment rules of sports governing bodies

Sports governing bodies have to apply French employment rules and regulations. Because of their 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 its 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 sport organisations. French legal requirements regarding competition law are set out in the Commercial Code and in the TFEU.

Two significant illustrations of application of competition law to sports should be mentioned. In the *Adidas* case, the French Professional Football League and adidas were found liable for having entered into an exclusive agreement, owing in particular to the fact that the French league had not marketed the rights through a call for tender and the duration of the agreement was excessively long (five years).

A recent case also illustrated the complex issue of competition law in the commercialisation of broadcasting rights. The process of sale of the rights and the duration of the broadcasting rights proposed must notably be analysed very carefully from an antitrust law perspective.

---

21 Articles 101 and 102 of the TFEU.
22 Decision 97-D-71 of 7 October 1997 of the French Competition Authority.
23 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 ranged from 0 per cent to 45 per cent for fiscal year 2015 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 for a professional activity of a non-resident:

a) 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

b) 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 anti-doping legislation.\(^\text{24}\) Since then, French legislation on the subject has significantly increased and most of the applicable provisions are now codified in the 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’ imprisonment and a €150,000 fine).\(^\text{25}\) An athlete’s refusal to submit to anti-doping control may also lead to criminal prosecution.\(^\text{26}\)

ii Betting

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

Since 1933, 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.

\(^{24}\) Law No. 65-412 of 1 June 1965 aiming to repression of use of stimulants during sports competitions.


Under the pressure of the European Commission, the French lawmaker amended its regulations with the Law of 12 May 2010,\textsuperscript{27} which liberalised the online gambling market.

According to 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 list prepared by ARJEL.\textsuperscript{28} Friendly national team games are excluded from this list,\textsuperscript{29} except in certain circumstances.\textsuperscript{30}

In addition, according to the Sports Code, the ‘organiser’s right’, mentioned in Section IV, \textit{supra}, on its competition includes the right to authorise bets on its competitions.\textsuperscript{31} Consequently, once certain online operators have been approved by ARJEL, they may enter into agreements with event organisers for the organisation of bets on the competition. Such agreements generally include compensation provisions, in which the betting operator is compensated at approximately 1 per cent of the amount engaged in gambling.\textsuperscript{32} The agreement also includes anti-fraud detection and prevention contractual obligations burdening the operator. Further, in order to prevent conflicts of interests, the Sports Code requires organisers to issue and impose regulations preventing players and related parties from betting on competitions in which they participate.

It must be stressed that the French online betting sector is highly regulated.

\textbf{iii \hspace{1cm} Manipulation}

The Sports Code and the Criminal Code do not specifically address match-fixing. However, several provisions of the Criminal Code incriminate acts of corruption committed by civil servants within their public office\textsuperscript{33} and by persons outside public functions.\textsuperscript{34}

Most importantly, the Law of 1 February 2012,\textsuperscript{35} codified in Articles 445-1-1 et seq. of the Criminal Code, 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 in order to induce a positive act or omission modifying the normal course of the sport event. Such 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).

\textbf{iv \hspace{1cm} Grey markets sales}

The Law of 12 March 2012 created the new offence of illegal resale of tickets to cultural or sports events. The new Article 313-6-2 of the Criminal Code incriminates the regular and permanent resale of those tickets outside the channels usually established by the event

\begin{itemize}
\item \textsuperscript{27} Law No. 2010-476 of 12 May 2010 on the liberalisation of online gambling.
\item \textsuperscript{28} List on the website: www.arjel.fr.
\item \textsuperscript{29} Decision ARJEL No. 2015-043, 16 July 2015.
\item \textsuperscript{30} Decision ARJEL, No. 2010-050 26 May 2011.
\item \textsuperscript{31} L. 333-1-1 of the French Sports Code.
\item \textsuperscript{32} Dalloz, \textit{Dictionnaire permanent de droit du sport} – Paris Sportif, No. 40.
\item \textsuperscript{33} Article 432-11 of the French Criminal Code.
\item \textsuperscript{34} Article 445-1 of the French Criminal Code.
\item \textsuperscript{35} Law No. 2012-158 of 1 February 2012 aiming to reinforce sports ethics and sportsmen rights.
\end{itemize}
organiser. Moreover, pursuant to Article L.333-1 of the Sports Code, the organiser has the right to prohibit any resale of 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 (it being noted that other organisers such as the French Rugby Federation and the Professional Football League did the same), French courts ordered the company Viagogo to cease the illegal resale of online tickets to sport events and held it liable to pay damages to the FFF.\[36\]

**IX THE YEAR IN REVIEW**

All over the world, and particularly in France, piracy has become one of the greatest challenges that sports federations and organisers are facing, as emerging techniques and technologies are threatening the organisers’ exploitation rights. French courts have recently enforced the organisers’ rights in piracy cases. The landmark *Rojadirecta* case\[37\] is a prime example, as the courts ruled that Rojadirecta, one of the leading live-streaming websites, had breached the Professional Football League’s organiser’s exclusive rights. The holdings of the *Rojadirecta* decision should be applied in other countries, since this type of website constitutes piracy at its finest and severely hinders the development of professional sports worldwide.

It should be noted that in connection with the organisation of the 2016 European Cup in France, the rights of the FFF were protected thanks to the aforementioned *Viagogo* case. The *Pizza Hut* case is also relevant, as Pizza Hut was held liable for promoting its pizzas via illegal reference to Ligue 1 matches, in violation of the Professional Football League’s organiser’s rights.\[38\]

**X OUTLOOK AND CONCLUSIONS**

French sports law is one of the most mature and well-established sports law in Europe and worldwide. The legal protection accorded to the rights of organisers with its extensive application by the courts has 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 going in the right direction, but with new technologies, and more generally the digitalisation of the media, sports rights business models require improved legal protection.

---

36 Decision first instance court 20 May 2014.
37 Decision first instance court 19 March 2015.
38 Decision first instance court 2 June 2016.
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).

In order for an entity to qualify as an association, the following requirements need to be fulfilled:\(^2\)

- \(a\) at the time of its foundation, the entity must be a voluntary organisation of at least seven persons;\(^3\)
- \(b\) 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.\(^4\)

Entities involved in sports choose to organise in the form of an association for various reasons: the possibility to organise as an association is generally independent from the number of persons involved.

---

1. Dirk-Reiner Martens is the principal and Alexander Engelhard is an associate at Martens Rechtsanwälte.
3. Section 56 BGB.
4. Palandt, Bürgerliches Gesetzbuch: BGB, Section 21(1).
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 the prime decision-making body of the association.

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 of which must be used to fund their non-profit activities. However, if an association through sponsorship and merchandising generates a profit, it will regularly transfer its commercial activities onto a separate (commercial) legal entity.

Because of the above, the German Football Association (DFB) in 1998 allowed the clubs of the German Bundesliga to spin-off their professional football departments as commercial companies. Most clubs in the Bundesliga have made use 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)).

---

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

6 Exceptions apply in situations in which a member mixes funds of the association 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 Liii, infra.

7 Section 32 BGB, according to which the affairs of the 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).

8 Article 9 of the Basic Law for the Federal Republic of Germany (GG) provides for the freedom of association.

9 See Haas/Martens, p. 34.

10 For more details see Lentze/Stopper, Handbuch Fußball-Recht, Erich Schmidt Verlag 2012, p. 795 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., >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 2015: www.lawinsport.com/articles/item/football-club-ownership-in-germany-less-romantic-than-you-might-think (last visited on 24 October 2016).
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 as well as certain corporate governance guidelines of sport organisations such as the German Olympic Sports Confederation (DOSB).12

The relevant civil laws include provisions on the internal structure of associations,13 their liability and that of their representatives.14 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.15 Relevant criminal matters include:16

- a) insolvency offences: Section 283 et seq. of the Criminal Code (StGB) and Section 15a of the German Insolvency Code;
- b) misrepresentation offences: for example, Section 399 of the Stock Companies Act or Section 82 of the Limited Liability Company Act;
- c) breach of fiduciary trust: Section 266 StGB;
- d) commercial bribery: Sections 299 and 300 StGB;
- e) public bribery: Section 331 et seq. StGB;
- f) tax fraud: Section 370 AO; and
- g) illegal gambling: Section 284 StGB.17

Beyond the (general) legal framework set out above, in 2007 the DOSB passed the DOSB Corporate Governance Codex and the DOSB Code of Ethics.18 The DOSB Corporate Governance Codex contains binding rules on issues such as conflicts of interest and transparency, and is applicable to the DOSB organs.19 Compliance is supervised by the Good Governance Commissioner, who draws up an annual good governance report that is published on the DOSB website.

---

12 The DOSB is the 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 24 October 2016).
13 For example, Sections 26 and 32 BGB.
14 See Section I.iii, infra.
15 Section 51 et seq. AO.
16 For more details, see Fritzweiler/Pfister/Summerer, Praxishandbuch Sportrecht, third edition 2014, p. 841 et seq.
17 See below Section VIII.ii, infra.
19 In the preamble of the Codex, the DOSB suggests that its member associations implement similar regulations concerning the good governance of their respective organisations.
The DOSB Code of Ethics claims to define the overall conduct and dealings of German sport altogether and towards third parties. It is binding for volunteers, employees and members of the DOSB.\textsuperscript{20}

\section*{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 BGB.\textsuperscript{21} This liability towards third parties cannot be ruled out in the statutes of an association.\textsuperscript{22} Moreover, the German Federal 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.\textsuperscript{23}

The liability of an association does not supersede the liability of an individual committing an act that causes damage:\textsuperscript{24} the association and the individual will be jointly liable for that damage.\textsuperscript{25} According to the general rules of German contract or tort law, or both, such individual will be liable, \textit{inter alia}, with regard to the failure to pay social security contributions or to timely file for the opening of insolvency proceedings.\textsuperscript{26} Considering the far-reaching scenarios of individual liability in the sport association context, managers and officials should consider taking out directors and officers liability (D&O) insurance.\textsuperscript{27}

\section*{II THE DISPUTE RESOLUTION SYSTEM}

\section*{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 of

\begin{flushleft}
\textsuperscript{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.
\end{flushleft}

\begin{flushleft}
\textsuperscript{21} For more details see Heermann, p. 67.
\end{flushleft}

\begin{flushleft}
\textsuperscript{22} \textit{Id.}, p. 77.
\end{flushleft}

\begin{flushleft}
\textsuperscript{23} \textit{Id.}, p. 67; BGH, judgment of 30 October 1967 – VII ZR82/65.
\end{flushleft}

\begin{flushleft}
\textsuperscript{24} \textit{Id.}, p. 82.
\end{flushleft}

\begin{flushleft}
\textsuperscript{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 Section 840(2) BGB. However, Section 31a BGB contains a liability privilege for an official towards the association and its members if an official earns less than \texteuro{}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 OLG Nürnberg, order of 13 November 2015 – 12 W 1845/15.
\end{flushleft}

\begin{flushleft}
\textsuperscript{26} For further examples, see Heermann, p. 83 et seq.
\end{flushleft}

\begin{flushleft}
\textsuperscript{27} D&O liability insurance provides coverage to managers and officials to protect them from 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.
\end{flushleft}
such sports governing body before a state court or arbitral tribunal.\textsuperscript{28} 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.\textsuperscript{29}

As a result of the above, an athlete or club intending to appeal a decision of 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.\textsuperscript{30} Only under 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.\textsuperscript{31}

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. In cases where an arbitration agreement does not exist or is invalid, or where a dispute is not arbitrable, an appeal may be brought before a state court.\textsuperscript{32}

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

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

\textsuperscript{28} See Haas/Martens, p. 119. Any provision to the contrary in the rules and regulations of a sports governing body would be invalid.

\textsuperscript{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.

\textsuperscript{30} See Haas/Martens, p. 121.

\textsuperscript{31} Id., p. 121.

\textsuperscript{32} Regarding the requirements for a valid arbitration agreement and the question of arbitrability, see Section II.ii, infra.

\textsuperscript{33} See Fritzweiler/Pfister/Summerer, p. 276 et seq.
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.\textsuperscript{34}

Typical requests for relief brought before a state court include:\textsuperscript{35}

- annulment of a disciplinary sanction;
- annulment of a sporting result;
- admission of an athlete or club into an association; and
- (preliminary) admission of an athlete into a competition.\textsuperscript{36}

In light of the above, the BGH recently 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.\textsuperscript{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).

Section 1031 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.\textsuperscript{38} 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.\textsuperscript{39} 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

\textsuperscript{34} Id., p. 280.

\textsuperscript{35} Id., p. 265.

\textsuperscript{36} 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 the Regional and the Higher Regional Court in 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 Friedek for the Games although he had fulfilled the nomination criteria. The case has been referred back to the previous instance to decide about the amount of damages to be paid (BGH, judgment of 13 October 2015 – II ZR 23/14).

\textsuperscript{37} See NJW-Aktuell 42/2016, p. 12.

\textsuperscript{38} Section 1031 ZPO also provides 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 self-employed activity of the athlete.

\textsuperscript{39} Section 1066 ZPO; see also Musielak/Voit, ZPO, 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.
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 the latest decision, the BGH confirmed that in sports matters, the need for international uniformity of decisions trumps the requirement of a ‘voluntary’ arbitration agreement.40

Sports disputes are arbitrable according to Section 1030 ZPO as long as they concern pecuniary matters.41 Labour law-related disputes, for instance between a player and his or her club, are generally not arbitrable under German law.42 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.43 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 an on-call duty of arbitrators on any day of the week.44

The DIS-Sport,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:

a) breaches of anti-doping rules;
b) disputes arising in the context of sports events;
c) transfer disputes;

40 BGH, judgment of 7 June 2016 – KZR 6/15; Despina Mavromati, The Legality of the Arbitration Agreement in favour of CAS under German Civil and Competition Law – The Pechstein Ruling of the German Federal Tribunal (BGH) of 7 June 2016, published in CAS Bulletin 2016/1, p 40; see also OLG München, judgment of 15 January 2015 – U 1110/14 Kart, see also Duve/Rösch, SchiedsVZ 2014, 216. Ms Pechstein has lodged a constitutional complaint against the BGH decision before the German Federal Constitutional Court (BVerFG).

41 The term ‘pecuniary matter’ must be interpreted in a wider sense, and also 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 Sections 4 and 101 of the Labour Court Act.

43 See Haas/Martens, p. 133.

44 Id., p. 134.

45 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, see the DIS website: www.dis-arb.de/em/57/content/about-the-dis-id46 (last visited on 25 October 2015); and the information provided by the National Anti-Doping Code at www.nada.de/fileadmin/user_upload/nada/Downloads/Regelwerke/080305_NADA_Informationsblatt_Schiedsgerichtsbarkeit.pdf (last visited on 24 October 2016).
disputes regarding licensing and sponsoring agreements; and

case disputes.

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. 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.

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.
The recognition and enforcement of foreign arbitral awards is governed by the New York
Convention on the Recognition and Enforcement of Foreign Arbitral Awards. It is worth
mentioning that disciplinary (doping) decisions of an arbitral tribunal are ‘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. The reasons
for annulment of arbitral awards according to Section 1059 ZPO are limited primarily to
procedural issues. An appeal that the award is ‘wrong’ will not be heard.

III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator

The legal relationship between the organiser and the 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. 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 the 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 the terms and conditions will depend on the type of ticket that is purchased
(e.g., a match-day or season ticket), but will usually include limitations on ticket transfer,
liability and security, and 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. 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.  

For security reasons, in order 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.  

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 damages caused by intent or gross negligence. However, damages caused to life, physical integrity or health, and those 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. 

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 the organiser and the 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), 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. The BGH has decided that Section 305 et seq. BGB, which regulate the inclusion of terms and conditions into 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.

52 See Lentze/Stopper, p. 852.
53 For details see Section VIII.iv, infra.
54 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.
55 See also Section III.v, infra.
56 Unlike Swiss law, German law prohibits ‘dynamic’ referencing to future editions of the rules and regulations of another (higher-ranking) sports governing body. See Haas/Martens, p. 70.
57 Id., p. 66 et seq.
59 If the rules are changed by the organiser during the duration of the contract, the athlete has the right to withdraw from the contract if the rule change appears inappropriate and unacceptable. See Haas/Martens, p. 75.
As an example, German Olympic athletes ahead of the 2016 Rio Olympic Games had to sign the DOSB athlete’s agreement as well as the International Olympic Committee (IOC) 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 it. 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. BGB (damages for breach of contract) and Section 823 et seq. BGB (damages for unlawful conduct).

Besides claiming damages (which are generally restricted to compensation without the possibility to claim 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 include Section 223 et seq. StGB (causing bodily harm) and Section 229 StGB (involuntary or negligent bodily harm); and Section 212 StGB (manslaughter) and Section 222 StGB (involuntary or negligent manslaughter).

---

60 The DOSB athlete’s agreement for the 2016 Rio Olympic Games contained, inter alia, the following obligations for athletes: (a) recognition of the World Anti-Doping Code, the National Anti-Doping Code, the Olympic Charter and other regulations and fundamental documents; (b) acknowledgement of team orders and the DOSB’s sole responsibility to nominate athletes; (c) 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 (d) acknowledgement of the rules on advertisements in the Olympic Charter and the prohibition of any form of advertising during the Games. The DOSB athlete’s agreement for the 2016 Rio Olympic Games is available at www.dosb.de/fileadmin/Bilder_allgemein/Veranstaltungen/Rio_2016/RIO_2016_Athletenvereinbarung_beschlossen_am_12.04.2016.pdf (last visited on 24 October 2016).

61 For more information on club licensing in the Bundesliga, see Lentze/Stopper, p. 665 et seq.

62 For more details on the civil liability of the organiser, see Heermann, p. 154 et seq.

63 Section 249 BGB.

64 See Heermann, p. 53.

65 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 mountain, Zugspitze, was not guilty of negligent manslaughter, although two of the participants had died of hypothermia during the race. The judge justified the acquittal by stating that the organiser had informed the participants about the weather on the Zugspitze and that the participants had put themselves at risk.
The criminal offences set out in Sections 223 and 229 StGB usually require a complaint by the victim for the 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, *supra*, regarding the liability of the organiser also apply with regard to the liability of athletes, particularly Section 823(1) BGB (also Section 280 BGB in the context of a contractual agreement) as well as Sections 223 and 229 StGB. From a civil law and from a criminal law perspective, athletes must respect a general duty of care when exercising 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 the game 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, such as boxing or 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 caused by that particular sport, or that the injured person acted at his or her own risk.

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

v Liability of the spectators

The relevant statutory provisions concerning the liability of spectators can also be found in Section 823(1) BGB (as well as in Section 280 BGB if the spectator violates obligations under the ticketing contract), and Sections 223 and 229 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 damages caused according to Sections 280 BGB or 823(1) 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 not increase risks for athletes in addition to those inherent to the sport itself.69 The liability of spectators also extends to violations of property rights, personality rights and other rights protected under Section 823(1) BGB.

---

66 See Haas/Martens, p. 179. Where 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 See Haas/Martens, p. 183.

68 Section 249 BGB.

69 See Heermann, p. 225.
If a particular perpetrator cannot be identified from a specific group of spectators, Section 830(1) BGB provides that each of the persons involved will be liable for the damage caused.\textsuperscript{70} A form of joint liability can even be found in criminal law, in Section 231 StGB, which allows punishment of a person for taking part in a brawl 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 StGB will be prosecuted \textit{ex officio}.

vi Riot prevention

German law does not provide for any sport-specific national laws to prevent riots. In football, the rules and regulations of the DFB show a twofold approach: the DFB obliges Bundesliga clubs to employ a fan commissioner\textsuperscript{71} and subsidises several fan projects. On the other hand, Section 9a of the DFB Disciplinary Code provides for the strict liability of clubs for the behaviour of their supporters and spectators.\textsuperscript{72} The rules go as far as to provide that 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 such spectators. In a recent judgment, 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 such obligation by throwing a firecracker into the stands injuring seven people, that spectator is liable for the damage caused by his or her conduct, including a foreseeable financial sanction imposed on the responsible club pursuant to disciplinary regulations.\textsuperscript{73} It must be clearly evidenced 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 such spectator committed the offence in question.\textsuperscript{74}

There is an ongoing debate in Germany about whether professional football clubs or the League should be held liable for the costs of police operations in connection with Bundesliga games. The reason that the debate has resurfaced in recent times was a change in the state law of Bremen, according to which administrative costs for police operations can now be claimed from the person or entity (e.g., an event organiser) in whose interest the operation took place.\textsuperscript{75} However, for several different legal and practical reasons, the majority of states deem that such police operations should be paid for with taxpayers’ money.\textsuperscript{76}

\textsuperscript{70} Id., p. 225.
\textsuperscript{71} Section 5 Letter h League Statutes – Licensing Regulation.
\textsuperscript{72} For more information, see Haslinger, \textit{Zuschauerausschreitungen und Verbandsankationen im Fußball}, Nomos 2010.
\textsuperscript{73} BGH, judgment of 22 September 2016 – VII ZR 14/16 overturning OLG Köln, judgment of 17 December 2015 – 7 U 54/15.
\textsuperscript{74} LG Karlsruhe, judgment of 29 May 2012 – 8 O 78/12.
\textsuperscript{75} Section 4 Fees and Contributions Act (Bremen).
\textsuperscript{76} For more information, see Böhm, Polizeikosten bei Fußballspielen, \textit{NJW} 2015, p. 3,000; Klein, Fußballveranstaltungen und Polizeikosten – Die Verfassungsmäßigkeit einer kostenrechtlichen lex-Fußball in Bremen, \textit{DVBl} 5/2015, p. 275.
IV COMMERCIALISATION OF SPORTS EVENTS

i Types of and ownership in rights

German law does not recognise a specific sports organiser right *per se*.\(^77\) 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.\(^78\)

Of central importance is the ‘house right’ set out in Sections 858 and 903 BGB.\(^79\) 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) 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 of a player and his or her club, and the protection of this contractual relationship under the law and relevant regulations of sports governing bodies.\(^80\)

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.\(^81\) 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*

This right allows the organiser to regulate access to a venue in relation to spectators and third parties (including radio and TV broadcasters).\(^82\) 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

---

77 For more information, see the legal opinion of Hilty/Henning-Bodewig, *Leistungsschutzrechte zugunsten von Sportveranstaltern?*, Boorberg 2007.
78 For latest recent assessment in the debate on the implementation of a sports organiser’s right, see Heermann, *Neues zum Leistungsschutzrecht für Sportveranstalter*, *GRUR* 2015, 232.
79 See also Sections 859, 862 and 1004 BGB.
80 For example, Article 13 et seq. FIFA Regulations on the Status and Transfer of Players.
81 For more information on German law regarding broadcasting rights, see Lentze/Stopper, p. 107 et seq.
(UrhG)). In addition, organisers and athletes are not protected by copyright law (Sections 73 and 81 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 UrhG protects at least the (host) broadcaster once it delivers or has delivered the pictures of a sporting event.\textsuperscript{83} Section 87(1) UrhG protects the TV channel that is airing the broadcast.\textsuperscript{84}

\textbf{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 UWG could prevent third parties from unauthorised filming and broadcasting of a sporting event.\textsuperscript{85}

\textbf{Tort law}

Finally, it has also been suggested that the organiser of a sporting event who has made a considerable investment in order to hold a sporting event, or an athlete who has invested a lot in training, enjoy protection under Section 823(1) BGB against the unpaid exploitation of their investment.\textsuperscript{86}

\textbf{iii Contractual provisions for exploitation of rights}

Contracts in the field of sport 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 to also properly structure and manage all rights contracts in order 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, \textit{inter alia}, with:

\begin{itemize}
  \item \textit{a} exclusivity;
  \item \textit{b} sub-licensing;
  \item \textit{c} territory;
  \item \textit{d} production;
  \item \textit{e} duty to broadcast;
  \item \textit{f} contract duration and termination; and
  \item \textit{g} warranty and indemnification.\textsuperscript{87}
\end{itemize}

\textsuperscript{83} See Lentze/Stopper, p. 111.
\textsuperscript{84} \textit{Id}.
\textsuperscript{85} BGH, judgment of 28 October 2008 – I ZR 60/09, GRUR 2011, p. 426 (\textit{Hartplatzhelden.de}).
\textsuperscript{86} See Lentze/Stopper, pp. 124, 125.
\textsuperscript{87} Schwartmann, \textit{Praxishandbuch Medien-, IT- und Urheberrecht}, CF Müller 2011, p. 426 et seq.; see also Lentze/Stopper, p. 137 et seq. or Fritzweiler/Pfister/Summerer, p. 455 et seq.
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 and other media rights will usually be split up into different rights packages to meet antitrust obligations.\textsuperscript{88} Other relevant norms include the right to produce short news extracts\textsuperscript{89} in Section 5 of the Interstate Broadcasting Treaty (RStV) or Section 4 RStV regarding ‘listed events’.\textsuperscript{90}

V \hspace{1em} PROFESSIONAL SPORTS AND LABOUR LAW

i \hspace{1em} Mandatory provisions

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

a \hspace{1em} Section 611 BGB, Article 1 and 2 GG: the 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.\textsuperscript{91}

b \hspace{1em} Section 616 BGB: the 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 \hspace{1em} Section 1 Federal Holiday Act: the athlete has a right to at least 24 business days of paid leave during the calendar year.\textsuperscript{92}

\textsuperscript{88} For more information, see Schwartmann, p. 414 et seq.; also Bundeskartellamt, decision of 12 January 2012 – B 6-114/10.

\textsuperscript{89} For more information, see Soldner/Engelhard, Kehrtwende im Recht zur Kurzberichterstattung? – Die Rechtsprechung des BVerfG auf dem Prüfstand, Kommunikation und Recht, p. 488.

\textsuperscript{90} Listed events are major sport events that need to be broadcasted on free-TV. In Germany, the list includes:

\textsuperscript{a} the Summer and the Winter Olympic Games;

\textsuperscript{b} the games of the German national team at the FIFA World Cup and the UEFA EURO;

\textsuperscript{c} the semi-finals and final of the FIFA World Cup and the UEFA EURO, irrespective of the participation of the German national team;

\textsuperscript{d} the semi-finals and final of the DFB Cup;

\textsuperscript{e} home and away games of the German national football team; and

\textsuperscript{f} the finals of the European club competitions (i.e., UEFA Champions League and UEFA Europa League) if a German team is playing.


\textsuperscript{92} 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 can be found at www.dfb.de/fileadmin/_dfbdam/31698-Mustervertrag_Vertragsspieler_englisch__07.2014_.pdf (last visited on 24 October 2016).
Section 14 et seq. of the Act on Part-Time Work and Fixed-Term Employment Contracts (TzBfG): most athletes will have fixed-term contracts. According to Section 14(1) 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. A fixed-term contract may not be renewed more than three times. However, it is widely accepted that athletes’ contracts can be 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 that the specificity of sport was insufficient to justify the fixed-term contract with the player, was recently overturned on appeal.93

Section 15 TzBfG: under German law, (justified) fixed-term contracts are valid for a duration of up to five years.94 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,95 the Federal Labour Court in 2013 held that a four-year fixed-term contract of a youth player with a one-year unilateral extension option was valid under German law.96

Section 626 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.

Tax and social security law provisions: the employer is obliged to withhold and pay income tax as well as social security contributions for his or her employees.

ii Free movement of athletes

After the Bosman decision of 1995,97 and in light of the freedom of movement for workers stipulated in Article 45 TFEU (ex Article 39), German football has abandoned rules that used to limit the number of foreign EU players able to appear in Bundesliga matches. Since then, foreign EU players as well as players from other UEFA members can be transferred and fielded without limitation. However, Section 5 No. 4 of the Bundesliga Club Licensing Regulations requires that clubs have at least 12 German nationals on the squad. Because the overall squad size is not limited, the rule seems to comply with Article 45 TFEU.98 Moreover, Section 5b of the Player Licensing Regulations obliges Bundesliga clubs to have eight locally

94 Section 15(4) TzBfG.
95 ArbG Ulm, judgment of 14 November 2008 – 3 Ca 244/08.
96 Federal Labour Court, judgment of 25 April 2013, 8 AZR 453/12.
97 CJEU, judgment of 15 December 1995 – C-415/93 (Bosman).
98 See Fritzweiler/Pfister/Summerer, p. 729.
trained players on their squad, of which four must be directly trained by the club. Because
the local player rule fosters youth development and applies irrespectively of the nationality of
locally trained players, it is also deemed compatible with European law.

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. Basketball has introduced a domestic
player rule that every team needs to have at least six German players on their squad.

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
in order to participate in league competition, the revocation of said licence does not per se
affect the validity of the employment contract.

VI SPORTS AND ANTITRUST LAW

Besides the relevance of antitrust law regarding broadcasting rights (see Section IV.iii, supra),
antitrust law plays an increasingly important role in sports in general.

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. Act against Restraints of Competition and Article 102 TFEU) and
prohibiting restrictive behaviour between undertakings (Section 1 GWB; Article 101 TFEU).
Infringements of antitrust laws can lead to fines and compensation claims. In addition,

99 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.

100 See Fritzweiler/Pfister/Summerer, p. 729. See also Streinz, 6+5′-Regel oder Homegrown-Regel
– was ist mit dem EG Recht vereinbar?, SpuRt 2008, p. 224.

101 See Fritzweiler/Pfister/Summerer, p. 729.

102 Id., p. 302.

103 For an overview of antitrust law issues regarding sport in Germany, see Stancke, Pechstein
und der aktuelle Stand des Sportkartellrechts, SpuRt 2015, p. 46.
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) TFEU and Section 134 BGB.104

The Higher Regional Court in Frankfurt (OLG Frankfurt) recently confirmed again that the conduct of sports governing bodies falls within the scope of Article 101(1) TFEU if it does relate to an economic activity and not merely to the practice of sport. If such conduct has a restrictive effect 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.105

In the much debated decision of the Higher Regional Court of Munich in the Pechstein case,106 the judges had held that the arbitration agreement between Pechstein and the 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.107 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. 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. Also, the list of arbitrators did include a sufficient number of neutral persons who were independent. The Court also held that sports federations and athletes were generally not in opposing ‘camps’ guided by opposing interests in the fight against doping in sport.108

Another recent case involving antitrust law was the dispute between several German handball clubs and the International Handball Federation (IHF) and the German Handball Federation (DHB). In a first instance decision, the Regional Court of Dortmund109 had accepted the claim of the clubs against IHF and DHB, ruling that the player release rules of the sports governing bodies (i.e., the obligation of clubs to release players for national team games without being entitled to compensation) infringed German and European antitrust laws. After said rules were changed in favour of the clubs the Higher Regional Court of

---

104 Id., p. 46.
105 OLG Frankfurt, judgment of 2 February 2016 – 11 U 70/15 (Kart).
107 Id., p 44. Regarding the criticism raised against CAS, see Duve/Troshchenovych, Seven steps to reforming the Court of Arbitration for Sport, 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?, SchiedsVZ 2015, p. 69.
108 BGH, judgment of 7 June 2016 – KZR 6/15. See also IX, infra.
Düsseldorf\textsuperscript{110} set aside the first instance decision, finding, \textit{inter alia}, that the claim of the clubs was no longer admissible, but also stating \textit{in obiter} that the rules of the IHF and the DHB did not violate German and European antitrust laws.\textsuperscript{111}

In June 2016, the Regional Court of Munich had ordered a temporary injunction against the International Basketball Federation (FIBA) and FIBA Europe, prohibiting the governing bodies from sanctioning national Basketball associations, leagues and clubs for the participation of clubs in the Euroleague, a competition organised by the private company Euroleague Commercial Assets.\textsuperscript{112} The Court later lifted the temporary injunction for procedural reasons after FIBA Europe had filed an objection against the injunction.\textsuperscript{113}

\section*{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) EStG and Sections 13 to 24 EStG are divided into different sources, including:

\begin{itemize}
  \item [a] commercial income (Section 15 EStG);
  \item [b] self-employed income (Section 18 EStG);
  \item [c] income from employment (Section 19 EStG); and
  \item [d] other income (Section 22 EStG).
\end{itemize}

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.\textsuperscript{114}

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 EStG or a double taxation treaty.\textsuperscript{115}

\textsuperscript{110} OLG Düsseldorf, decision of 15 July 2015 – VI-U(KART) 13/14.

\textsuperscript{111} One of the findings concerned the notion of ‘agreement’ or ‘decision’ in the sense of Article 101 TFEU. In this regard, the Court found that the decision of the IHF to adopt the contested regulations would not qualify as an ‘agreement’ or ‘decision’ within the meaning of Article 101 TFEU. The regulations would not aim to coordinate the behaviour of the member associations or the clubs concerning the marketing of league games. Their objective would be to ensure high-performing national teams and therefore to organise attractive competitions. The regulations would not lead to a relevant restriction of competition on the market of marketing league games.

\textsuperscript{112} LG München, 1 HK O 8126/16.

\textsuperscript{113} For more information, see www.fiba.com/news/fiba-europe-welcomes-munich-court-decision-to-cancel-temporary-injunction (last visited on 24 October 2016).

\textsuperscript{114} For more information, see Fritzweiler/Pfister/Summerer, p. 916.

\textsuperscript{115} See Adolphsen/Nolte/Lehner/Gerlinger, \textit{Sportrecht in der Praxis}, Kohlhammer 2012, p. 505 et seq.
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).  

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 that case, entities making payments to foreign athletes or clubs may have to withhold tax according to Sections 50 and 50a EStG.

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 distributing, prescribing or administering medicinal products to others for the purpose of doping as well as the purchase or possession of doping substances in quantities above a certain amount. Other criminal laws that apply to scenarios involving doping include Sections 212 StGB (manslaughter), 223 and 229 StGB (causing bodily harm, negligent bodily harm), Section 263 StGB (fraud) and Section 29 BtMG (illegal handling of narcotics).

There have been hardly any criminal proceedings regarding doping in Germany. The most famous case involved German cyclist Jan Ullrich, who was subject to a criminal investigation between 2006 and 2008 after he had obtained and used doping substances from Spanish sports medic, Eufemiano Fuentes.

Because the above-mentioned legal framework supposedly failed to properly tackle the issue of doping in sport (mainly because the undertaking of doping as such was not subject to criminal liability), in 2016, the government implemented a new Anti-Doping Act (AntiDopG). The law, which consolidates the above-mentioned provisions from different codifications, foresees prison terms for elite athletes (amateur athletes will not be affected), coaches, officials and doctors who are caught, inter alia, using, administering or being in possession of doping substances. 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.

116 Id.; see also Section I.i, supra.
117 Id., p. 517 et seq.
118 The investigation was mainly concerned with the question of whether Ullrich acted fraudulently in relation to his former employer, Team Telekom, by engaging in doping despite an express provision in his employment contract not to do so. However, because the prosecution was not able to establish that Ullrich’s employer was truly unaware of his conduct and the parties had reached a settlement in a parallel civil proceeding, the case was abandoned according to Section 153a Criminal Procedural Code before it went to trial. Ullrich also had to make a substantial payment to end the criminal proceeding.
120 Section 4(7) AntiDopG.
121 Section 4(1) and (2) AntiDopG.
122 Section 4(4) AntiDopG.
The new law has been heavily criticised by legal scholars, athletes and anti-doping experts alike.\textsuperscript{123} Until 1 June 2016, 14 criminal complaints have been lodged with the public prosecution offices on the basis of the new law.\textsuperscript{124}

\textbf{ii} \hspace{1em} \textbf{Betting}

According to Section 284 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 StGB provides that a person participating in unlicensed gambling shall be liable to imprisonment for up to six months or subject to a fine.\textsuperscript{125}

Until recently, Germany had implemented a state monopoly on gambling through the Interstate Treaty on Gambling. However, in 2010, the Court of Justice of the European Union (CJEU) decided that this state monopoly on gambling violated European law and thus needed to be reformed.\textsuperscript{126} The shortcomings of the existing system should have been resolved by the First Amendment to the Interstate Treaty on Gambling, which abolished the old state monopoly and replaced it with a new licensing system for private gambling and betting providers. Under the amended Treaty, online gambling remains illegal in Germany.\textsuperscript{127} After the entry into force of the amended Treaty in 2012, licences should have been granted to a maximum of 20 private gambling and betting providers for an experimental phase of seven years.\textsuperscript{128}

The Higher Administrative Court of Hessen recently decided that the new licensing system is illegal because it is non-transparent and undemocratic.\textsuperscript{129} In February 2016, the CJEU ruled that a sports betting operator in Germany could not be charged under Section 284 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.\textsuperscript{130} In April 2016, a local administrative court in Hessen decided that there was no justification

\begin{itemize}
\item \textsuperscript{123} Steiner, Deutschland als Antidopingstaat, \textit{ZRP} 2015, 51; Matthias Jahn, Noch mehr Risiken als Nebenwirkungen – der Anti-Doping-Gesetzentwurf der Bundesregierung aus Sicht des Strafverfassungsrechts, \textit{SpuRt} 2015, 149.
\item \textsuperscript{124} For more information, see www.sueddeutsche.de/news/politik/sportpolitik-nada-chefin-zu-russland---was-muss-noch-passieren-dpa.urn-newsml-dpa-com-20090101-160601-99-145589 (last visited 24 October 2016).
\item \textsuperscript{125} See AG München, judgment of 26 September 2014 – 1115 Cs 254 Js 176411/13, in which the Court held that participation in gambling licensed in another EU country (without being licensed in Germany) is illegal.
\item \textsuperscript{126} CJEU, decisions of 8 September 2010 – C-409/06, C-316/07, C-46/08.
\item \textsuperscript{127} Section 4(4) First Amendment to the Interstate Treaty on Gambling.
\item \textsuperscript{128} 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 may continue to use it for a grace period in Schleswig-Holstein only.
\item \textsuperscript{129} VGH Hessen, decision of 16 October 2015 – 8 B 1028/15.
\item \textsuperscript{130} CJEU, decision of 4 February 2016, C-336/14.
\end{itemize}
for the limitation to merely 20 licences, ordering that a sports betting provider should be granted a licence irrespective of the fact that already 20 licensees had been selected at the time.131

### iii Manipulation

Currently German law does not provide for a sport-specific criminal provision outlawing match-fixing. However, match-fixing has been punished under Section 263 StGB, according to which a person committing fraud shall be liable to imprisonment of up to 10 years.132

Section 263 StGB was applied in the famous *Hoyzer* case in 2005, which involved Robert Hoyzer, the German referee who confessed to fixing and betting on matches in the second Bundesliga, the DFB Cup (DFB Pokal) and the Regional League.133 At the time, the courts found that the referee’s conduct (intentionally making wrong calls in order to achieve a certain result that he or his accomplices had betted on) damaged the sports betting provider through shifting the odds, also considering that the sports betting provider would not have concluded a betting contract with Hoyzer or his accomplices had it known that an intentional manipulation of the matches in question would take place.134 The Court’s arguments used in the *Hoyzer* case have been applied and developed further in subsequent match-fixing cases.135

It should be noted that match-fixing cases in Germany that resulted in convictions have all been related to sports betting. Indeed, the current legal framework does not address match-fixing if it is not related to betting (e.g., for sporting purposes only).136 This is why, after signing the Council of Europe Convention on the Manipulation of Sports Competitions137 in 2014, the German government recently presented two new draft criminal provisions specifically dealing with the manipulation of sports competitions. Section 265c StGB defines sports betting fraud as an agreement to manipulate a sporting competition on which bets have been placed. Section 265d 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, in very serious cases of up to five years.138

---

131 VG Wiesbaden, judgment of 15 April 2016 – 5 K 1431/14 WI.
132 Section 263(3) StGB. Section 263 StGB 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.
133 BGH, judgment of 15 December 2006 – 5 StR 181/06; *NJW* 2007, p. 782.
134 For further information, see Fritzweiler/Pfister/Summerer, p. 829 et seq. Hoyzer and his accomplices were sentenced to two and three years’ imprisonment, respectively.
135 BGH, judgment of 20 December 2012 – 4 StR 55/12; *NJW* 2013, p. 883.
136 See Fritzweiler/Pfister/Summerer, p. 841.
137 More information is provided on the Council of Europe website: www.coe.int/en/web/conventions/full-list/-/conventions/treaty/215 (last visited on 24 October 2016).
138 For more information see https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/DE/Strafbarkeit_Sportwettbetrug_und_Manipulation_berufssportlicher_Wettbewerbe.html (last visited on 24 October 2016).
iv   Grey market sales
As mentioned in Section III.i, supra,, 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) are prohibited unless there is prior consent by the organiser.139 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 from entering the sporting venue and may even claim a contractual penalty.140

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. The Higher Regional Court of Hamburg pointed out in a recent decision that clubs have to make sure that their justification to hinder ticket transfers (e.g., security reasons, 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.141

IX   THE YEAR IN REVIEW
2016 has been an exciting year for sports law in Germany with the arrival of the AntiDopG and several noteworthy decisions in sports-related cases, the most relevant of which have been set out in this chapter. The case that overshadowed the entire (German) sports law scene also in 2016 was the Pechstein case.142 The BGH judgment in relation to this case has been criticised by some, but praised by many others.143 The significance of the BGH decision for international sports dispute resolution provided through the CAS cannot be overestimated. The judgment underlines the utmost importance of a uniform international arbitration system in international sport as provided by the CAS. It confirms that the CAS is a genuine arbitral tribunal and that arbitration agreements in favour of CAS are valid. Sport governing bodies are allowed to demand that athletes sign arbitration agreements in favour of CAS as a precondition for their participation in sporting competition. It is not far-fetched to assume that had Ms Pechstein prevailed this would have severely eroded the legitimacy of CAS worldwide and would have possibly invited athletes of other nationalities to challenge their arbitration agreements in favour of CAS as well.

140   AG Hamburg, judgment of 8 October 2014 – 23 a C 90/14.
141   OLG Hamburg, judgment 13 June 2013 – 3 U 31/10. A legal analysis of the case is provided in MMR 2014, 595.
142   BGH, judgment of 7 June 2016 – KZR 6/15. See Sections II.ii and VI, supra.
143   For example, a critical assessment of the decision is provided by Heermann, Die Sportschiedsgerichtsbarkeit nach dem Pechstein-Urteil des BGH, NJW 2016, 2224. The judgement is endorsed by Mavromati, The Legality of the Arbitration Agreement in favour of CAS under German Civil and Competition Law – The Pechstein Ruling of the German Federal Tribunal (BGH) of 7 June 2016, published in CAS Bulletin 2016/1, p. 40.
X OUTLOOK AND CONCLUSIONS

The outlook for 2017 remains the same as for 2016: antitrust law will continue to play a major role in sports law in Germany and elsewhere in Europe, and it will substantially influence the way sport is organised.

For 2017, the entering into force of two new criminal provisions on the manipulation of sports competitions is expected, as well as an adjustment of the German Interstate Treaty on Gambling.
Chapter 9

ITALY

Maria Laura Guardamagna

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Organisational form

The Italian sports system is governed by the Italian National Olympic Committee (CONI), a public and independent entity, enjoying statutory autonomy as regards the legislative or executive powers. CONI forms the Confederation of Sports Federations and Associated Disciplines.\(^2\)

Pursuant to Article 20 of the CONI Statute, national federations are non-profit associations having legal personality.\(^3\) They are governed by statutory rules in accordance with the rules set forth by the relevant international federation of affiliation, the Olympic Chart, the CIO and CONI itself. They are public entities but incorporated under private laws.

To be part of the sports system, sports organisations have to be recognised by, and affiliated to, CONI or the relevant national federation. For each sport, CONI recognises only one national federation.

The following entities or persons are part of the sports system:

\(a\) CONI;
\(b\) federations;
\(c\) sports companies;
\(d\) sports associations;
\(e\) sports promoters;
\(f\) athletes (professional and non-professional);
\(g\) sports managers;
\(h\) sports trainers;

---

1 Maria Laura Guardamagna is a partner of Guardamagna e associati.
3 An example of a federation formed by athletes is the Box Federation.
i sports doctors; and
j athletes’ agents.

ii Corporate governance
On 6 November 2012, Italy issued a new Anti-Corruption Law (Law No. 190/2012), which requires all public administrations, including CONI, to adopt specific measures to prevent corruption and bribery. In particular, such measures include:
a implementation of an anti-corruption plan;
b appointment of a controlling officer; and
c implementation of a code of conduct.

In December 2015, CONI adopted a three-year anti-corruption plan.4

Moreover, according to Legislative Decree No. 231/2001, most of the sport companies shall adopt a code of conduct, which shall define the relevant values and principles of the organisation, detailing the rights, duties and responsibilities of the organisation members.5

iii Corporate liability
The sports companies and associations act through their directors. Therefore, they are responsible for their directors’ fault, negligence and offences.6

For example, according to Articles 11 and 12 of the Italian Football Federation (FIGC) Code of Sports Justice, the clubs are held responsible for the presence in the stadium of discriminatory signage. According to Article 44 of the Italian Basketball (FIP) Code of Sports Justice, clubs are also responsible for fraud committed by their managers and affiliates.

II DISPUTE RESOLUTION SYSTEM

i Access to courts
Sports-related disputes are dealt with by sports judges, state judges (ordinary and administrative ones) and European Union judges (Articles 2 and 3 Law No. 280/2003).7

Sports judges are competent for all matters related to the application of sports leagues, to the ordinary functioning of competitions (on field issues) and to the disciplinary sanctions.

Administrative judges are competent for all matters related to acts issued by CONI or by a national federation.

Ordinary judges are competent for all matters related to economic disputes between teams, associations, federations and athletes (except for those issues that are left to the sports arbitration panels).

European judges are competent for matters related to employment and services (Article 45 TFEU) and to competition (Articles 101 and 102 TFEU).

6 For more information on corporation criminal liability, see Legislative Decree No. 231/2001
7 Further details available at www.lexitalia.it.
For completeness, it should be noted that the European Court of Human Rights holds jurisdiction for matters related to violation of fundamental human rights.

The current Italian Code of Sports Justice, which entered into force in 2014, harmonised the legal system of the CONI-affiliated federations, in particular by foreseeing that each such federation shall have:

a national judges, territorial judges and a court of appeal, which shall hear cases concerning the correct functioning of competitions (Articles 3 and 14 of the Code of Sports Justice); and

b a federal tribunal and a federal court of appeal, which shall hear all cases not subject to the jurisdiction of national or territorial judges (Article 25 of the Code of Sports Justice).

Additionally, the Code of Sports Justice establishes a CONI Supreme Court, with the power to review – for points of law only – decisions issued at a federal level (Article 54 of the Code of Sports Justice).

ii Sports arbitration

Under Article 4 of the Code of Sports Justice, each federation may establish a sport arbitration body to decide on the economic disputes between affiliated subjects (conflicts between athletes and teams). Such provision is in compliance with Article 4 of Law No. 81/91 and Article 806 of the Civil Procedure Code.

For example, an arbitration clause is provided by the collective agreement entered into by the FIGC, the Italian Professional Leagues and the Italian Association of Football Players.

iii Enforceability

Disciplinary decisions such as fines and suspensions can be enforced directly by the relevant sport association or federation. As an example, under the FIGC Code of Sports Justice (Article 8) a team failing to serve a disciplinary sanction is subject to a penalty. In addition, to recover the amount of a monetary fine, a special procedure to seek a payment order may be activated before the ordinary civil courts. Italian sport arbitral awards are considered as binding as a contract, and can similarly be enforced by way of a special procedure to seek a payment order before the ordinary civil courts.

8 Italian Code of Sports Justice is available on www.coni.it.
9 Article 21 of the agreement between FIGC, National Basketball League (LNP) and Italian Football Association (AIC), available on www.legaseriea.it.
10 FIGC Code of Justice is available on www.figc.it.
11 Article 633 of the Italian Civil Procedure Code and ff.
12 Articles 633 and 808 of the Italian Civil Procedure Code.
III ORGANISATION OF SPORTS EVENTS

i Relationship and sports organisers’ liability

The sport event organiser (which is often the relevant federation or the association) may be responsible for damages suffered by the athletes or by the fans under applicable contract and tort laws.\(^{13}\)

In particular, the organiser might potentially be liable towards spectators or athletes who pay to watch or participate in the event in case of a breach of the event contract.\(^{14}\)

Moreover, if the organiser corresponds to the employer, pursuant to Article 2017 of the Italian Civil Code, it is also responsible for the physical damages suffered by the athlete owing to the absence of the adequate security measures.

With regard to tort liability, the organiser’s liability for the damages suffered by the athletes or by the spectators stems from the general principle neminem ledere set forth under Article 2043 of the Italian Civil Code, combined with – on a case-by-case basis – presumption rules concerning evidence as laid down in Articles 2049, 2050 and 2051 of the Civil Code.\(^{15}\)

In order to ascertain such liability for damages, the first question coming into play is to determine the person holding the power to manage the sport facility in concrete terms.

As an illustrative example, in the proceedings following the fatal accident involving Ayrton Senna during the San Marino GP, the Italian Public Prosecutor pursued the autodrome and not FIA, which, in theory, was the event organiser.\(^{16}\)

In another case, for the damages suffered by a skier during a competition due to the absence of the safety net, the Italian Supreme Court established liability by both the Italian Federation of Winter Sports (in its capacity as the event organiser) and the ski run manager (in its capacity as the custodian of the ski run itself).\(^{17}\)

Hence, in order to stay away from any damage liability, an event organiser is supposed to adopt all measures of caution in order to limit the risk of the relevant sport activity not complying with the sport rules.

ii Riot prevention

In order to prevent, monitor and control issues related to the spectator violence and misbehaviour, Italy has transposed the European Convention on Spectator Violence

---

17 Cass. 3 October 2012, No. 13940.
and Misbehaviour at Sports Events and in particular at Football Matches (Strasbourg 19 August 1985) by passing Law No. 401 of 13 December 1989, which introduces ad hoc measures to: 18

a secure that the design and physical fabric of stadia (1) provide for the safety of spectators, (2) do not readily facilitate violence between spectators, (3) allow effective crowd control, (4) contain appropriate barriers or fencing and (5) allow security and police forces to operate;

b segregate effectively groups of rival supporters, by allocating to groups of visiting supporters (when they are admitted) specific terraces;

c ensure this segregation by strictly controlling the sale of tickets, and take particular precautions in the period immediately preceding the match;

d exclude from, or forbid access to, matches and stadia, insofar as it is legally possible, known or potential troublemakers, or people who are under the influence of alcohol or drugs;

e provide stadia with an effective video surveillance system and encourage spectators to behave correctly;

f prohibit the introduction of alcoholic drinks by spectators into stadia; restrict and preferably ban, the sale and any distribution of alcoholic drinks at stadia, and ensure that all beverages available are in safe containers;

g provide controls so as to ensure that spectators do not bring into stadia objects that are likely to be used in acts of violence, or fireworks or similar devices; and

h ensure that liaison officers cooperate with the authorities concerned before matches on arrangements to be made for crowd control.

IV COMMERCIALISATION OF SPORTS EVENTS

i Types of ownership in rights and protection

Broadcasting rights


Audiovisual media services are as much cultural services as they are economic services. They have an impact on the citizens’ fundamental rights, in particular by ensuring freedom of information, diversity of opinion and media pluralism education and culture, which justifies the application of specific rules.

The legal framework of the provision of broadcasting services in Italy is established by Legislative Decree No. 9/2008, which makes the broadcasting market subject to the regulatory powers of the Italian Competition Authority. In particular, the above measure (1) foresees that any broadcaster shall be entitled to have access to short extracts of events of high interest to the public, even if broadcasted on an exclusive basis by one market player, in order to ensure the dissemination of information about the most relevant aspects of the events

concerned, (2) establishes that the broadcasting right must be subject to a time duration, (3) introduces the obligation to sell broadcasting rights via public tenders and not by the single-buyer rule and (4) provides for the sale of broadcasting rights by platform and not by product.

Broadcasting rights concerning team sports events are jointly owned by the organiser of the relevant competition and the organiser of the single event (i.e., the host).

In the past few years, the business spotlight has moved from TV rights to media rights, with the consequence that protection of copyright and intellectual property rights has become one of the greatest areas of concern within the context of media group’s investment strategies. The activity of Italian regulators and judiciary bodies also reflect such increasing attention.19

ii Rights protection

Under Article 96 of the Copyright Law, the reproduction and economic exploitation of an individual image is allowed only with the individual’s consent. Consent may be given and subsequently withdrawn at any time.20 In the case of illegal exploitation of the individual’s image, athletes may bring an action before the courts to obtain a ban from using the image and seek compensation for damages.

Registered trademarks and club symbols are protected under Articles 2569 and 2574 of the Civil Code, and Article 23 of Legislative Decree No. 30/2005. In case of infringement, the trademark owner may bring action before courts to obtain, besides monetary damages, an injunction against further infringements.

iii Contractual provisions for the exploitation of rights

Image rights

The image of an athlete bears an economic value and amounts to a property right protected by the law.21 The right to use the image may be licensed and assigned. It might be the case that the image right licence or assignment agreement interferes with the sports system: this occurs when the athlete is registered with a club or is part of the national team, or whenever the athlete’s image is assigned to the relevant sports federation. This is where the need for a federation arises (as, e.g., the Winter Sports Federation) to limit the athlete’s economic right to use his or her image.22

19 P. Capello and A. Bozza, Blanket blocking order to stop football streaming denied, in WSLR, September 2016.
20 Article 97 of the Italian Copyright Law provides an exemption from the requirement to obtain consent, when the use is justified by the notoriety or the function of the person represented, or by scientific, public interest or educational reasons.
21 See Article 10 of the Italian Civil Code, as well as Article 96 of the Italian Copyright Law (633/1941).
Sponsorship agreements
Sponsorship agreements regulate the relationship between a sponsor and a sponsee: by means of a money or in kind consideration, the sponsor acquires the right to have its trademark or distinctive design associated to a sport event, to a competition, to a federation, to a club or to an athlete.

This type of contract is not expressly regulated by the Civil Code (it is defined as atypical contract), it is an onerous, synallagmatic contract. The growing economic relevance of sponsorship agreements stimulated sport organisations to regulate some of the aspects concerned (e.g., the Italian Ice Federation had the right to use an athlete’s image subject to prior agreement).

Merchandising agreements
Merchandising agreements regulate the relationship between an entrepreneur and a club or an athlete: by means of a money consideration, the entrepreneur acquires the right to use the club’s or the athlete’s name, symbol, image on definite products (gadgets, clothes, perfumes, etc.), with specific clauses to regulate the design, the product quality, the trademark protection, the money consideration (which is usually structured as a royalty on the sale, with a minimum guaranteed).

V PROFESSIONAL SPORTS AND LABOUR LAW

i Mandatory provisions

Law No. 91 of 23 March 1981 regulates the sports employment relationship and provides a definition of professionals, including the following: athletes, coaches, athletic trainers and sports directors who work with continuity and under remuneration in the CONI sports system. Sports employment relationships between professionals are not subject to the protection established by the Labour Statute Laws.\textsuperscript{23}

To be valid and effective, employment agreements must be in writing, and shall respect the standard agreement set by the relevant federation and to be filed within the relevant federation (Article 4 of Law No. 91/81). They shall foresee that athletes must respect the authority and technical instructions received in order to achieve the sports target results (Article 4 of Law No. 91/81). They cannot have a duration exceeding five years (Article 5 of Law No. 91/81), but can foresee that all disputes related to the employment relationship shall be dealt with by a sport arbitration panel; furthermore, they cannot include provisions that could in any manner limit the freedom of work and movement of the athletes. The employment agreement may be assigned from a club to another.

It is also possible to have an independent contract for the provision of sport services, subject to the fulfilment of one of the following conditions:

\begin{itemize}
\item[a] the sports service is related to one event only;
\item[b] the athlete is not bound to follow specific training sections, but is free to arrange his or her training section at his or her discretion; or
\item[c] if the sport performance does not exceed eight hours a week, five days in a month or 30 hours in a year.
\end{itemize}

\textsuperscript{23} Available at www.altalex.com.
The relationship between sport organisations and non-professional athletes is not regulated by a specific law provision (even though also these athletes de facto receive a wage), thus it is deemed that those agreements are governed by the labour law civil rules.24

ii  Free movement of athletes

The right to free movement is protected by EU treaties and also applies to sportspeople, both at a professional and at an amateur level. Consequently, any discrimination based on nationality, or any obstacle that may hinder the right to free movement of sportspeople is prohibited.25

Few federations, including the FIGC, have adopted the ‘locally trained rule’, which imposes that, within a club, a certain number of athletes have to be home-grown.

VI  SPORTS AND ANTITRUST LAW

Sports have a huge economic impact on society and consumers, and as such, shall comply with antitrust rules, in particular those prohibiting anticompetitive agreements and concerted practices, as well as any abuses of a dominant position. In this regard, as a landmark example, the Italian Competition Authority called the need to change the system for distribution (among clubs) of the income obtained from the sale of broadcasting rights, thus suggesting that such distribution policy should be based on real sports merits and left to the activity of a third-party independent entity.26 A decision by the Italian Competition Authority was also invoked and obtained to fine the Equestrian Federation for abuse of a dominant position.27

VII  SPORTS AND TAXATION

i  Professional athletes

The income of an employed athlete, both an Italian and a foreign one (accordingly to double taxation treaties), is subject to a source withholding tax applied directly by the club acting as withholding agent.28 Taxable income consist of gross earnings and fringe benefits. In several cases, earning from exploitation of image rights has been considered as an integration to the wages, and thus made subject to the same fiscal treatment.29 Self-employed incomes are subject to a source withholding tax that is paid directly by the issuer entity, the applicable rate depending on the income value (DPR No. 600/1973). Non-resident athletes are subject to a withholding tax equal to 30 per cent of the income earned in Italy. Self-employed incomes are not subject to VAT.

24 L. Colantuoni, op. cit., p. 156.
26 See www.agcm.it.
27 See www.agcm.it/.../B4C2182D07E0116BC125745E003712BE.html?...pdf.
29 See judgment of the Court of Cassation of 26 February 2010, No. 4737.
ii Non-professional athletes
The income of a non-professional athlete are subject to a preferential income tax treatment: no imposition for income below €7,500 or a tax rate of 23 per cent for income above €7,500 (Article 67 Consolidated Tax Act).

VIII SPECIFIC SPORTS ISSUES

i Doping
Doping offences have a criminal relevance under Italian law. 30
In particular Law No. 376/2000 has regulated the matter by sanctioning with imprisonment and fining measures anyone who, in order to improve or modify competitive performance, administrates, takes or encourages the use of drugs and biologically or pharmacologically active substances not justified by pathologic conditions. 31 Also, the commercialisation of doping substances constitutes a criminal offence. 32 If the offender is a doctor, along with the criminal sanction, he or she will receive a temporary ban from the exercise of the profession.

With regard to the sports system, CONI applies the World Anti-Doping Agency (WADA) Anti-doping Code.

ii Betting
Betting is legally allowed, albeit strictly regulated and monopolised by the Italian government, to the extent that the European Court of Justice issued a decision contesting the Italian betting system:

1. National legislation which prohibits the pursuit of the activities of collecting, taking, booking and forwarding offers of bets, in particular bets on sporting events, without a licence or a police authorisation issued by the Member State concerned, constitutes a restriction on the freedom of establishment and the freedom to provide services, provided for in Articles 43 EC and 49 EC respectively.

30 This approach has been commented on by WADA, where it stated: WADA does not wish to interfere in the sovereign right of any government to make laws for its people. However, the Agency believes that the sanction process for athletes, which includes a right of appeal to the Court of Arbitration for Sport (CAS), is a settled process, accepted by all governments of the world, and further that the sanctions for a doping violation by an athlete, which now includes a longer, four-year period of ineligibility, have been globally accepted by sport and government. As such, the Agency does not believe that doping should be made a criminal offence for athletes (see www.wada-ama.org).

31 Doping is punished with imprisonment from three months to three years and a fine of between €2,582 and €51,645.

32 Commercialisation is sanctioned with imprisonment from two to six years and a fine between €5,164 and 77,468.
2. It is for the national courts to determine whether, in so far as national legislation limits the number of operators active in the betting and gaming sector, it genuinely contributes to the objective of preventing the exploitation of activities in that sector for criminal or fraudulent purposes.

3. Articles 43 EC and 49 EC must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which excludes – and, moreover, continues to exclude – from the betting and gaming sector operators in the form of companies whose shares are quoted on the regulated markets.\(^{33}\)

iii Manipulation

Match-fixing is illegal under Italian law. In particular, Law No. 401/1989 defines match fixing as an offence that occurs whenever someone offers a benefit, or acts in a way so as to manipulate the result of a competition organised by CONI or by other recognised sport organisations.

Match-fixing is a formal offence: in other words, it occurs whenever a benefit is offered to a competition participant, with the specific intention to manipulate the competition result, and even if the offer is not accepted (Article 1 Law No. 401/89). The competition participant who accepts the benefit is punishable even if the result was ultimately not manipulated or affected (Article 1 Law No. 401/89).\(^{34}\)

The purpose of the law is to guarantee fair play and to fight illegal sport betting, which has showed a tendency to be associated with the activity of criminal organisations.

iv Grey market sale

Ticket resale is tolerated in Italy, and punished only when the tickets resold come from an illegal source. A specific provision, indirectly limiting the grey market sale, has been passed in relation to football: in order to prevent and limit misconduct in the stadium, on occasion of football matches, only nominative tickets are allowed for sale (Security Department resolution implementing Decree-Law No. 28/2003).\(^{35}\)

IX THE YEAR IN REVIEW

In July 2016, the Federal Court of the Volley Federation (FIPAV) sanctioned the manager of a volleyball club for not having complied with a precedent suspension period. According to Article 79 of the FIPAV Code of Sports Justice, an affiliated individual that does not comply with a disciplinary decision is suspended from all activity related to the sport system for a period of three months to one year. The Court also punished the volleyball club for indirect liability because of the fault of its manager.\(^{36}\)

The Giudice di Pace of Verbania sanctioned an amateur club to the restitution of the consideration paid by a minor non-professional player to terminate his relationship

---

34 Manipulation of results is punished with the imprisonment from one month to one year and the fine from €238 to €1,032.
with the club early and move to a new club (*svincolo*). According to the judge, the payment of a consideration to move a minor player from one club to another amounted to an act of ‘extraordinary administration’, for which the tutelary judge’s authorisation would be required; absent such authorisation, the payment is unlawful and shall be returned. The club appealed the decision before the Italian competent court. The Court of Verbania confirmed the judgment, although based on a different reasoning. It established the nullity of the *svincolo sportivo* clause (which allowed players the freedom to move from one club to another conditional on the payment of a monetary consideration) for the following reasons:

*a* the clause is an unfair and vexation provision, in that it restricts the recreational auto-determination of the player only to protect an economic interest of the club; moreover it foresees a right of termination *ad nutum* in the only interest of the club; and

*b* being an unfair and vexation clause, it should have expressly been signed by the player according to Article 1341 of the Civil Code.37

The Court of Milan issued a blocking order relating to unauthorised sports broadcasting via a live streaming website.38

The Italian Data Protection Authority confirmed that WADA’s Anti-Doping Administration and Management System complies with the Italian data protection rules.39

**X CONCLUSION**

A century ago the expression ‘sports laws’ would have been interpreted as an oxymoron: sports were identified only with recreational activity; nowadays the sports ‘industry’ generates important economic revenue, and is based on very structured systems, which put together and juggle different national sports rules with national and international sources of laws.

Although the sports system is an independent system, its relevance for, and impact on, society increasingly necessitates supplementary or complementary regulation by national and international legal orders, for instance, with regard to the handling of organisational corruption, doping, match-fixing or the protection of privacy.
Chapter 10

NETHERLANDS

Kees Jan Kuilwijk

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Organisational form

In sports, an important role is played by sport associations. Statutory provisions regulating associations can be found in Article 2:1 to 2:52 of the Dutch Civil Code. These provisions are mandatory law and therefore cannot be waived, unless the law specifically provides for exceptions.

The two central bodies of an association are the board and the general assembly; the latter must be regarded as the highest body of the association.2

The law with respect to associations is governed not only by statutory provisions, but also the statutes and the regulations of the association itself. Also unwritten law, reasonableness and fairness, and customs play a role in the law concerning associations. On the basis of Article 2:8 Civil Code, the members must conduct themselves, towards each other, and the association towards the members, in a way that is reasonable and fair.

Athletes faced with an adverse ruling by their association often fight an uphill battle. A successful appeal to the general standard of reasonableness and fairness is tricky because courts are generally reluctant to interfere in the decisions of associations. A judge will ask not if they would have made the same decision, but whether the board or the general assembly could have come to the decision in all fairness.

ii Corporate governance

Organised sports in the Netherlands adopted their own code of conduct, entitled the Good Governance in Sport Code, in 2005. The Code covers 13 recommendations, dealing with a range of topics, including:

1 Kees Jan Kuilwijk is counsel at AKD.

2 See Article 2:40 paragraph 1 Civil Code.
a transparency;
b procedures for nomination and appointment of board members;
c separation of executive, policymaking, supervisory and implementation tasks; and
d a clear definition of tasks, powers and responsibilities of management.

iii Corporate liability
Normal faults of directors and officers are usually the responsibility of the association. In the
event of serious misconduct by directors and officers, personal liability may arise.

A director or officer of an association can be held personally liable by a third party on
the basis of a tort committed by them. A director or officer who enters into debt on behalf
of the association, knowing that the association will not be able to meet the obligations,
is personally liable. Liability of the entire board will only arise if the unlawful act of each
individual director or officer can be proven.

A director of officer can be held liable by the association if they do not properly
fulfil their task or if they exceed their powers. Liability in principle entails that the board is
collectively responsible for good governance. However, this is not the case when directors or
officers cannot be reproached in relation to a serious incident. A stereotypical example of this
would be where the treasurer steals association funds for his or her own personal gain.

If directors or officers can be reproached with regard to a serious breach of ethics or
code of conduct, for example, for maintaining a slush fund used for ‘under-the-table’ payments
to players, they may be held jointly and severally liable with respect to the association. Also
the tax authorities can, in such a case, hold these directors or officers individually liable.

II THE DISPUTE RESOLUTION SYSTEM
A distinction must be made between private law and public law enforcement. Private law
regulates the relationship between citizens, while public law regulates the relationship
between the government and the citizens. Administrative law, criminal law and constitutional
law together form public law.

In Article 254 Code of Civil Procedure, provision is made for urgent cases; they can
be brought through summary proceedings.

Associations can also punish members who do not follow their rules. The most severe
penalty is the expulsion of the member. A member may also be reprimanded, suspended
or be ordered to pay a fine. A national sports federation can also discipline a member of an
association. This happens more and more often in Dutch amateur football, for instance,
because of the increasing number of instances of serious violence against referees.

i Access to courts
If a player or a coach does not receive his or her salary from the association to which he or
she belongs, he or she will need to take civil court action and request the court to order the
association to pay the salary.

3 See Article 6:162 Civil Code.
4 See Article 2:9 Civil Code.
Public law, particularly criminal law, can play a role in sport, for example, in the case of extreme fouls in football whereby opponents are severely injured and the tackle is classed as ‘career threatening’.

The opportunity to obtain a rapid decision through summary proceedings is important in cases that require prompt action, for example, where a sports federation has not selected an athlete to participate in an important upcoming event and instead has selected another competitor.

In the run-up to the London Olympic Games, Epke Zonderland had been nominated to participate by the Dutch Gymnastics Association. Jeffrey Wammes, another well-known gymnast in the Netherlands, instigated summary proceedings against the decision, arguing that Zonderland had yet to demonstrate preservation of his good form. The interim relief judge agreed that there could be no question of a final nomination but only a conditional one. In the end, Zonderland was still selected to represent the Netherlands at the London Olympics, where he would win a gold medal on the high bar.

ii Sports arbitration

Arbitration plays an important role in sports. Most sports federations in the Netherlands have their own arbitration commission. Arbitration is a means to resolve disputes between the federation and an affiliated association; between an association and a member; or between two associations. The membership of a sports club and a sports federation usually implies that an individual member is bound by the rules of arbitration.

The decision of an arbitration commission may be re-examined by the civil courts. However, the review may only be carried out on a limited number of grounds, as stated in Article 1065 Code of Civil Procedure. Judges are generally very reluctant to annul an arbitration award. The reason for that reluctance is that litigation should not serve as an appeal.

In most cases, rulings of the arbitration committee of a sports federation can be appealed to the Court of Arbitration for Sport (CAS) in Lausanne. Judicial recourse to the Swiss Federal Tribunal is possible against CAS awards on a limited number of grounds, such as lack of jurisdiction, violation of elementary procedural rules or incompatibility with public policy.

III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator

The relationship between organiser and spectator may result from both an agreement (providing access to an event after purchasing an admission ticket) as well as from statutory law. An important legislative provision is Article 6:162 of the Civil Code, which deals with tort. A tortious act is regarded a violation of someone else’s right (entitlement) or an act or omission in violation of a duty imposed by law or of proper social conduct, according to unwritten law. This entails an organiser of an event having a duty of care.

Sport often places spectators at risk, to varying degrees; for example, a spectator at a football match may get hit in the head by a ball or a spectator at a rallycross event runs the

risk of being hit by a car travelling at high speed. Spectators are expected to be alert and not take unnecessary risks, such as crossing the road at a rallycross event. On the other hand, the duty of care of the organiser means that all possible precautions must be taken to avoid accidents.

ii Relationship between organiser and athletes or clubs
An organiser of an event and an athlete often enter into a contract that stipulates the conditions of participation. When the conditions are violated, any claim must not be based on tort but on breach of contract.

It is not uncommon for organisers to demand of participants that they sign a disclaimer in which the participant declares that the organiser shall not be liable for damages suffered by the participant.

It is not always possible, however, for an organiser to invoke a disclaimer in court. A judge may consider that there is such a severe form of negligence on the part of the organisation that invocation of the disclaimer must be deemed to be in violation of reasonableness and fairness.

iii Liability of the organiser
As mentioned above, in assessing whether the organiser has acted unlawfully in relation to spectators, and is liable for damages, the main question that must be answered is whether the organiser has acted in violation of its duty of care. For example, an organiser of sporting events – and this certainly applies to motor sports – will need to take precautionary measures to protect the public.

Participants may suffer damage as a result of a cancelled event. Participants may be able to hold the organiser liable for such a cancellation as is the organiser’s duty to ensure that an event goes ahead unhindered. In the event that organisers fail in that duty of care they act, in principle, unlawfully with respect to the participants.

iv Liability of the athletes
Athletes can be held liable for injuries caused to, for example, spectators or opponents. For example, on 17 December 2004, Rachid Bouaouzan, a player at the football club Sparta, ended the football career of Niels Kokmeijer of Go Ahead Eagles with a dirty foul. Kokmeijer suffered a double leg fracture to the right leg and was forced to retire from professional football.

Sparta suspended Bouaouzan for the rest of the season, which was more than the 10-match ban the Royal Dutch Football Association (KNVB) had awarded him. Kokmeijer filed a complaint with the public prosecutor against Bouaouzan for aggravated assault. Bouaouzan was sentenced to a suspended prison sentence of six months.6 He was later ordered to pay damages of €100,000. The amount was paid to Kokmeijer by his club Sparta.

v Liability of spectators
The doctrine of tort also governs the liability of spectators. On 27 September 1989, Ajax played against Austria Wien in the UEFA Cup. During the match a supporter threw an iron
rod on the pitch which hit the goalkeeper of Austria Wien. UEFA decided to ban Ajax from all European football for an entire season; Ajax also lost the match 3-0. The club decided to take civil action against the spectator and he was sentenced to payment of 500,000 guilders (€125,000) for committing a tort against Ajax. In a separate criminal procedure, the offender was sentenced to five months in prison.

vi Riot prevention
The law on measures to combat football hooliganism and serious nuisance (MBVEO) entered into force on 1 September 2010. With this law, both the mayor and the public prosecutor obtained additional powers of intervention in cases of football vandalism and serious nuisance. Although specifically written to combat football hooliganism, the law does not exclusively apply to football.

IV COMMERCIALISATION OF SPORTS EVENTS

i Types of and ownership in rights
The economic importance of sport is enormous. This not only pertains to the paid members of a professional sport, but also to all kinds of economic activities that are related to sport. Sport is a product to which companies like to connect their name. Since companies are willing to pay large sums in sponsorships, they are keen to be associated with certain sports, while top athletes can make money from endorsements through the use of their name and image, along with personal appearances. The actual value is determined by the popularity of the sport, the performance of the athlete, and his or her appearance.

Of great interest are the television rights to sports events. In the Netherlands, the owner of the venue (or the one obtaining the usage right), usually the club, has the possibility to prohibit filming without permission at the venue. The broadcaster needs permission to place cameras and to make any recordings.

In Europe, a lot of money is paid for the rights to broadcast football matches. For matches in the Eredivisie (the Dutch professional football league), the American network Fox pays about €120 million per year. This may seem like a lot, but it is in sharp contrast to the amount that Sky Television and British Telecom are willing to pay for the rights to the games of the English Premier League, namely €2.3 billion per year (for the 2016/2017 season).

ii Rights protection

Copyright
The Copyright Act gives creators of a work the right to control the ways in which it may be used. Decisions of the Supreme Court make clear that there are two requirements that a ‘work’ must meet: first, it must have an original character and, secondly, a personal stamp of the creator.8

The creator of a television programme that involves a sports event has two important exclusive rights under the Copyright Act. First, the creator has the exclusive right to reproduce

---

7 The law is also known as the Football Law.
8 See Article 1 Copyright Act.
the work. Secondly, they have the exclusive right to publish the work. With regard to the 'right to make public', it is important to note that for each disclosure, separate permission must be obtained.

First, a television station must have permission to broadcast a sporting event. Showing the event in a public space is a new disclosure. The owner of a bar is therefore not permitted to show a game on television in his or her bar without permission from the copyright holder. Permission usually comes in the form of paying a monthly fee to show all sporting events covered by specific broadcasters.

*Portrait rights*

The popularity of athletes has a commercial value. They have the right to determine how their portrait is commercially exploited. Portrait rights are also regulated in the Copyright Act. If a portrait is used, the person portrayed can oppose the use thereof if he or she has a reasonable interest. This interest may be a personal interest or a commercial interest.

*Trademark law*

In the Netherlands, a brand can be protected on the basis of the Benelux Convention on Intellectual Property. Signs that may constitute a Benelux trademark are names, drawings, imprints, stamps, letters, numerals, shapes of goods or packaging and all other signs that can be represented graphically and that serve to distinguish the goods or services of an undertaking.

Nike and adidas are among the most counterfeited brands in the world. The burden of proof of a genuine product can be a problem sometimes because some products are extremely well counterfeited. The trademark holder must be able to prove, in each individual case, that the goods are fake and that it is not an instance of (legitimate) parallel trade.

It is also possible to register a European trademark. The European Union Intellectual Property Office is responsible for managing EU trademarks.

### Contractual provisions for exploitation of rights

The most relevant contractual provisions in an agreement to commercially exploit sports-related rights are those related to the scope of the acquired rights, payment of the agreed compensation, and the duration of the agreement. Provisions of mandatory law need not be included in the contract.

## V PROFESSIONAL SPORTS AND LABOUR LAW

### i Mandatory provisions

For a number of agreements, ‘special agreements’, provisions exist that sometimes differ from general contract law. The employment contract is an example of such a special agreement. Provisions are often aimed at protecting the weaker party, and in the case of the employment contract, the weaker party is the employee.

---

9 See Article 19ff Copyright Act.
10 See Article 2.1 Benelux Convention.
An oral employment contract is also a valid employment contract. In most cases, it is not difficult to prove the existence of an oral agreement of employment. Usually the employer makes weekly or monthly payments into the bank account of the employee.

Certain stipulations can only be made in writing; for example, a trial period pursuant to Article 7:652 Civil Code, or a non-competition clause. 11

Contracts with athletes often incorporate clauses that allow the athlete to terminate the contract of employment in cases of ‘position improvement’. The concept of position improvement should not be interpreted too narrowly. If, for example, an assistant coach at one club can earn significantly more at a new club, but remains an assistant coach, this should still be considered a position improvement. 12

ii Free movement of athletes

One of the freedoms enjoyed by EU citizens is the free movement of workers. 13 This right includes the rights of free movement and residence for workers, the rights of entry and residence for family members, and the right to work in another Member State and be treated on an equal footing with nationals of that Member State.

The seminal Bosman case 14 was an important decision made by the European Court of Justice on the free movement of labour and had a profound effect on the transfers of football players within the European Union. The decision banned restrictions on foreign EU players within national leagues and allowed players in the EU to move to another club at the end of a contract without a transfer fee being paid.

iii Application of employment rules of sports’ governing bodies

A large number of rules typical of sports bodies can be incorporated in individual employment contracts of athletes without any problem. In most non-sporting employment contracts a penalty clause is exceptional. In an employment contract with a professional athlete, however, this is often a standard clause. If the athlete misbehaves, the club can impose a fine on the athlete. This includes cases where a player, without valid reason, arrives late for training, behaves in an unsporting way during a game or is guilty of misconduct in the public arena.

VI SPORTS AND ANTITRUST LAW

Sporting rules are subject to EU antitrust rules when the body setting the rules, or the companies and persons affected by the rules, are engaged in an economic activity. Article 101 of the Treaty on the Functioning of the European Union (TFEU) prohibits anticompetitive agreements and its implementation is defined in Council Regulation No. 1/2003, which can

11 See Article 7:653 Civil Code.
12 See Ten Hag v. FC Twente.
13 Freedom of movement for workers is one of the founding principles of the EU. It is laid down in Article 45 of the Treaty on the Functioning of the European Union and is a fundamental right of workers.
be applied by the European Commission and by the national competition authorities of EU Member States. Article 102 TFEU is aimed at preventing undertakings from those who hold a dominant position in a market from abusing that position.

The International Automobile Federation (FIA) is the sole regulatory body of international motor racing in the European Union. Anyone wishing to participate in an international motor sports event authorised by the FIA must obtain an FIA licence, not just drivers but also track owners, vehicle manufacturers and organisers of motor sport events.

Once a licence is obtained, licensees are only allowed to enter or organise races authorised by the FIA. Any licence holder disregarding this prohibition can be stripped of their licence. Losing the licence would prevent the licensee from playing any role in almost all international motor sport events taking place in Europe.

The case was investigated by the European Commission, which held, in its statement of objections, that the FIA was using its regulatory powers to block the organisation of events that competed with the events promoted or organised by the FIA.

The Commission eventually settled with the FIA. The Federation agreed to stop preventing teams and circuit owners from participating in or organising other non-FIA races provided that essential requisite safety standards are met.15

In October 2015, the European Commission opened an antitrust investigation into International Skating Union (ISU) eligibility rules that permanently ban skaters from competitions such as the Winter Olympics and the ISU World and European Championships if they participate in events not approved by the ISU. The investigation followed a complaint by two Dutch speed skaters, Mark Tuitert and Niels Kerstholt.16

On 27 September 2016, the Commission sent a statement of objections to the ISU stating its preliminary view that ISU rules are unreasonably preventing athletes from engaging in their profession by putting disproportionate and unjustified obstacles in the way of organisers not linked to the ISU but who want to hold alternative ice-skating events.17

VII SPORTS AND TAXATION

i VAT
A sports club or organiser of sporting events is usually liable to pay sales tax though different rules that apply to sports clubs and organisers. Sports clubs usually benefit from exemptions. As a result, organisers often pay VAT, but sports clubs in most cases do not. However, when a short-term single sporting event is organised, the organiser would not usually pay any sales taxes. The organiser will not regarded as a trader.

Payroll tax
A sports club, or organiser of sporting events, that pays people must, as an employer, declare and pay payroll taxes. Payroll taxes are imposed on employers or employees, and are usually calculated as a percentage of the wages that employers pay their staff. They cover

15 See IP/01/1523, 30 October 2001, Commission closes its investigation into Formula One and other four-wheel motor sports.
16 See also Kees Jan Kuilwijk, Skating must innovate, or die, Volkskrant, 21 January 2016.
17 See IP/16/3201, 27 September 2016, Commission sends statement of objections to International Skating Union on its eligibility rules.
advance payment of income tax, social security contributions and various insurances (e.g., unemployment and disability). A club or organiser that only makes use of volunteers does not pay payroll tax.

Corporate tax
Corporate tax is a tax on the profits of a company. Most sports clubs are not considered companies and thus do not have to pay corporate tax. Also, organisers of sporting events usually do not pay corporate tax. Some clubs and organisers are incorporated as a limited company or a public limited liability company, and in that case the rules regarding corporate tax do apply to them.

VIII SPECIFIC SPORTS ISSUES

i Doping
The Doping Authority is the independent anti-doping organisation in the Netherlands. Its mission is realising doping-free sport in Netherlands. It does that on behalf of the government (Ministry of Health) and the Dutch Olympic Committee (NOC*NSF) and it cooperates with many national and international organisations.

Unlike various EU Member States, the Netherlands has no specific doping legislation. Doping culprits can therefore not be legally prosecuted. Of course, they can still be banned from competing in their chosen sport if caught taking banned drugs.

ii Betting
The Netherlands is among the few countries in Europe where online sports betting is still illegal. The Second Chamber of Parliament voted in July 2016 in favour of a plan to modernise the gaming policy. If the Senate agrees, it will be possible by the second half of 2017 to obtain a licence for offering online games of chance, casino games such as poker and sports betting.

The bill creates the basis for a licence system so that players can participate in online gaming in a safe and responsible way. The new legislation will make it possible to impose strict requirements pertaining to online gambling operators and thus better protect players against developing a gambling addiction. Licence holders will be required to pay a 29 per cent gambling tax, 0.25 per cent to the Gaming Addiction Fund and a 1.5 per cent contribution to the Gaming Authority over the gross game result (i.e., the profit).

iii Manipulation
Match-fixing is the manipulation of the results of sports games for the benefit of people who gamble on these games. There is no separate law in the Netherlands which criminalises match-fixing as, for example, in Italy and Portugal. In the Dutch Penal Code, there are also no separate articles related to match fixing as in Bulgaria and Spain.

Match-fixing falls under fraud. To prove fraud, ‘intent’ is required. A player suspected of fraud may argue that, for instance, he placed the ball without intent behind his own keeper

18 See Article 326 Criminal Code.
in scoring an own goal, or that his red card was undeserved. A player or referee who accepts money from a match-fixer may also be punishable on the basis of ‘bribery by someone other than an official’.  

The KNVB officially established that in the Eredivisie, match-fixing occurred in 2009. The research showed that Ibrahim Kargbo, then a player for Willem II, entered into a deal with match-fixer Wilson Raj Perumal to manipulate the Willem II v FC Utrecht match on 9 August 2009. Email conversations between Kargbo and Perumal show that the two agreed that Willem II would lose the game.

iv Grey market sales
In the Netherlands, the secondary ticket market has been put under much scrutiny in the past few years as ticket touts dominated the resale ticket market. In April 2010, a proposal was adopted by the Second Chamber of Parliament to restrict the sale of tickets for more than 120 per cent of the original price. However, actual legislation still has not been adopted.

Providers of official sports tickets and other events, like music festivals, increasingly affiliate themselves with secondary ticket sites so that they can keep prices under (their) control. For instance, the infamous website Seatwave was bought by Ticketmaster. Both foreign, these companies are nonetheless active and popular in the Netherlands.

IX THE YEAR IN REVIEW

i State aid
In July 2016, the European Commission concluded that support measures granted by several Dutch municipalities to five professional football clubs were compatible with EU state aid rules. The Commission found that four clubs (FC Den Bosch, MVV Maastricht, NEC Nijmegen and Willem II Tilburg) received aid, but that the support was in line with EU State aid rules. A land transaction concerning PSV Eindhoven involved no aid as it took place on open-market terms.

ii Access to courts/football
In July 2016, Eredivisie football club De Graafschap initiated summary proceedings against the KNVB. The club wished to maintain its place in Eredivisie. Although it had been relegated, in May, the licence committee of the KNVB had withdrawn the licence of FC Twente, another club in the Eredivisie, for triple infringement of FIFA’s ban on third-party

19 See Article 328 ter Criminal Code.
20 In the emails Kargbo indicated that ‘the captain’, then Michael Aerts, and a third player would cooperate. In return for deliberately losing this match, each of these three players would receive €25,000 from Perumal.
21 See IP/16/2402, 4 July 2016, Commission clears support measures for certain football clubs in the Netherlands.
ownership and several years of general financial mismanagement, and had issued them a new licence for participation in the Jupiler League, at the second-highest level. Therefore, a spot had opened up in the Eredivisie.

Even though FC Twente lost the case in civil court, it had instigated action against the KNVB’s decision to withdraw its licence. On appeal the appellate body of the licence committee, in a highly controversial ruling, reversed the decision of the licence committee so that FC Twente could keep it place in the top division.

De Graafschap lost its case in court only because the court felt it did not have the authority to relegate FC Twente and it was impossible, in practice, to adapt the programme for the new season to accommodate 19 instead of 18 clubs.

iii Access to courts/Olympic Games

The NOC*NSF decided in August 2016, at the instigation of the Gymnastics Association, to exclude gymnast Yuri van Gelder from the Dutch Olympic team with immediate effect. Van Gelder was sent back to the Netherlands after he left the team village to embark on a night out on Saturday, before returning in the early hours of Sunday morning. He also missed a training session that day. According to the Olympic Committee, Van Gelder had, in doing so, grossly violated the norms and values of both the NOC*NSF and the Gymnastics Association. As a result of the decision, Van Gelder could not participate in the finals on rings, taking place a week later.

In the Netherlands, the gymnast started summary proceedings to force the NOC*NSF to allow him to participate in the finals, but he lost. The court agreed with the Olympic Committee, stating that participants in the Olympic Games must strive to maximise their sports performance and act as good team members, both in and outside the sport.

X OUTLOOK AND CONCLUSIONS

The European Commission’s decision to send a statement of objections to the ISU, stating its preliminary view that ISU rules are preventing athletes from engaging in their profession by putting unjustified obstacles in the way of organisers not linked to the ISU, is likely to have an enormous impact on the organisation of sports events in Europe.

Although the sending of a statement of objections does not prejudge the final outcome of the investigation, the Commission takes the preliminary view that the ISU rules are disproportionate and in violation of EU antitrust law. It therefore seems likely that international sports federations will lose their monopoly on the organisation of sports events. Several national competition authorities have already found that rules prohibiting the participation of its members in non-sanctioned events violated Articles 101 and 102 TFEU and had to be abolished.

---

22 See generally, Kees Jan Kuilwijk, FIFA TPO ban cannot be justified under EU law, LinkedIn column, 27 October 2015.
23 See Kees Jan Kuilwijk, Graxit or Twexit? LinkedIn column, 3 July 2016.
I OVERVIEW

Despite being a country with an estimated population of just under 4.5 million people, New Zealand competes on the international sporting stage at a level comparable with many of its bigger sporting rivals. Inaugural winners of the Rugby World Cup in 1987, New Zealand’s famous All Blacks recently won the 2015 Rugby World Cup held in England and Wales, becoming the first team to win three world championships, and to defend a title (having won the tournament in 2011). New Zealand’s national men’s and women’s Rugby Sevens teams have won multiple world championships. At the 2016 Rio Olympics New Zealand finished as the 14th overall nation in terms of total medals, and 19th in terms of medal type. In addition, New Zealand has enjoyed success belying its modest size in, inter alia, yachting (particularly the Americas’ Cup), 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, ranks among the top cricket teams in the world (recently finishing runner-up to Australia in the 2015 Cricket World Cup).

In sports administration, New Zealand also contributes significantly on the international stage. A number of leading officials and administrators in, inter alia, rugby, cricket, netball, athletics, sailing and rowing come from New Zealand, as does David Howman, the founding director-general of the World Anti-Doping Agency (WADA).

As sport has become more professional and more commercial, the law across the globe has increasingly moved with it. New Zealand law is no different in this respect. 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.

---

1 Aaron Lloyd is a partner at Minter Ellison Rudd Watts.
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 Incorporation 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 Incorporation Societies Act. Examples of sporting organisations incorporated in this manner include New Zealand Cricket,4 New Zealand Rugby and its member unions,5 and New Zealand Netball.6 In addition, players’ associations have also traditionally been formed as incorporated societies in New Zealand, often also registering as a union under New Zealand employment law. Examples of this include the New Zealand Rugby Players Association (NZRPA),7 the New Zealand Cricket Players Association8 and the New Zealand Netball Players Association.9

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, in order 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).10 Reform of this area of the law has been under discussion for some time, with the government seeking submissions on draft legislation throughout 2015 and 2016. It is likely this will lead to law change over the 2016/17 period, and accordingly, care should be taken to ensure compliance with current and likely 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 form of legal entity is often combined with partnership (or limited partnership) arrangements, particularly in the ‘franchise’ sporting sector. Examples of such an approach can be seen in,

7 www.nzrpa.co.nz.
8 www.nzcpa.co.nz.
9 www.nznpa.co.nz.
inter alia, 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.11 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.12 In addition, specialist resources focus on areas such as health and safety,13 event risk management,14 and sports integrity topics such as match-fixing.15 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. This was the biggest reform of health and safety law in New Zealand in over 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).16

Directors and officers of entities owing duties under the Health and Safety at Work Act 2015 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 courts 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 courts) 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 generally hears civil claims of less than NZ$15,000) and the Employment Relations Tribunal (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 Tribunal 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 courts or High Court.

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 sports’ own disciplinary tribunals, or through the Sports Tribunal of New Zealand, 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 Sports Tribunal of New Zealand 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, 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.17

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 Contractual Remedies Act 1979, 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 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 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, depending on the popularity of the sport. Rugby, cricket, netball and rugby league all have significant broadcast deals in place, allowing pay-tv broadcaster Sky TV to broadcast those sports in New Zealand, and for offshore broadcasters to broadcast New Zealand sporting content abroad. 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. Alternative products, such as club-specific broadcast content (with respect to the EPL, club TV channels such as MUTV, LFCTV and Chelsea TV), were picked up by the historical football broadcaster Sky TV, but this resulted in delayed rather than live coverage, and only on the pay-TV platform. 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.

As the delivery market for sports broadcasting has matured in the past two to three years, there has been a swing back toward the main players (and particular Sky TV) obtaining broadcast rights, although this has, in part, involved those traditional players developing their own over the top or internet based delivery platforms.

Outside of broadcast rights, image rights, merchandising and sponsorship remain significant commercial commodities, although the value of the same is often limited by the relatively small nature of the New Zealand sporting market. Some New Zealand sporting brands, such as the All Blacks in rugby, have significant global value, as evidenced by New Zealand Rugby's global sponsorship arrangements with adidas and with insurance giant AIG. In 2016, New Zealand Rugby also ceased its commercial relationship with Coca-Cola Amatil New Zealand Limited (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 New Zealand Rugby (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). Passed by Parliament ahead of New Zealand hosting major international sporting events (including the 2010 Rowing World Championships, Rugby World Cup 2011, FIFA U17 World Cup 2015 and International Cricket Council Cricket World Cup 2015), 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.19

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$15.25), 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 described as 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 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 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.20

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.21 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  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 agency in the form of Drug Free Sport New Zealand.22 In general it should be noted that issues regarding free movement of athletes are yet to be closely scrutinised by New Zealand courts in any sport.

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

20 Section 21, Human Rights Act.
22 See drugfreesport.org.nz.
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.

iii Manipulation
In 2014, Parliament passed an amendment to the Crimes Act 1961 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.

VIII THE YEAR IN REVIEW
i Anti-doping
The Sports Disputes Tribunal, which hears the majority of New Zealand’s anti-doping cases, reported only four anti-doping decisions of significance in the year to publication (1 October 2016). Unlike the previous year, the Tribunal’s decisions were solely in relation to more traditional doping infractions, all being cases responding to adverse analytical findings. Two cases involved the substance Salbutamol (DFSNZ v Lewis ST 10/16; DFSNZ v Wallace ST 06/16). One case involved a veteran level cyclist returning positive tests for the substances prednisone and terbutaline (DFSNZ v Spessot ST 15/15). The final case involved a female football player, who had changed her mind about retiring from the sport, testing positive for the substance probenecid which had been legitimately administered to her, but for which a therapeutic use exemption was not obtained (DFSNZ v Kennard ST 14/15).

ii Match-fixing
The past two years have been dominated by the UK perjury trial of former New Zealand cricketer Christopher Cairns. In 2012, Cairns was successful in libel proceedings against Lalit Modi in the High Court in London for a tweet in which Modi said that Cairns had been involved in match-fixing. In 2015, acting on information provided by the International Cricket Council, the London Metropolitan Police interviewed and subsequently charged Cairns, alleging that he had committed perjury when he claimed, as part of that trial, that he had never cheated at cricket or asked anyone else to cheat at cricket. It was alleged that he was involved in match-fixing during the now-defunct Indian Cricket League in 2007/8, and that he tried to recruit others to do the same. Cairns was acquitted on all charges by a jury in late 2015 following an eight-week trial in the Southwark Crown Court in London.

23 See www.nzracingboard.co.nz.
iii Selection disputes

The Sports Tribunal had a much busier 2016 in this area, almost exclusively because of the Rio Olympics. The Tribunal determined six selection disputes in relation to Rio, with a number of other selection matters being resolved by mediation or the use of an ombudsmen process. Of the disputes taken, only one (Radford v. Swimming New Zealand ST 07/16) resulted in an athlete who had not originally been selected for the New Zealand Olympic Team going to Rio. In all other cases the athlete failed to alter the selection decision (Martalletti v. Athletics New Zealand ST 13/16; Miller v. Olympic Weightlifting New Zealand ST 09/16; Webby v. Swimming New Zealand ST 08/16; Kosinska v. Yachting New Zealand ST 05/16; and Winther v. Yachting New Zealand ST 04/16).

In New Zealand, a three-step process is required to be followed before an athlete can be selected for the Olympic Team. First, an athlete must ‘qualify’ a spot at the Olympics in his or her sport for New Zealand. Secondly, the athlete must then be nominated by their NSO to fill that spot on the New Zealand Olympic Team. Finally, the NZOC must then select that athlete to the Olympic Team. The selection cases in 2016 (including those that did not make it to the Tribunal) were a mix of challenges to decisions by the NSO for non-nomination and by the NZOC for non-selection. Ultimately, the NZOC put in place a requirement that an athlete must demonstrate they are ‘top-16 capable’ for selection. NSOs have the ability to set varying requirements, so long as they are at or below this top-16 threshold.

Outside of the Olympic cycle, the Tribunal heard a further matter of interest (Columb v. Motorcycling New Zealand ST 15/16). The Columb matter involved a dispute between a rider and his NSO in relation to non-selection to a team to compete at the 2016 Motocross of Nations event. Interestingly, Motorcycling New Zealand’s rules did not provide for referral to the Tribunal, but all parties (including the rider who had been selected) agreed to the matter being determined by the Tribunal.

iv Rugby

Rugby has had significant issues throughout 2016 in relation to matters that can broadly be categorised as integrity-related. At the conclusion of the SANZAAR Super Rugby competition, New Zealand-based franchise the Chiefs were embroiled in a scandal labelled ‘stripper-gate’ by the media, after it was revealed that a female stripper had been hired to perform at the players’ end of season function, and allegations of improper conduct arose. Although there were no criminal charges, it was reported that at least two sponsors cancelled commercial arrangements with the Chiefs, and the incident led to an investigation by New Zealand Rugby.24 That investigation cleared those involved of wrongdoing, although a collective warning was recorded in relation to the players. New Zealand Rugby were criticised for the manner in which the review was conducted.25

Following ‘stripper-gate’, three incidents of rugby players being involved in reported criminal activity raised further questions of culture and, in particular, rugby’s response to violence and attitudes towards women and sexuality. The case of Wellington rugby player Losi Filipo involved media questioning how much rugby bosses knew about an assault that

---

Filipo had pleaded guilty to, but for which he had been discharged without conviction. This matter was followed by the case of a Mid Canterbury rugby player being reported in the media as under arrest for assault with intent to commit sexual violation, and a Southland rugby player for indecently exposing himself in public.

These matters collectively led to media and public calls for resignations and reviews, and for changes to rugby culture to occur, with many citing the lack of woman in governance positions as something requiring remedy. New Zealand Rugby has responded, indicating a review is being undertaken, and the NZRPA has also commented noting that traditions such as ‘mad Mondays’ should be revised.

IX OUTLOOK AND CONCLUSIONS

Integrity breaches remain the key risk for sports organisations in New Zealand, and around the world, at present. The potential for a doping, match-fixing or some other corruption scandal to embroil an athlete or a sports organisation remains of significant concern for athletes, but perhaps more importantly sports administrators and governors. Furthermore, if such a scandal does arise, it has the very real potential to cause irreparable reputational and financial harm. The media-labelled integrity scandals surrounding rugby in 2016 are evidence of both the damage that such matters can cause, but also the need to have defensible practices in place when athletes can go ‘off-piste’ and do unconscionable things at any time, often quite unrelated to their sport.

The government continues to struggle with the appropriate level of intervention in this area, and little has been advanced by way of proposed policy change or legislative reform during 2016. The criminalisation of match-fixing is likely to be followed by the strengthening of criminal laws in relation to doping. Further, 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.

As sport becomes more valuable, commercial disputes are likely to increase, whether in relation to the disrupting and evolving the 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 is becoming increasingly likely.

However, the hot topic of the moment remains integrity in sport. It is a topic that is as broad as it is significant, and this is expected to be the touchstone for many of the leading developments in sports law and administration for the remainder of 2016 and into 2017 and beyond.
I LEGAL ORGANISATION OF SPORTS IN PARAGUAY

i Introduction

An examination of the legal organisation of sports in Paraguay leads us, in the first place, to determine the organisms (understood in the sense of institutions or entities) that govern Paraguayan sports in both public administration and the private sector (1) general sports organisation, moving on to dispute resolution mechanisms stipulated in the legislation; (2) dispute resolution system, without overlooking general characteristics of sports events; (3) organisation of sports events and the commercialisation mechanism of the rights arising from such; (4) commercialisation of sports events, concluding with the exploration of professional sports; (5) professional sports and labour law as well as the tax system applicable to sports; (6) sports and taxation and certain aspects related to diverse issues linked to the practice of sports; and (7) specific sports issues.

ii General organisation of sports

The organisation of Paraguayan sports can be studied from two different perspectives: the public and the private organisation of sports.

Firstly, the Paraguayan Constitution of 1992 – the first to include sports within its text – has undertaken the obligations expressed within it. In fact, the current Constitution, in Article 84 of the chapter dedicated to education, in the section on the rights of a person, states:

The State will promote sports, especially those of a non-professional nature, which stimulate physical education, providing economic contributions and tax exemptions to be set forth in the law. Likewise, it will promote national participation in international competitions.

1 Gerardo Luis Acosta Pérez is a lawyer at P&A Grupo Consultor.
And it is from precisely from this constitutional basis that Law No. 2874 ‘on Sports’ enacted in 2006 stems, also inspired in the type of government management adopted by Paraguay pursuant to Article 1 of the same Constitution, which reads ‘The Paraguayan Republic… becomes a Constitutional State under the rule of law.’

Paraguay therefore leaves behind the liberal way of state and adheres to the trend of welfare states, which arises before the deep crisis in the idea of abstentionism that inspired liberal constitutionalism. Thus, ‘the emergence… of social constitutionalism, leading to the incorporation, within constitutional texts, of the so-called social rights’² arises, ending an evolutionary process ‘in the achievement of general interest objectives that is not absorbed by the State, but rather harmonised in a joint state–society action’.³

Into this group of third-generation rights, following political and economic rights, the promotion of health through sports arises as an important aspect. ‘This recent constitutionalisation of sports is not something spontaneous (Cazorla) but a product of the evolution of the concept from liberal state to welfare state, which provides material supplies to all citizens, demanding a positive action from the former to provide the latter with minimum qualities of life conditions.’⁴

Based on doctrinal considerations, the Sports Law created the National Sports Agency, a public entity under the Executive Branch created to the extent of ‘executing this Law (of Sports) and its regulation, by proposing a national sports policy, promote sports culture and practice of sports among the population, allocate resources to sports activities and supervise sports entities throughout the national territory, within the scope set forth herein’.

The Agency is run by the National Sports Secretary, an officer with ministerial rank. National sports federations were set up at the beginning of the 20th century and then, in 1980, the Paraguay Olympic Committee was organised. National sports federations are governed first of all by laws of a civil nature regulating non-profit organisations. The associative form these entities adopt is that provided in Book One, Section II, Chapters I, II and III of the Paraguayan Civil Code. The mentioned rules foresee the existence of two different types of civil associations, those of acknowledged public utility and those of limited capacity. The difference between them stems from the formalities for obtaining legal status and asset management capacity.

Associations of acknowledged public utility obtain legal status from the approval of their by-laws by the Executive Branch and further filing in the appropriate Public Registry, whereas those of limited capacity are merely required to be registered in the Public Registry. Amendments to their by-laws also need to be approved by the Executive Branch.

Likewise, associations of renowned public utility can receive bequests or donations through successions, something associations of limited capacity are prevented from doing.

---

² Zarini, Helio Juan; *Derecho constitucional*, p. 10.
³ Souvirón, José María; ‘Fronteras entre lo público y lo privado’ in *Derecho del deporte. El nuevo marco legal*, p. 53.
⁴ Moya, María Victoria; ‘El art. 43.3 de la Constitución Española’ in *La Constitución y el Deporte*, p. 33.
The Paraguayan Olympic Committee shares legal status with sports federations in the scope of civil law, with no special consideration except for that provided under Article 34 of the Sports Law:

The Paraguayan Olympic Committee is governed by the Law, its bylaws and regulations and international provisions to the applicable, insofar as the latter do not violate national legislation. The Paraguayan Olympic Committee may only include in its records those sports entities that are duly registered before the National Sports Agency and that practice sports disciplines of an Olympic nature, recognized as such by the International Olympic Committee. Its fundamental mission is to develop Olympic sports and spread its ideals …

To legal status we must add that, to be considered a sports institution, they must be recognised by the National Sports Agency and the Sports Law, Law No. 2874/06, which has specifically enshrined monopoly of sports activities by federations in its Articles 29 and 31, stating:

Article 29. The National Sports Agency must authorize incorporation of Sports Federations, being one of them mandatory for each district where at least five clubs were affiliated. Furthermore, there shall be one for each department these District Federations are affiliated to and a National Sports Federation that all Agency Federations are affiliated to, which may be called Confederation.

Article 31. The National Sports Agency must authorise the incorporation of an official entity for each sports discipline, with a national reach that includes all entities practising a certain sport. Such entity will be deemed a National Sports Federation. In the event of more than one per sport or group of similar discipline, the one created and that has obtained legal status first will be deemed a National Sports Federation.

In other words, a sports federation has a double legal status, one in the civil field and one in the sports field.

Finally, clubs remain, to date, civil non-profit associations, although they participate in professional competitions, adopt the same type of legal status as sports federations, and must also be recognised by the National Sports Agency.

Shared administration, between the National Sports Agency and sports federations or the Paraguayan Olympic Committee, occurs through public subsidy, the means used by the state to promote sports in Paraguay. The Sports Law created the National Sports Development Fund as a special purpose account that, since 2010, has generated its resources from taxes on alcohol and tobacco. The money in such fund is allocated to the construction of sports facilities, execution of strategic plans for sports federations and the Olympic Committee, and for top athlete training plans.

II DISPUTE RESOLUTION SYSTEM

i Access to courts

Given that sports federations (and the Paraguayan Olympic Committee) are private legal persons, the decisions adopted by their governing bodies, are subject to the same jurisdictional recourse set forth in Paraguayan legislation.
Thus, stemming from the Constitution, Article 16 reads: ‘The defence of persons and their rights in trial is inviolable. Every person has the right to be judged by competent, independent and impartial judges and tribunals.’

These constitutional provisions faces the traditional prohibition to recourse to ordinary justice contained in the by-laws of national sports federations, copying what is provided for by international sports federations. However, in the case of the latter, recent inclusion of the possibility of recourse to the Court of Arbitration for Sport, based in Lausanne, has ended this confrontation, offering the parties involved in sports the chance to bring a claim before a tribunal meeting the requirements of both independence and impartiality.

In Paraguay, the Sports Law has tried to offer the same, through the following provisions:

Article 44. The National Sports Agency must organise a proceeding of conciliation and arbitration for resolution of sports-related disputes brought by athletes and sports clubs with their corresponding Sports Federations and Leagues.

Article 45. The conciliation and arbitration proceeding will be set forth through a regulation, being subject to the following conditions:

a) an ad hoc Conciliation and Arbitration Commission will be created, and its members will be appointed on an equal basis by the National Sports Agency, the Paraguayan Olympic Committee, the Sports Federations and athletes with an effective licence;

b) application of specific conciliation and arbitration formulas in line with the State legislation on the subject;

c) compulsory submission of all conflict referred to in this Chapter, waiving any other jurisdiction, especially civil and administrative and regulatory;

d) a system of challenges of those who perform conciliation or arbitration duties;

e) procedure through which this duties will be carried out, respecting constitutional principles and, in particular, those of contradiction, equality and parties’ right to be heard; and

f) methods of enforcement of decisions or resolutions adopted through conciliatory or arbitral means.

Article 46. Bringing an appeal before the Conciliation and Arbitration Commission will entail suspension of enforcement of the appealed sanction or decision, except before fair cause for its enforcement. The President of the Commission will determine the existence of fair cause on a case-by-case basis.

Article 47. The resolutions adopted in these proceedings will have the effects assigned to them in the applicable laws. The only recourse against them is the appeal before the Court of Arbitration for Sports seated in Lausanne (Switzerland).

Unfortunately, this part of the Law is yet to be enforced by the National Sports Agency, therefore parties linked to sports (athletes, clubs, referees, officers) only have civil action to protect their rights. Following this line of argument, there are two possible solutions, the first being to file for relief against violation of constitutional rights through a summary proceeding known as *amparo*. The other is an ordinary claim for nullity of the act, considering that every decision of a legal entity constitutes a civil legal act.

The problem with the first option is finding a constitutional right that has been inflicted, whereas the second, being an ordinary lawsuit, could last a long time, which is incompatible with the immediacy of the sports phenomenon.
Finally, against decision taken by the National Sports Agency, a regulatory-administrative claim could be brought before the appropriate tribunal.

III ORGANISATION OF SPORTS EVENTS

There is no special legislation regarding rights and obligations linked to the organisation of sports events, except for prevention of violence at stadiums (Law No. 1866/2002).

Therefore, the Civil Code determines the possible legal consequences of sports events. In that sense, the organiser of a sports event is rendering a service to athletes and clubs, as well as spectators, as the connection between them is governed by the provisions of the agreement, and alternatively by the rules of a services agreement.

Regarding the liability regime, following the same line, the rules on contractual civil liability would apply or, eventually, rules on torts.

In this aspect, Paraguayan legal regulations are similar to those contained in countries with a Roman-German tradition’s legislation. However, given the lack of specific legislation, it is advisable that all aspects of the sports event be contemplated in the agreements, so as to avoid subsidiary application of legislation that was not developed for these types of public manifestations. Unfortunately, this does not happen, which exposes organisers (clubs or federations) to significant legal risks.

IV COMMERCIALISATION OF SPORTS EVENTS

There is, additionally, no special legislation with regard to commercialisation of sports events, therefore, in this aspect the agreement would once again be the main source of rights and obligations for the parties.

In Paraguay, only football has developed statutory regulations on event commercialisation. The by-laws of the Paraguayan Football Association state that it has exclusive commercial rights over the events it holds or participates in. This means that the football federation is the holder of intellectual rights of the championships it organises, among which we could highlight the Honour Division (considered professional), as well as its participation in competitions organised by the South American Football Confederation (CONMEBOL) and the International Federation of Association Football (FIFA).

As holder of intellectual property rights over the events it organises or participates in or both, the Paraguayan Football Association is protected by Law No. 1328/1998, which regulates intellectual property rights.

The Paraguayan Football Association negotiates, in the representation of its clubs, broadcasting rights for the Honour Division championship and the money paid by the assignee of those rights is redistributed among the participating clubs. Likewise, it negotiates broadcasting rights for the participation of the Paraguayan team in the qualifiers for the FIFA World Cup. Up to 60 per cent of the sums collected through the aforementioned negotiations is used in the participation in such competition, and the outstanding sum is redistributed among the federation associates.

In both cases, broadcasting rights are negotiated outside a legal regulatory framework, which has caused the creation of a kind of monopoly that the assignee ensures through preference clauses inserted in the contracts. Paraguay does not have a regulation similar to that adopted by the European Union, which guarantees viewers free access to certain events.
In fact, the right of access to information envisaged in Article 27 of the Constitution would be violated by an alleged request by the assignee that the competition be broadcast first on the channel it has a contractual relationship with and then on other channels.

V PROFESSIONAL SPORTS AND LABOUR LAW

In Paraguay, among collective sports, only football is deemed professional, and only the players are professionals, unlike the clubs. Clubs participating in professional competition maintain their status as civil non-profit associations. There is no legislation that allows them to adopt the scheme of corporations.

Professional football players and their activities are governed by Law No. 5322 of 2014, which modified Laws Nos. 88 of 1991 and 3580 of 2008 in full.

Pursuant to such law, the relationship between clubs and players constitutes a sports employment contract:

Article 2. A valid contract would be deemed to exist to the extent of this law when one party undertakes to play football for a certain term, becoming a team member of a sports entity and the latter agrees to pay a certain sum in return. Parties to such contract are:

a) Clubs in the Honour Division or those participating in the higher level championship organised by the Paraguayan Football Association;

b) Intermediate Division Clubs, pursuant to the by-laws of the Paraguayan Football Association;

c) Football players qualified as professionals by such clubs, insofar as they have reached legal age of 18 years, for a minimum term calculated from the date of registration to the ends of the season and a maximum of five years;

d) 16-year-old players for a term no longer than three years; and

e) The team of professional players of Honour Division and Intermediate Division Clubs must be duly approved by the beginning of the season, according to the rules of the Paraguayan Football Association and the International Federation of Association Football (FIFA).

In Paraguay, only the 12 clubs competing in the Honour Division and the 16 participating in the Intermediate Division, the two top competition divisions in the country, can employ professional players. There have been theories developed around the possibility that other divisions maintain an employment relationship with their football players, based on Paraguayan labour law. However, we believe that given the existence of specific legislation on the subject, and in light of the lex specialis derogat generalis principle, the clear wording of article 2 of Law No. 5322 prevents this from being possible.

With regard to the employer, a particular situation that is common in Paraguay is a management agreement, in which clubs unable to manage their professional participation aim to develop this participation commercially, which is a better method. Under the form of ‘management’, corporations with the most diverse activities are incorporated and engage in contractual relationships with clubs participating in professional competitions to take over management of the team, paying an annual sum to the club and assuming labour liability for the professional players.

Managers employ players for their respective clubs. The purpose of the agreement is to render sports activities within the business structure of the employer. Thus, in these cases, as an exception to the rule, we deem it possible that a legal entity not linked to the national association may engage professional athletes. This view has also been adopted by the Court of
Arbitration for Sports in the case TAS 2005/A/799 *KSK Beveren v. Mimosas*, where the Court determined that the broad definition of ‘club’ includes the civil association of a sports nature and the corporation that manages its activities related to professional competition, granting them the right to act as both plaintiffs or defendants.

As to footballers, both a professional and an amateur football player are, in principle, athletes with a licence or form allowing them to participate in federate sports competitions. “What distinguishes a professional athlete from an amateur is the remuneration: the distinction is based upon the significance of the remuneration and not the nature of the activity”, which would be the same in either case. Both the amateur and the professional allocate most of their time to physical training for competitions, aiming to obtain the best individual and group performances. Put simply, the amateur does so for the mere pleasure of athletic perfection while the professional undertakes such activity as a means to make a living.

Professional football players were amateurs first and, therefore, linked to their clubs through a sports contract, of which the licence is material evidence, and that constitutes a unique link between the parties. But once the player reaches a professional level, the sports contract becomes ancillary to a different relationship, an employment relationship, which requires a licence for participation in the sports competition but not to ensure the validity of the contract. Therefore, following Spanish legislation, it may be worth defining professional football players as those who “by virtue of a relationship of a regular nature, voluntarily undertake the practice of sports for and within the scope of application of an organisation and management of a club or sports entity in exchange for a remuneration”, highlighting the concept of remuneration as the distinction between professionals and amateurs.

However, not every federated football player can become an employee, since in order to execute such a contract, the rules governing capacity to enter into contracts in Paraguayan legislation should be considered. Following this line of argument, it is an *intuitu personae* obligation that must be performed by an individual, in this case a football player. The employee can never be a legal or moral entity. In Paraguay, limitations have been stipulated for capacity to enter into contracts, establishing the age of 18 as the minimum to execute a sports employment contract for a term of five years, and 16 for the same contract but with a three-year term. This distinction made by Paraguayan law is meant to follow the provisions of FIFA’s Regulations on the Status and Transfer of Players.

Rights and obligations of the parties can be studied from the point of view of the employer club and the employee footballer.

i The employer club

The football club is the employer of the professional football player and, in the performance of the employment contract, it undertakes a number of obligations with singular significance, such as effective occupation, payment of remunerations in due time, adequate medical assistance, payment of movement and training expenses, and mandatory periods of rest.

---

6 Sanino, Mario. ‘La organización del deporte en Italia’ in *El derecho deportivo*. p. 123.
7 Ramírez, Juan M. *Curso de Derecho del Trabajo*. p. 545.
As per effective occupation, this right is contemplated in the Labour Code and applied to the sports employment contract in a subsidiary manner. The obligation of the club is fulfilled when it allows the player to participate in all preparatory sessions for official competition, for the player to develop his or her skills freely and, in the event of being called to be in the team, to be successful in the event before spectators.

The second main obligation of the club is to pay in due time the remunerations agreed with the football player. It is on this particular issue that this rule has a number of amendments to the regime of payment contained in general legislation. Thus, payment within five days from the due date has been extended to 10 days in the case of football. In addition, arrears are not sufficient cause for termination of an employment contract.

Paraguayan law stipulates: ‘Article 16. The club is obliged to: a) pay the economic conditions and comply with other provisions set forth in the contract’, and ‘Article 7º. Accrued remunerations, including salaries and other agreed benefits shall be paid by the club within ten days following triggering of the obligation’.

The law establishes, with regard to medical assistance:

\[\text{Article 16º. The club is obliged to: b) grant integral medical assistance, to ensure efficient performance of the player’s activities. Likewise, the Paraguayan Football Association with the Paraguayan Professional Football Players Association, will set forth a system of Family Medical Insurance and risks, until the social security regime is organized by Law…} \]

Football players are not covered by the social security regime, even though this is a fundamental right of every person.

Regarding weekly rest, the legislation states that it must be ensured for a uninterrupted term of 24 hours. However, ‘a fractioned enjoyment of the weekly rest is inherent in sports practice, undoubtedly’\(^{10}\) since it is very complicated, owing to a professional footballer’s lifestyle, to grant a straight 24-hour licence.

The 30-day annual rest term, however, which is in fact not mandatory, can be divided up.

**ii The employee football player**

As an employee in a dependent relationship, the professional football player is subject to the rules of subordination to the employer, and in particular, to work for the latter. The issue to be determined is when and how the professional football player works. In this sense, his or her main obligation is diligence and efficiency at work, adding the obligation of personal care, and compliance with the work schedule and hours.

Diligence and efficiency in the provision of the service, ‘such as any other employee, does not necessarily demand a specific result’,\(^{11}\) that is personal and much less as a group,

\(^{10}\) Carceller, José Luis and other. *La relación laboral especial de los deportistas profesionales*. p. 63.

this means that ‘personal effort may be valued and it might be held accountable for it, but it cannot be so for lack of diligence or effort of his or her fellow team members’. 12 Also, ‘During training, the athlete must prove skills and fitness to participate in the competition.’ 13

It is possible that, setting aside the true sense of the diligence duty, the most relevant obligation of the football player, is to participate in all training sessions and all activities prior to competition. That is how it is viewed in subsections b, c and f of Article 18 of the Law.

Although not specifically legislated, we consider that personal care is inherent to the diligence duty set forth by the Law and as such, it should be satisfied.

Work hours are fixed by the employer and clearly, participation in official competition cannot be deemed extra work hours, even if it takes place during what would be considered a rest day for any other employee.

iii Special features of the contract

Among the characteristic features of this employment relationship we can analyse the term of the contract, the written form and filing, the player’s remunerations, disciplinary authority and labour litigation in the football scope.

Regarding the term of the contract, Law 3580 stipulates that the minimum will be calculated until the end of the season the player is signed for, and a maximum equal to five years, if the player is older than 18 years old, and three years if he or she is between 16 and 18 years old. There is no obligation of unilateral extension of the term, contrary to the situation when Law No. 3580 was in full force and effect.

Paraguayan legislation requires a written form of contract and the appropriate filing before the Paraguayan Football Association. This filing has ad probationen and not ad solemnitaten effects, therefore even in the event of failure to file the contract, it would still remain valid between the parties.

As previously mentioned, the football player is entitled to full payment within the 10 first days of the following month, and when the club defaults on payment of two months’ worth of salaries, it can be deemed dismissed, upon closing of a regulatory procedure before the Paraguayan Football Association, which is as follows:

- The footballer brings the claim stating that the club has defaulted on payment of two or more salaries.
- The Paraguayan Football Association issues a warning notice to the club to pay the accrued sums or to prove having paid them.
- After 10 days, upon failure by the club to pay or to submit evidence, the player is free and can be hired by a different club.
- He or she may also resort to labour courts to claim payment of the salary and compensations he or she is entitled to.

Every time there is a transfer of a footballer’s licence, he or she is entitled to receive 12 per cent in national transfers, and 20 per cent in international transfers, of the total price paid by the new club. This right cannot be waived according to the law.

---

The club exercises disciplinary authority of labour over the football player, which is completely unrelated to the sport disciplinary authority exercised by the Paraguayan Football Association. For this reason there is no basis for the following provision of the law:

*Article 19. In case the football player fails to perform its obligations with the Club, the latter can take the measures provided in the Contract or in the Internal Rules, namely a sanction and suspension for a term no longer than sixty days for each misconduct in the same season, having conducted the appropriate regulatory procedure, and this sanction must be communicated to the Paraguayan Football Association.* This communication made to the football federation does not have any legal effects, unless it intends to broaden the scope of a labour sanction into the sports area.

In addition, according to the law, labour judges have jurisdiction and competence to solve disputes; however, a private dispute resolution before equal representation bodies is possible, as is the situation before the Dispute Resolution Chamber of FIFA: *Article 22. Labour Courts will be competent to hear and decide all matters of a litigious nature arising from the creation, performance or modification or individual or collective relationship set forth in this Law… Article 30. In order to solve disputes related to this law on a regulatory administrative level, the Paraguayan Football Association will create a tribunal pursuant to the FIFA Rules.*

The player's contract is terminated for a number of reasons expressly set out in the legislation:

*Article 24. The contract is terminated due to:*
  
a) mutual consent  
b) contract term has elapsed  
c) breach of contractual obligations by one party and upon request of the other.  
d) final transfer  
e) unjustified termination of the contract. In all cases, to calculate compensation, the rules set forth in article 17 subsection 2) of the Regulations on the Status and Transfer of Players of FIFA shall be applicable.

*Article 25: In cases of termination of the contract attributable to the Club, the player will be entitled to a compensation equal to the remunerations accrued and due for that year by virtue of the contract.*

One thing worth highlighting regarding this issue is the contradiction between subsection (e) of Article 24, which allows for calculation of compensation for contract cancellation adhering to the rules set forth in Article 17 subsection (2) of the FIFA Regulations on the Status and Transfer of Players (outstanding sums of the salary, new salary, special features of sports); and Article 25, which limits compensation when it is attributable to the club, to only outstanding sums of the salary for the year in which the breach occurred. This seems to indicate that if the player is the one terminating the contract, the FIFA regulations will be applicable, but on the other hand, if it is the club, it will be the Paraguayan regulations.
VI SPORTS AND TAXATION

Paraguay is a country with a low tax burden. Sports in particular benefit greatly from exemptions stipulated in Article 24 of the Sports Law, amended by Law No. 3992 of 2010, which states: ‘Sports entities registered in the Sports Entities Registry of the National Sports Agency shall be exempt from taxes and shall be granted discounts on municipal fees.’

However, whenever clubs engage in commercial activities, they are subject to value added tax (VAT) at a 10 per cent rate for the provisions of services or sale of goods of a local source, which means within the Paraguayan territory. Clubs are not subject to commercial income tax, which is levied on commercial enterprises at a 10 per cent rate.

Individuals, football players in this case, are not subject to VAT, because the services they provide are within the scope of a labour relation, as set forth in Law No. 5322, but they are when they engage in commercial operations (advertisement contracts) in the national territory, and are also subject to the personal income tax (IRP) when their earnings exceed the fixed limits. IRP levies net income on a rate of 10 per cent.

Organised sports events are subject to the taxes characteristic of these types of events.

VII SPECIFIC SPORTS ISSUES

As per the particularities of sports, there is only one regulation regarding doping that exists in Paraguay. Paraguay has signed the Convention with UNESCO in the fight against doping, and has adopted the World Anti-Doping Code, in its 2016 version, through the Resolution of the National Sports Agency.

The National Anti-Doping Organisation has also been created and has been fully functional since 2016. The prevention programme and fight against doping is in its initial stages in Paraguay and has not had any significant results so far.

VIII CONCLUSION

Legal regulation of sports in Paraguay is minimal. There is only one Sports Law that refers to certain aspects. It was intended to serve as a basis for further regulatory developments, which have not taken place – at least not entirely.

The National Secretary for Sports has only laid down three resolutions, and not by means of a decree as is the norm: the operation of sports entities (clubs, federations, professional leagues, the National Olympic Committee), the High Performance National Commission (responsible for election of high-performance athletes) and the National Anti-Doping Commission, called ORAD Paraguay.

However, there remains much to regulate. The dispute resolution system contained in the Sports Law has yet to be set up, as in other legislation, the possibility of clubs participating in professional competitions becoming corporations should be analysed, and whether broadcasting rights to sports events could be subject to an open and competitive sale system.
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, 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 (SADs) 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.

On the other hand, 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 multisport or single-sports 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.

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 such rules, the general liability rules foreseen in the Civil Code 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 last 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 such 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 due to disputes between sports clubs, sports companies, or players and the relevant sports federations, namely within football, the Court having mainly ruled upon disciplinary issues.

iii  

Enforceability

An arbitral award may be enforced, and such 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.

Furthermore, 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 (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 data and 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 such 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 such 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 (also known as sportspersons) can be held liable for damages 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 in cases where 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 such 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:

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. Furthermore, when crimes are committed against sportspersons, sports coaches, referees and others 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 the above-referred Law, the crime of participation in a riot is punishable with imprisonment of up to three years or with the payment of a fine.

As per 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.

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 by 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 (Decree-Law No. 47344 of 25 November 1966), the Industrial Property Code (Decree-Law No. 143/2008 of 25 July) 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 right 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:

- its term;
- the territory involved;
- a list of the rights assigned or licensed, or both;
- in the case of licensing, the conditions for the use of the rights;
- the price; and
- 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

Employment contracts for athletes must be in written form and are always fixed-term (for a minimum of one sports season to a maximum of eight 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:

a  expiry of the contract;

b  agreement to the termination;

c  termination for cause (by the club or by the athlete);

d  termination during a trial period;

e  collective dismissal; and

f  abandonment of work.

ii  Free movement of athletes

According to the applicable legislation, athletes may not be denied registration with any sports federation if such athletes fulfil the requirements that are deemed necessary by such 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 such 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 used to apply 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 and 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 self-employed may deduct, up to a maximum limit of €2,096 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 in the insured’s lifetime during the initial five-year period.

Moreover, under certain conditions no PIT applies to allowances granted to Olympic and Paralympic athletes by sports federations benefiting from having ‘public utility’ status; 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; and prizes granted as recognition for high-value and high-merit competitive sports events under the applicable laws (such as the Olympic and Paralympic Games, World and European championships).

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 self-employed sportspersons in consideration of sporting activities.

Where sports-related services are rendered by using a rent-a-star company, no PIT applies. 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, it is worth noting that Portugal tends to follow closely the Organisation for Economic Co-Operation and Development 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 such income accrues to the athlete him or herself or to another person, should apply.

Notwithstanding the above, on case-by-case basis, the government tends to grant tax exemptions to high-exposure international sports events. One example can be found in the general PIT and CIT exemptions 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.
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 such 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 recent 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 such 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 (1) an anti-doping rule violation, (2) any attempted anti-doping rule violation or (3) 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 (1) is serving a suspension period, (2) has been convicted in a criminal or disciplinary proceeding to have engaged in conduct equivalent to an anti-doping rules violation or (3) is acting on behalf of or as an intermediary of any of the individuals early described, is considered to be an administrative offence.

Teams, clubs or sports public limited companies to which a punished athlete belongs that commit a breach of the 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 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 Santa Casa da Misericórdia de Lisboa (SCML), 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, the SCML 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.

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 a period of 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 in cases where tickets for an event are sold at a higher price than the price fixed by the event organiser.
IX THE YEAR IN REVIEW

On 11 March 2015, the Court of Appeal of Lisbon (Court of Appeal) upheld the fining decision that the Portuguese Competition Authority (PCA) had levied against Sport TV for abusing its dominant position in the market of conditional-access premium sports TV channels.

In 2013, the PCA considered that Sport TV applied, from 1 January 2005 to 31 March 2011, a discriminatory remuneration system in the distribution agreements for Sport TV television channels, entered into between this company and the operators of subscription-based television services, imposing a fine of €3.7 million on Sport TV.

On 4 June 2014, the Competition, Regulation and Supervision Court had already confirmed the abuse of dominant position, although it reduced the fine to €2.7 million.

The Court of Appeal entirely dismissed Sport TV’s appeal, confirming that the company abused its dominant position in the market by applying discriminatory conditions to subscription-based television operators.

X OUTLOOK AND CONCLUSIONS

Online gambling and betting was not a regulated practice in Portugal until 2015. An online gambling and betting regime was approved in 2015, and online gambling, and betting on sports events and horse races, are now legal and regulated activities. The new applicable rules aim to combat fraud, money laundering and corrupt influence on games results.

The new legislation allows the government to grant online gambling and betting licences, namely to EU public limited liability companies to exploit such activities. The licence application shall be submitted on the standard form approved by the national authority responsible for the monitoring, inspection and regulation of online gambling and betting (The Gambling Inspection and Regulation Service, controlled by the Portuguese Tourism Institute), duly accompanied by the documents required in the referred form. It is recommended that the licence application be submitted online. As of September 2016, three licences have been issued.
I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Organisational form

At the national level, a sport is usually governed by a national sports association (NSA). Below the level of an NSA lie various sports clubs and organisations that participate in that sport and are members or affiliates of the NSA.

The sports administrative infrastructure in Singapore consists of the Ministry of Culture, Community and Youth (MCCY), the Singapore National Olympic Council, Sport Singapore (formerly known as the Singapore Sports Council, and a statutory board under the MCCY) and individual NSAs for each sport, as well as a number of other associations, organisations and clubs depending on the sport in question.2

Sport Singapore, as it is now known, was established by the Singapore Sports Council Act, Chapter 305 of Singapore as a body corporate. Most of its functions concern the planning, promotion and coordination of sporting activities in Singapore.

There is no legislation dealing specifically with sports in Singapore.3

Sports organisations that are formed as societies or as clubs have to be registered as a society under the Societies Act, Chapter 311. The law relating to clubs, societies and unincorporated associations governs sporting clubs and societies.

Where an organisation is incorporated under the Companies Act, Chapter 50, company law governs that entity as it would any other legal commercial entity.

1 Ramesh Selvaraj, Tham Kok Leong, Daren Shiau and Sunit Chhabra are partners at Allen & Gledhill LLP.
ii Corporate governance

The rules and regulations on sporting activities in Singapore are set out by the respective sports authorities, and these can be an international set of rules, a domestic set of rules or a combination of both.

There is another layer of regulation for NSAs, set out by government-linked bodies such as the MCCY, known as the Code of Governance for Charities and Institutions of Public Character (Code). The Code has streamlined past governance guidelines, such as the Code of Governance for National Sports Associations 2003, into a single comprehensive code. The Code serves to instil financial accountability and management, as well as prudent management requirements.

All NSAs go to Sport Singapore for official recognition and must abide by the Code to obtain funding.

iii Corporate liability

An entity that is an unincorporated association generally comprises an association of individuals who have come together to carry out a mutual purpose. For legal purposes, an unincorporated association has no separate legal identity distinct from the individuals who comprise its membership. The relationship between the members is contractual, based on the rules or constitution agreed between them. Members of the management committee of an association may be personally liable for any liability of the association that goes beyond its assets. Members of an association may also be liable, depending on the rules of the association.

Where the sporting organisation is a body corporate, one of the key benefits is that the liability of members is limited. A limited liability company may sue and be sued in its own name, rather than in the names of the individual members or managers or officers of the company.

II THE DISPUTE RESOLUTION SYSTEM

i Access to courts

Challenges to sports governing bodies may be brought by way of a private law action or by way of judicial review where the leave of court is first required. In granting such leave, the court will need to be satisfied that a public element exists.

The Singapore courts have tended to apply public law principles (by implication as a term in the relevant contract) to assess the exercise of discretion by sports governing bodies and the remedies of public law are to a large extent equally available in a private law action.

The courts have held that sports governing bodies and tribunals must conduct themselves and act in a fair and reasonable way. See, for example, the case of Singapore Amateur Athletics Association v. Haron bin Mundir [1993] 3 SLR(R) 407, in which a sports tribunal was found by the Singapore courts not to have met an acceptable standard at law.

The case concerned a decision by the Singapore Amateur Athletics Association (SAAA) to suspend a sprinter. The Singapore courts held that the SAAA had not exercised its powers in accordance with the rules of natural justice and had been in breach of those rules in the conduct of the disciplinary proceedings in question. Accordingly, the Singapore courts set aside the suspension. In nullifying the suspension, the courts also held that, in relation to the proceedings of clubs, the role of the courts is a supervisory one and confined to the examination of the decision-making process (i.e., whether the rules of natural justice have
been observed and the decision reached honestly). It also reiterated that the court’s function
is not to review the evidence and the correctness of the decision itself, but instead the manner
in which the decision has been arrived at; the preferred approach should be that of a duty to
act fairly in an overall sense.

ii Sports arbitration

Singapore’s first ever framework for Alternative Dispute Resolution for Sports (ADR Sports) to resolve sports disputes was launched in 2008. The ADR Sports is a med-arb dispute resolution framework spearheaded by Sport Singapore and developed in collaboration with the Singapore National Olympic Council, the Singapore Mediation Centre, the Singapore International Arbitration Centre (SIAC) and the Singapore Institute of Arbitrators. Leveraging existing arbitral and mediation institutes rules, systems, expertise and reputation in resolving disputes, it aims to resolve problems faced by NSAs in areas such as athlete selection for national or international events, discipline, eligibility, contractual disputes and appeals against a decision of an NSA or sports organisation or club that affects one of its members.

There are a number of matters that are excluded from the ADR Sports, such as government grants to NSAs and criminal matters.

Domestic arbitration is governed by the Arbitration Act, Chapter 10. Any sports dispute is potentially arbitrable in Singapore, unless arbitration of such a dispute is contrary to Singapore public policy or not capable of settlement by arbitration. There is no exhaustive list of non-arbitrable matters; however, it is generally accepted that such matters may include those that have public-interest elements (e.g., citizenship or criminal matters).

An ‘arbitration agreement’ is defined by legislation as an agreement by the parties to submit to arbitration all or certain disputes that have arisen or that may arise between them, whether contractual or not. It may take the form of an arbitration clause in a contract or of a separate agreement.

The arbitration agreement must be in writing and is deemed to be so if its content is recorded in any form (including electronic communications), regardless of whether the arbitration agreement or contract was concluded orally, by conduct or other means. The intention to arbitrate must be clear and unequivocal.

The Arbitration Act, Chapter 10 confers certain powers on the tribunal (which are without prejudice to any powers conferred by the parties’ agreement), which include the power to make orders or give directions for discovery, the preservation and interim custody of evidence for the purposes of the proceedings and to administer oaths or affirmations.

If urgent interim relief is required before the tribunal has been constituted, the SIAC Rules provide for an emergency arbitrator procedure. Any order made by the emergency arbitrator may be reconsidered, modified or vacated by the tribunal when eventually constituted.

The powers granted to arbitrators under the Arbitration Act, Chapter 10 are concurrently exercisable by the Singapore High Court. Parties are therefore at liberty to apply either to the tribunal or the Court as may be expedient. However, assistance from the

5 See Section 4 of the Arbitration Act, Chapter 10 of Singapore.
6 See Section 28 of the Arbitration Act, Chapter 10 of Singapore.
iii Enforceability

The issue of enforcement of the decision of a sports governing body is usually covered by the specific rules and regulations of the relevant sports body.

Awards made by an arbitral tribunal in Singapore are binding and enforceable. To enforce an arbitration award by way of execution proceedings, an application must be made to the High Court for leave to enforce the award.8

Appeals to a court against awards on a question of law are permissible in arbitration proceedings under the Arbitration Act, Chapter 10.9 An appeal may be brought only if all the parties consent, or with leave of the High Court. Before granting leave to appeal, the court must be satisfied that, among other things, the determination of the question will substantially affect the rights of one or more of the parties; or that on the basis of findings of fact in the award the decision of the arbitral tribunal on the question is obviously wrong; or the question is one of general public importance and the decision of the arbitral tribunal is at least open to serious doubt.

Arbitral awards made under the Arbitration Act, Chapter 10, apart from being set aside on appeal, may also be set aside if the court is satisfied that, among other grounds, the making of the award was induced or affected by fraud or corruption, or a breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced.10

The grounds for refusal to enforce an award are no wider than those that relate to the setting aside of the award as detailed above.

III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator

There are no mandatory statutory provisions to be incorporated into or that apply under the contracts between an event organiser and a spectator.

The individual terms and conditions of ticket sale and entry, in general, govern the relationship between an organiser and spectator. The relationship is thus primarily contractual in nature.

Typical terms and conditions in such contracts include a prohibition against selling on tickets and unauthorised tickets, provisions dealing with the event programme, alteration and seating, safety guidelines, entry and exclusion, as well as restricted items not permitted into the venue.

---

7 See Section 31 of the Arbitration Act, Chapter 10 of Singapore.
8 See Section 46 of the Arbitration Act, Chapter 10 of Singapore.
9 See Section 49 of the Arbitration Act, Chapter 10 of Singapore.
10 See Section 48 of the Arbitration Act, Chapter 10 of Singapore.
ii  Relationship between organiser and athletes or clubs

In general, the relationship between the organiser and the athletes, competitors or clubs is governed by a specific contract or agreement entered into between the parties, which may outline the rights and obligations of the parties, and deal with the exclusion of liability.

Where an athlete or competitor has agreed by way of a suitably worded clause in the agreement or contract to an exemption or exclusion of liability for personal injury or death, such a clause will be not be effective as a defence to a claim in negligence brought by the athlete or competitor against the event organiser.

iii  Liability of the organiser

The duty breached by an organiser that results in potential liability may result from a contract but may also be tortious in nature.

A claim may be brought against an organiser in tort by a victim who has suffered loss as a result of a civil wrong by the organiser. For instance, an organiser may be liable for an actionable nuisance where the sporting activities generate noise, etc., or even found liable in a claim in negligence in relation to the sporting event in question.

Organisers of sporting events owe a duty to take reasonable care of spectators and other visitors at sporting venues where they are occupiers. A breach of duty may arise from a failure or omission by the organiser to warn of a danger that is not obvious.

Spectators are taken to consent to reasonably foreseeable and inherent risks of attending a sporting venue but not to actions that amount to negligence on the part of the organiser.

In respect of competitors, players and athletes, however, organisers may expect them to appreciate and guard against risks incidental to the sport.

Failure to comply with codes of practice, rules and permits issued by relevant sporting or other bodies may amount to a breach of an organiser’s duty.

An organiser may also be rendered vicariously liable for the negligent actions of its employees whose actions occurred during the course of such employment.

Depending on the actions of the organiser, an organiser of a sporting event may well also be exposed to criminal liability (e.g., excessive noise in contravention of Section 14 of the Miscellaneous Offences (Public Disorder and Nuisance) Act, Chapter 184).

Criminal investigations may be commenced if a police report is made against the organiser or if the organiser is suspected of being involved in an offence by the authorities.

iv  Liability of the athletes

Every competitor in a sport owes a duty to the others to take reasonable care to avoid causing injury in all of the prevailing circumstances.

Breach of rules, conventions or customs of the sport is relevant but must be considered in the prevailing circumstances and does not necessarily establish a breach of duty on the part of the competitor, although it may do. If a competitor breaks the association or competition
rules, resulting in physical damage or injury to another person, that competitor may be disciplined by the association or sued for damages and the claimant may rely on the breaking of the rules as evidence of conduct falling short of the reasonable standard of care.

There has been a recent case of assault in Singapore involving a national cyclist. He was believed to have assaulted a teammate. Further to disciplinary proceedings carried out by the Singapore Cycling Federation, the cyclist was handed a three-month suspension and was ordered to serve 30 hours of community service with young cycling enthusiasts and also made subject to further counselling with the Singapore Sports Institute.13

There are many instances where both on-field and off-field conduct by competitors or athletes have run foul of criminal law or tort law in Singapore.

Competitors and athletes similarly owe a duty to spectators. Evidence of a reckless disregard of the spectators’ safety may well amount to a breach of duty. The test of whether there has been a breach of duty where an error of judgment has caused injury to a spectator is whether a reasonable competitor in the sport may have similarly committed such an error.

v Liability of the spectators14

The liability of a spectator typically arises out of contract, namely the terms and conditions (both express and implied at law) pertaining to his or her entry into the sporting venue. If the spectator’s conduct or actions amount to a breach of the entry terms and conditions, the spectator is likely to be held in breach of contract, which would in turn entitle the organiser, promoter or venue owner to seek appropriate remedies, which may include ejecting the spectator from the venue in question.

Depending on the spectator’s conduct or actions, the spectator may also be liable under general tort law.

Spectators remain at all times subject to criminal law.

vi Riot prevention

Under Section 141 of the Penal Code, Chapter 224, it amounts to an unlawful assembly for five or more persons to gather with the common object to overawe by criminal force, or show of such force, any public servant or to resist the execution of any law or to deprive any person of the enjoyment of the right of way.

A member of an unlawful assembly is liable to be punished with imprisonment for a term that may extend to two years, or with a fine, or with both.

Section 144 of the Penal Code, Chapter 224 covers the offence of an unlawful assembly armed with a deadly weapon, which carries more severe punishment, namely imprisonment that may extend to five years, or with caning.

The act of joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse amounts to an offence under Section 145 of the Penal Code, Chapter 224 of Singapore.

The punishment for the offence of rioting under Section 147 of the Penal Code, Chapter 224 is imprisonment for a term that may extend to seven years as well as mandatory caning. Rioting armed with a deadly weapon carries an enhanced imprisonment term that may extend to 10 years plus caning.

Under Section 154 of the Penal Code, Chapter 224, whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held or such a riot is committed or likely to be held or committed shall be punishable with a fine not exceeding S$5,000, if such an owner or occupier fails to give early notice to the authorities or take all lawful means to prevent the same or disperse or suppress the riot or unlawful assembly.

IV COMMERCIALISATION OF SPORTS EVENTS

Singapore is entering into a new era of sport. The success of annual fixtures such as the Formula One Grand Prix, the Women’s Tennis Association Finals and the HSBC Women’s Champions, in addition to a rotation of special events including the inaugural Youth Olympic Games and the recent 28th South East Asian Games, has cemented Singapore’s position as an international sporting destination. With such events having proven to be consistently lucrative and continued developments such as Singapore’s inclusion in the World Rugby Sevens Series and the construction of the state-of-the-art Sports Hub (at a cost of S$1.33 billion15), it is unsurprising that sports events are an increasingly attractive prospect for event organisers, sponsors, broadcasting companies and sanctioning bodies alike.

i Types of and ownership in rights

While no sui generis property right exists in respect of sports events, event organisers typically rely on a thick web of contractual and intellectual property rights within a framework of regulatory controls. The exploitation of formal intellectual property rights such as copyrights and trademarks represents a substantial income stream in most commercial sports events. For instance, the licensing of registered and unregistered trademarks is central to advertising, sponsorship and merchandising campaigns. Copyright law protects any footage created when an event is filmed – such rights are often assigned ahead of time to the event organiser, who in turn licenses our broadcast rights for a fee.

Additionally, a significant proportion of sports-related rights are purely creations of contract – such rights are often diverse in nature and customised to suit the requirements of the parties involved. For example, while Singapore does not recognise a general right of privacy, rights to use the names and images of well-known sportspeople are increasingly the currency of many high-value merchandising and endorsement agreements. In a very different vein, sports governing bodies play an important role in sanctioning and regulating sports events, and contribute greatly to the perceived legitimacy and popularity of an event.

As is the case with music and arts events, sponsorship revenue is one of the main income generators in respect of sports events. Sponsorship agreements represent the monetisation of bundles of often very disparate rights, such as advertising and merchandising rights, rights in relation to individual athletes and sports people, and rights in relation to the use of valuable intellectual property. Event filming or broadcasting rights (part and parcel of most large-scale commercial sports events) are in essence a contractual right of access, as such rights derive their value from their contractual exclusivity and accompanying paraphernalia,

such as goodwill in the event. Major sporting events involve the dividing up of an assortment of legal and commercial rights for the benefit of numerous stakeholders, who hope to exploit the publicity generated both locally and worldwide.

ii Rights protection

Where formal intellectual rights are concerned, stakeholders may take comfort from international surveys that reliably rank Singapore’s intellectual property protection as one of the most rigorous in the world. To protect and enforce their rights, proprietors of copyrights and registered trademarks may have recourse to a wide range of remedies including injunctions, either damages or an account of profits, and an order for delivery up or disposal of infringing articles. Aside from the aforesaid civil remedies, copyright and trademark infringements may also be the subject of criminal proceedings in certain circumstances. For instance, criminal liability may arise in respect of counterfeiting a registered trademark, falsely applying a registered trademark or importing or selling goods with falsely applied trademarks, the convictions for which attract severe penalties. Singapore courts consistently take robust measures against intellectual property infringements because of ‘efforts to promote Singapore as a regional intellectual property centre and the concomitant need to clamp down on piracy of intellectual property’ (Ong Ah Tiong v. PP [2004] 1 SLR(R) 587 at [23]).

In relation to well-known trademarks, there are, moreover, statutory protections regardless of whether the relevant trademark has been registered in Singapore, pursuant to which a proprietor is entitled to restrain by injunction unauthorised dilutive use or use that is likely to cause confusion, subject to certain conditions being fulfilled. These statutory provisions conform to international standards established in Article 6 bis of the Paris Convention and in the WIPO Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks.

Where less conventional rights are involved, for example, in relation to ‘image’ or ‘name’ rights of a sports person, interesting issues arise as to which legally recognised rights are capable of being infringed. Copyright offers no protection as no copyright exists in a face or a name. Nevertheless, the industry clearly recognises that such image-related rights can be extremely valuable. Parties may find themselves employing creative approaches to protect their rights. While there is currently no relevant Singapore case law, the UK case of Irvine v. Talksport Ltd [2003] EWCA Civ 423 suggests that the tort of passing off may provide some protection where someone acquires a valuable reputation or goodwill that is damaged by a misrepresentation as to his or her endorsement of another’s goods or services.

Finally, where contractual partners are involved, parties seeking to enforce their contractual rights may be rest assured of the dispute resolution mechanisms and venues available. Singapore has been named as the most popular Asian seat of arbitration, and with the advent of the Singapore International Commercial Court, Singapore is set to be a leading choice for international commercial dispute resolution.

---


17 2010 International Arbitration Survey: Choices in International Arbitration.
iii  Contractual provisions for exploitation of rights

First and foremost, any commercial agreement for the exploitation of sports-related rights should specify clearly the various rights sought to be conveyed, and parties should investigate and carry out all requisite due diligence to ensure that counterparties are in the position to convey the relevant rights. For example, a typical sponsorship agreement should state in detail the various advertising rights accorded to the sponsor and the respective parties’ obligations in relation to promoting the event. It should also make adequate provision for the use and ownership of the right owner’s marks and any jointly produced intellectual property, as well as specifying exactly the degree of media coverage that the event organiser is responsible for procuring.

Moreover, as many sponsors and licensees (especially smaller or secondary players) have little control over the running of the actual sporting event, it is usually advisable for them to obtain warranties from the event organiser in relation to the event’s compliance with rules and regulations (including rules of the sports governing body and other regulatory bodies) as well as indemnities for any liability arising from the event.

Finally, in an arena where much rides on the publicity and goodwill generated by a sporting event, ‘ambush marketing’, whereby competitors seek to associate their own products or brands with an event that already has official sponsors, represents a serious threat to the commercial value of the sponsorship rights sought to be exploited. It is therefore important for event organisers to address this concern by controlling access to the event venue and working closely with the media to combat ambush marketing.

V  SPORTS AND ANTITRUST LAW

The principal statute governing the general competition law regime in Singapore is the Competition Act, Chapter 50B (Competition Act). Part III of the Competition Act sets out the three main prohibited activities: anticompetitive agreements, decisions and practices; abuse of a dominant position; and mergers that substantially lessen competition.

The Competition Act has general applicability, and would apply to most sports-related matters in Singapore (e.g., conduct of non-governmental sporting bodies, ticketing and merchandising agreements, etc.). However, it should be noted that certain broadcasting issues and matters involving governmental sporting bodies may fall outside the scope of the Competition Act.

Broadcasting

The Competition Commission of Singapore does not have jurisdiction over competition issues falling under the purview of the InfoComm Development Authority of Singapore (IDA) or the Media Development Authority of Singapore (MDA). Competition in the provision of telecoms services is regulated by the IDA and the provisions of the sector-specific Telecom Competition Code 2012 issued pursuant to Section 26(1) of the Telecommunications Act, Chapter 323. The media industry is regulated by the MDA and the relevant applicable competition rules may be found in the Code of Practice for Market Conduct in the Provision of Media Services.

Although there is no specific mechanism to avoid conflicting exercises of jurisdiction by the IDA and MDA, they may be expected to consult with each other to ensure that the implementation of policies within the telecom and media sectors is not inconsistent.
**Governmental sporting bodies**
The government is involved in sports through governmental statutory bodies such as Sport Singapore and the Ministry of Culture, Community and Youth. Sport Singapore, formerly the Singapore Sports Council, is a statutory body established by the Singapore Sports Council Act, Chapter 305 of Singapore and its functions include the planning, promotion and coordination of sporting activities in Singapore, and recommending minimum standards for participation in international sports competitions.

Pursuant to Section 33(4)(b) of the Competition Act, the prohibitions set out under Part III of the Act will not apply to any statutory body. Therefore, the conduct and activities of Sport Singapore would be exempted from the prohibitions of the Competition Act.

**VI SPORTS AND TAXATION**
Generally, Singapore has a territorial system of taxation. This means that Singapore income tax is payable on the income of a person ‘accruing in or derived from Singapore or received in Singapore from outside Singapore’. However, the Income Tax Act, Chapter 134 (ITA) does not define when income can be said to accrue in or be derived from Singapore, and this is typically determined by an examination of case law principles. Under Sections 10(1) (a) and (b) of the ITA, ‘gains or profits from any trade, business, profession or vocation’, or employment, where they accrue in or are derived from Singapore, may be brought to tax. The Inland Revenue Authority of Singapore (IRAS) generally takes the view that sportspeople taking part in sports events or tournaments located in Singapore can be said to be exercising a profession, vocation or employment in Singapore. Such participation then creates a taxable source of income in Singapore, as their earnings from such events may be said to accrue in or be derived from Singapore.

Given the temporary nature of such an athlete’s stay in Singapore, collection of such taxes is administratively challenging. Accordingly, under Section 45GA of the ITA, payments of income to a ‘non-resident public entertainer’, which are derived from Singapore, are subject to withholding tax at the rate of 10 per cent. Under the withholding tax mechanism in Singapore, a local payer is required (in relation to payments made to non-residents on or after 1 July 2012) to notify and account for the tax withheld to the IRAS by the 15th day of the second month following the date of payment to the non-resident recipient.

Under Section 40A of the ITA, the term ‘public entertainer’ is defined to include athletes and ‘an individual exercising any profession, vocation or employment of a similar nature’. The IRAS has also publicly clarified that the term extends to all sportspeople taking part in any sporting events or tournaments; for example, golfers, tennis players, horse jockeys, racing drivers and runners.

In Singapore, the concept of tax residence for individuals is set out in Section 2(1) of the ITA, which provides that an individual is regarded as tax resident in Singapore if he or she: resides in Singapore except for such temporary absences as may be reasonable and not inconsistent with a claim by such a person to be resident in Singapore; or is physically present or who exercises an employment (other than as a director of a company) in Singapore for

---

18 Section 8 of the Sports Council Act, Chapter 305 of Singapore.
19 Section 9(a) of the Sports Council Act, Chapter 305 of Singapore.
183 days or more during the relevant year. Generally, foreign athletes who visit Singapore to participate in sports events or tournaments are likely to be regarded as non-resident if they are physically in Singapore for less than 183 days in a calendar year.

A tax exemption is generally available in respect of income accruing in or derived from Singapore from employment exercised in Singapore for not more than 60 days in a year; however, this exemption is not available for athletes and sportspeople unless their visits to Singapore are ‘substantially’ supported from the public funds of a foreign government. The IRAS has indicated that athletes may avail themselves of this exemption if more than half of the cost of their visit is funded by the government of their home country. Supporting documentation will need to be submitted to the IRAS if such an exemption is intended to be relied upon.

Withholding taxes are applicable to all types of payments in the nature of income, and not just cash payments. For example, taxable benefits in the hands of non-resident athletes include non-cash gifts or prizes exceeding S$100, match fees, prize money, tournament winnings, win bonuses, per diem allowances and benefits in kind.

As a concession, the cost of providing accommodation (excluding the value of food, and provided such accommodation is not provided for more than 60 days in a calendar year) and airfares provided to such sportsmen and sportswomen classified as non-resident public entertainers are exempt from the withholding taxes mentioned above.

While Singapore is not a member of the Organisation for Economic Co-operation and Development (OECD), it nonetheless adopts the OECD Model Tax Convention on Income and on Capital (Model Tax Convention) as the basis for its bilateral treaties concluded with other countries. Singapore has an extensive network of treaties for the avoidance of double taxation (DTAs) and has concluded and ratified DTAs with approximately 80 countries to date. The Model Tax Convention Commentary is therefore a useful guide in the interpretation of Singapore’s DTAs, but it is not binding. Singapore’s DTAs tend to include articles that are similar but not always identical to Article 17 of the Model Tax Convention. For example, some of Singapore’s DTAs expressly include a provision that mirrors domestic law tax exemptions (i.e., if a visit by an athlete is substantially supported from the public funds of a government of a contracting state, then the income derived by such an athlete from his or her activities performed in Singapore may not be taxed in Singapore). It is, therefore, important to consider whether a foreign athlete is able to rely on DTA exemptions afforded through Singapore’s wide treaty network.

VII SPECIFIC SPORTS ISSUES

i Doping

Doping in sport does not, in general, give rise to any criminal liability.

Anti-Doping Singapore (ADS) was established and designated by the government of Singapore as the national anti-doping organisation to promote and support the eradication of doping in sport in Singapore.

Hearings of possible anti-doping rule violations pursuant to the ADS Anti-Doping Rules are held before the National Anti-Doping Disciplinary Committee (NADC). The NADC is an independent national tribunal body appointed by the MCCY.

Singapore is a signatory to the Copenhagen Declaration on Anti-Doping in Sport (2003) and has also ratified the United Nations Educational, Scientific and Cultural Organization’s International Convention against Doping in Sport (2005), thereby formally recognising Singapore’s commitment to the implementation of the World Anti-Doping Agency Code (Doping Code).

The Doping Code provides a framework for the harmonisation of anti-doping policies, rules and regulations across all sports and countries in the world. In honouring Singapore’s commitment to the Doping Code, the Anti-Doping Policy of Singapore (the Policy) and the ADS Anti-Doping Rules have been developed for all NSAs and their participants to observe and comply with.

Athletes and athlete support personnel who are found guilty of a doping violation in accordance with the Policy, the ADS Anti-Doping Rules or the rules of their sport will be subject to sanctions. The sanctions include a provisional suspension, a period of ineligibility from competition as well as the withholding of financial support.

As a condition of receiving financial or other assistance from the government or ADS, an NSA must accept and abide by the spirit and terms of the Policy and the ADS Anti-Doping Rules. In the event of a NSA failing to comply, ADS will conduct a review and impose appropriate sanctions, including withholding financial or other support.

ii  Betting

Singapore has two key betting and gambling laws – the Common Gaming Houses Act, Chapter 49 and the Betting Act, Chapter 21. Both Acts make it illegal for companies and individuals to operate online as well as land-based betting businesses within Singapore. The only legal way to bet on sports and horse racing events is to do so at either the Singapore Turf Club (STC) or the Singapore Pools, which accept bets on national as well as international sporting events.

The Betting Act, Chapter 21 was enacted to curb illegal betting and to make the act of sports betting in public places illegal. The Common Gaming Houses Act, Chapter 49 was similarly enacted with the same objective. Both Acts were, however, enacted long before the advent of the internet. The Acts, therefore, did not apply to any form of online or mobile betting or gaming.

Most recently, in February 2015, the Remote Gambling Act 2014 (RGA) came into force. The RGA provides the legislative framework to regulate remote gambling activities in Singapore. The objectives for regulating remote gambling are to maintain law and order and protect young persons and other vulnerable persons from being harmed or exploited by remote gambling. The RGA provides for a comprehensive set of blocking measures, namely, website blocking, payment blocking and a tightly controlled exemption regime. Several hundred websites that offer remote gambling services have since been blocked since the RGA came into force.

The Singapore Pools and the STC have recently successfully applied for certificates of exemption to offer remote gambling services and are looking to launch their online betting services in the months of October and November 2016. An operator could be exempted

---

from the RGA provided that it was not-for-profit and contributed to public, social and charitable causes in Singapore. Both STC and Singapore Pools are not-for-profit organisations operated by the Singapore Totaliser Board (Tote Board), a statutory board under the Ministry of Finance. Their gaming surpluses are channelled to the Tote Board to fund charitable and social causes. The government has declared that any operator authorised to offer remote gambling would be subject to stringent conditions, such as responsible gaming measures.

It is an offence under the RGA to gamble in Singapore using remote communication and using a remote gambling service not provided by an exempt operator. The penalty is a fine not exceeding S$5,000 or imprisonment for a term not exceeding six months or both.\(^{23}\)

### iii Manipulation

Manipulation or match-fixing amounts to an offence of corruption under Singapore law.

Under Section 5 of the Prevention of Corruption Act, Chapter 241 (PCA), a person is guilty of a corruption offence when he or she, as an inducement to or reward for any person to do or forbear to do anything in respect of any matter or transaction whatsoever, actual or proposed:

- corruptly solicits, receives or agrees to receive any gratification for himself or herself or for any other person; or
- corruptly gives, promises or offers to any person any gratification, whether for the benefit of that person or of another person.

‘Gratification’ is defined very widely in the PCA and can take many forms including, money, gifts, loans, rewards and commissions, as well as any service, favour or advantage.\(^{24}\)

Section 6 of the PCA creates offences of corruption by an agent involving either the corrupt offer to, or acceptance of, gratification by an agent in relation to the performance of the principal’s affairs or for the purposes of misleading that principal.

A Singapore citizen will be liable under Section 37 of the PCA for corrupt behaviour, even if such behaviour took place outside Singapore.

Anyone found guilty of an offence under Section 5 or 6 of the PCA shall be liable on conviction to a fine not exceeding S$100,000 or to imprisonment for a term not exceeding five years or to both.

### iv Grey market sales

Whether or not an unauthorised reseller of a sports event ticket may be taken to task under the law for reselling the ticket would depend very much on the terms and conditions that he or she is bound by upon purchasing the ticket.

If there are terms prohibiting ticket resale, the reseller will commit a breach of such terms upon a private resale of the ticket. The event organiser may then have the right to void the ticket, especially if such a right was expressly stated to arise in the event of ticket resale, as part of the terms and conditions.

---

23 See Section 8 of the Remote Gambling Act 2014.

24 See Section 2 of the Prevention of Corruption Act, Chapter 241 of Singapore.
VIII THE YEAR IN REVIEW

In 2015-2016, Singapore was rocked by a number of match-fixing scandals, including one involving a South East Asian Games football match. The accused at the heart of the scandal, a Singapore national, faced corruption charges under the PCA and was eventually sentenced to an imprisonment term of almost four years.25

In a further case of note, the Singapore High Court dismissed an application by an alleged match-fixer involved in match-fixing globally to review his detention in Singapore without trial under the Criminal Law (Temporary Provisions) Act, Chapter 67. He had been detained under the Act in the interests of public safety, peace and good order. On appeal before the Singapore Court of Appeal, he was subsequently freed from detention. The Court of Appeal noted that while the alleged acts of match-fixing were reprehensible, the acts all took place outside of Singapore. Accordingly, the Court of Appeal held that there was nothing to suggest that the acts concerned could be thought to have a bearing on public safety, peace and good order within Singapore.26

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

The Spanish sports model is basically structured on Act 10/1990 on sports (Act 10/1990), 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, not only the regulations enacted by the Spanish parliament (such as Act 10/1990) 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 competences 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, Royal Decree 1251/1999 on Sports Limited Liability Companies and the Companies Act (Royal Legislative Decree 1/2010).
**Federations**
Federations are private entities with legal personality that, *inter alia*, are responsible for the organisation of sports events and competitions, promote sport and exercise the disciplinary powers within their material scope. Federations develop their own private competences 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.

**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 governmental 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 even 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 such 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, of special note in this respect is the Sport Administrative Court, which was recently created and 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 (Act 60/2003), 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 7/2000. 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

In Spain, 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 (Act 19/2007) and Royal Decree 203/2010 of 26 February (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 sport licences. Upon the signature of the relevant labour agreement, athletes request through their club that the relevant federation issue 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

Pursuant to Article 63 of Act 10/1990, individuals or legal entities that organise any competition or sport event are liable for any damage or public disorder that takes place during the competition owing to their lack of diligence or prevention of such damage or public disorder. This civil liability is independent of and without prejudice to any other criminal or disciplinary liability. In line with this, Article 5 of Act 19/2007 establishes the economic and administrative liability of organisers of sports events for all damages that may take place due to their lack of diligence or prevention of damage or public disorder.

iv Liability of the athletes

Owing to the specific characteristics of sport, as a general rule athletes are not liable for damages (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 damages 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 damages 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 (animus laedendi).
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 damages that, through their fault or negligence, are caused to third parties. Furthermore, 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 sport 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 the implementation of the necessary measures to prevent riots and for 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 sport 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 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 sport 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, it is particularly noteworthy that the government recently 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 football national professional 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 damages 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 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, it should be emphasised that 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, it is worth noting that the 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 such 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 the right to information of the citizenship. 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 kind of services to be rendered and the qualities of the persons rendering these services.
Spain

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., expiration 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 tax 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 labour relationship with a club that has obtained their image rights as part of such relationship are taxed PIT also on the payments made by the club to third parties for the image rights. This special rule does not apply if the salary represents at least 85 per cent of the total amount paid by the club to the athlete.

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 in Spain to non-resident income tax 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 28 per cent (25 per cent for 2016).

VIII SPECIFIC SPORTS ISSUES

i Doping
Besides the administrative sanctions established by 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 in order 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 and four years, a fine equivalent to six up 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, it should be taken into account that the ‘autonomous communities’, in light of the provisions set out in Section I, supra, 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. Furthermore, 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 above, 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 sport match, game or sporting competition. The sanction foreseen for such 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 to 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, it should be noted that 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, e.g., resale through the internet), it is not clear whether the resale of tickets outside those channels established by the organiser of the sport event is prohibited by law. Taking into account the existing legal gap, it is worth noting that the region of Catalonia is currently drafting a legislative proposal to prohibit the grey market sale of tickets on the internet without the authorisation of the organiser of the sporting event.

However, regarding the sale of tickets to a sport event, most organisers impose on purchasers a general prohibition to resell 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 resolution of the Superior Sports Council of 17 March 2016, concerning the registration of a football player aged under 18, in which it is declared that for a minor amateur player to get a federative licence to play for a Spanish club it is enough that this player is legally residing in Spain.
b A judgment (Auto) on provisional measures of the Administrative Court 11 of Madrid dated 20 May 2016, which suspended the execution of an administrative act that impeded to bring and show a flag named ‘estelada’ in the final match of the 2016 Football King’s Cup.

c A judgment of the Supreme Court of 28 July 2016 confirming the partial annulment of the resolution of the Presidency of the National Sports Council of 4 February 2013, which rules the athletes’ tracking form for anti-doping purposes. The Supreme Court considered that some of the anti-doping tracking measures established in the official form were disproportionate and, thus, contrary to the athletes’ fundamental right to privacy foreseen in Article 18 of the Constitution.

d A judgment of the Supreme Court of 28 April 2016 annulling a sanction that the National Competition Commission (the National Commission for Markets and Competition (CNC)) imposed to Sevilla FC owing to the assignment of its broadcasting rights to Mediapro, for a period exceeding three sporting seasons, which was the maximum assignment period established by the CNC in its resolution of 14 April 2010. The Supreme Court ruled in favour of Sevilla FC since in the assignment agreement the parties had included a termination clause that would operate after the third sporting season in case a final and binding judgment had confirmed the validity of the Resolution from the CNC of 14 April 2010.

X OUTLOOK AND CONCLUSIONS

The sports law system in Spain is quite evolved and complete, 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 within 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 the 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 nine million inhabitants are members of a sports club (as competitors, leaders, trainers, coaches, supporters, etc.). Some 2.4 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.2

Local sport clubs are the foundation of the sports movement in Sweden. There are more than 20,000 local sport 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 organised form to meet a common, non-profit purpose (organising sport activities). The actual agreement must be legalised in the form of statutes. A non-profit association cannot engage in commercial activities in order to enrich its members, but only in support of the non-commercial purpose. Sport clubs are thus governed by their statutes, which require democratic forms such as annual general meetings, executive

1 Karl Ole Möller is a partner at Advokatfirman NORDIA.

195
committees, etc. 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 71 special sports federations, which organises more than 250 different sports and 20,000 sports clubs, who 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.3 The 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, etc.

The sport clubs hold participating licences to take part in and compete in sports activities arranged by their respective special sport federation. The sport 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 hold 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.4 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 rest 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 in Sweden 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 in Sweden has been subject to the effects of professionalisation, commercialisation and globalisation, as in the rest of the world. Therefore, sport governance in Sweden (including corporate governance) will most probably be going through a period of transformation. Listed companies are subject to various rules and recommendations on corporate governance, such as the Swedish Corporate Governance Code.5 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

3 The statutes of the Swedish Sport Confederation 2013, available at www.rf.se.
4 Chapter 11, Section 3 of the Swedish Sport Confederation’s statutes.
5 The Swedish Corporate Governance Code, available at www.corporategovernanceboard.se.
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, the management of assets and the 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.

A member of the board or an officer of a non-profit association or company may be liable for damages 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 (1975:1385) 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 damages that he or she causes the company (or a shareholder) intentionally or negligently in the performance of his or her duties. The board members are primarily responsible for the acts and omissions within the scope of the board's area of responsibility. The 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 the 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 damages 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, environmental matters, etc. 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 in Sweden 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, etc. Generally, the public courts are restrictive with

---

6 Chapter 15, Section 1 of the Swedish Companies Act.
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, the public courts have 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 agreements, venue agreements or merchandising agreements.

As will be further outlined, 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 such a case, the court will dismiss the legal proceedings, unless the arbitration agreement is invalid.

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. Such an 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. As mentioned above, 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.

The use of arbitration is very common in the Swedish sports sector. By the Swedish Sports Confederation’s statutes the 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 last instance. 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 such decisions in respect of security measures as the court has jurisdiction to issue.

An arbitral award can only be declared invalid or wholly or partly set aside by a public court under certain specific conditions.

---

8 Section 4 of the Arbitration Act; Chapter 10, Section 17a of the Swedish Code of Judicial Procedure.
10 Section 4 of the Arbitration Act; Chapter 10, Section 17a of the Swedish Code of Judicial Procedure.
11 Chapter 2, Section 8 of the Swedish Sports Confederation’s statutes.
12 Section 4 of the Arbitration Act.
13 Sections 34–36 of the Arbitration Act.
iii Enforceability

As stated above, a Swedish civil 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 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).

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. 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 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 to refuse access to the event for security reasons, imposing restrictions on resale of the ticket, taking film or 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 from the venue any person 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.

15 Sections 33–34 of the Arbitration Act.
16 Sections 54–59 of the Arbitration Act.
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 and in accordance with the standards expected for such an event and to provide a suitable and safe venue for the event. The primary obligations on the part of the athlete and clubs will usually include participation 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. 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 case of criminal behaviour.

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 had 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. 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. 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.

---

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, Section 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, Section 1 of the Tort Liability Act.
20 Chapter 6, Section 1 of the Tort Liability Act.
21 See, for example, the Swedish Work Environment Act (1977:1160).
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.

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, violenti non fit iniura. 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. Some of the actions that are happening in the context of sporting activities can by juridical argumentation be given criminal liability. Other actions can be significantly more difficult to call criminal liability. If a clear distinction cannot be found, an assessment of each sport itself 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 playingfield than the game will meet with a greater risk of prosecution and conviction. 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.

Riot prevention
Following tragic incidents related to hooliganism at Swedish football grounds, legislation was introduced in 2005 relating to the access to sport events. 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, for up to

---

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.
three years. Such an 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. 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 SPORT 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 commercialising 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 anyway 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. 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

26 See Chapter 4 and 5 of the Swedish Copyright Act.
would not be protectable in itself, but any recording (sound recordings, visual recordings and audiovisual recordings), broadcast and footage of that performance may be protectable under the 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). The owner of the mark can bring an action against anyone making unauthorised use of the mark. A name or logotype 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. The 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 (1978:800) on Names and Images in Advertising (the Names Act). The Act gives fundamental protection against tradesmen’s use of well-known athlete’s name in marketing without the explicit permission from the athlete. 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 use 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, supra, sport events will usually require several different agreements, such as broadcasting contracts, sponsorship contracts, ticketing contracts and merchandising contracts. Sometimes such 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

---

27 Chapter 2, Section 32-33 of Swedish Trade Marks Act (2010:1877).
28 Chapter 1, Section 4 of the Swedish Trade Marks Act.
29 Section 1 of the Names Act.
to naming and title rights, official supplier rights, advertising rights or presentation rights),
the use of trademarks or logos, 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).

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. On the other hand, 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 club) before the fixed
date, unless a material violation of the contract has occurred34 or if the parties mutually agree
to terminate the contract. According to Swedish employment law, it is possible to terminate

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 collective
bargaining agreement.
32 Section 5 of the Employment Protection Act.
33 Collective Bargaining Agreement for Football Players (2016) and General Employment Terms
34 AD 1976 No. 52, AD 1979 No. 152 and AD 1991 No. 81.
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, e.g., 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.

ii Free movement of athletes

Sweden is a member of the EU and, as such, subject to the 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. Such regulations would, however, be considered invalid and unenforceable if such regulations 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 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

35 ECJ, judgment of 15 December 1995 – C-415/93 (Bosman).
36 The Swedish FA’s representation conditions 2016.
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 being necessary nor proportionate in order 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 other cases 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 in order 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 the 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 which 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.

37 Case MD 2012:16.
Payment of remuneration to non-resident athletes and others may be made on particularly favourable tax terms for a limited period of time in accordance with the rules of the Act on Special Income Tax for Non-resident Artists and Others (SFS 1991:591, A-SINK).\textsuperscript{39}

\section*{VIII SPECIFIC SPORTS ISSUES}

\textbf{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 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.\textsuperscript{40} 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 if 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.

\textbf{ii Betting}

Betting on sports events in Sweden is regulated in the Lotteries Act (1994:1000). The Swedish Gambling Authority has overall responsibility for licensing and supervision within the field of gambling and monitors compliance with the Lotteries Act. Organising and advertising of betting on sport events is strictly prohibited in Sweden, except for two selected companies. The first, ATG, runs the horse racing industry in the country. The second, Svenska Spel, is owned by the state and controls all other sports gambling, as well as the country’s lotteries, casinos and most forms of online gambling. These companies have a statutory obligation to prevent abuse or crime, as well as harmful social and health effects of gambling and betting.

In order to uphold the Swedish gambling regime the Lotteries Act contains a prohibition on promoting participation in lotteries arranged outside Sweden and unlawful lotteries. The

\textsuperscript{39} See the Swedish Tax Agency’s guide SKV 520B regarding payment of remuneration to non-resident artists, athletes and others, October 2015.

\textsuperscript{40} Chapter 13 of the Swedish Sports Confederation’s statutes.
prohibition of participation in foreign or unlawful lotteries covers such activities as selling lottery tickets, receiving stakes or passing on prizes and advertising. A fine or a maximum of two years’ imprisonment may be imposed on persons who unlawfully arrange a lottery or promote participation in gaming arranged outside Sweden. Foreign companies, along with private Swedish companies, have long tried to gain a foothold on the Swedish sportsbook industry. Unibet, Sweden’s largest private sportsbook operator has been battling against Svenska Spel’s monopoly for many years, but success does not appear to be imminent.

iii Manipulation

Swedish sporting associations, the gambling industry, the justice system and the media have paid increasing attention to match-fixing in recent years. The main focus has been on football and basketball, since these are the sports that have been affected. The number of cases is still relatively low, but the consequences may, nevertheless, be 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.

Match-fixing and other manipulation of sports activities has so far no specific and separate penal provision in the Criminal Code. However, penalty may be imposed for fraud, under which a person committing fraud shall be liable to imprisonment of up to two years, and in particularly serious cases up to six years.41 A penalty may also be imposed for corruption (bribery) in connection with match-fixing and other manipulation of sports activities. The sentence for bribery varies from fines to imprisonment of up to two years, and in particularly serious cases up to six years.42

In 2015, the Swedish Sports Confederation adopted a general code to fight the manipulation of sporting competitions.43 According to the code, it is prohibited to wilfully or negligently take part in 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 for 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 trying to influence the outcome of football games in Division 1, the third level of the Swedish football league system. The court found the three former footballers guilty of taking bribes to manipulate the outcome of a match.44 The Swedish Supreme Court denied leave to appeal.

41 Chapter 9, Sections 1–3 of the Swedish Criminal Code.
42 Chapter 10, Section 5 a-c of the Swedish Criminal Code.
43 The Swedish Sports Confederation’s Regulations on prohibited betting and manipulation of sports activities (match fixing).
The Swedish Sports Confederation has recently proposed to the government that a specific criminal provision with regard to the manipulation of sports activities shall be introduced in the Lotteries Act.  

iv Grey markets sales

In Sweden, 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

One of the most recent decisions in Swedish sports law has been the anti-doping allegations against the former world 1,500m champion Abeba Aregawi. Ethiopia-born Aregawi won gold at the 2013 World Championships and 2014 World Indoor Championships. She tested positive for the substance meldonium on 12 January 2016. The substance was made illegal by WADA on 1 January 2016. The Swedish Doping Commission brought doping charges against Aregawi during the spring of 2016 and Aregawi was subject to interim suspension pending the National Anti-Doping Panel hearing. But new guidelines issued by WADA in spring 2016 confirmed that it was not scientifically known for how long the substance can stay in the athlete's body. Therefore, the suspension was lifted in July 2016 with immediate effect as it had not been proven that Aregawi had taken the substance after it was banned.

X OUTLOOK AND CONCLUSIONS

The sports sector is continuing to grow rapidly 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 is becoming more complex.
Chapter 17

SWITZERLAND

András Gurovits and René Fischer

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.

---

1 András Gurovits is a partner and René Fischer is a senior associate at Niederer Kraft & Frey Ltd.
2 Article 23 BV.
3 Article 27 BV.
4 Articles 60–79 ZGB; Heini/Scherrer, in Basler Kommentar, Zivilgesetzbuch I, 5th ed. (BSK ZGB I-Heini/Scherrer), preliminary notes to Articles 60 to 79, Paragraph 10
i Organisational form
The ZGB and the OR provide the basic statutory framework permitting the establishment of associations, share corporations and limited liability companies.5

In contrast to 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 (UCI) 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).6

On the other hand, share corporations and, in some limited cases limited liability companies, are the forms used for professional sports teams, and in particular for football7 and ice hockey teams.8 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 that 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).

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;9 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.10 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 2011, more than 20,000 sports clubs forming part (through their relevant national federations)  


5 In particular for associations, Article 60 et seq. ZGB; for share corporations, Article 620 et seq. OR; and for limited liability companies, Article 772 et seq. OR.

6 Article 64 ZGB in conjunction with Article 67 ZGB.

7 For example, FC Basel 1893 AG, Neue Grasshopper Fussball AG.

8 For example, ZSC Lions Betriebs AG.

9 Article 52 et seq. ZGB.

10 BSK ZGB I-Heini/Scherrer, footnote 4, preliminary notes to Articles 60 to 79, Paragraph 10 et seq.; Meier-Hayoz, Forstmoser, footnote 4, p. 675.
of Swiss Olympics were organised as associations. The form of association is chosen for small sports clubs with less than 100 members (64 per cent of all sports associations) as well as for large clubs with more than 300 members (6 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.

### 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. On the other hand, 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 criminal sanctions irrespective of the criminal liability of a natural person, unless the

12 Ibid, p. 5.
13 Article 61, Paragraph 2 ZGB.
14 For example, FIFA, the International Olympic Committee and the IIHF.
15 Article 69a ZGB in conjunction with Article 957 et seq. OR; Article 69b ZGB.
16 Article 55 ZGB.
17 In particular, Articles 752 to 760 OR.
18 Article 754, Paragraph 1 OR.
19 Article 102, Paragraph 1 StGB.
company can prove that it has taken all reasonable organisational measures required to prevent the criminal act.\textsuperscript{20} As per 1 July 2016, bribery of private individuals also falls under Article 102 Paragraph 2 of the StGB.

II \hspace{1em} \textbf{THE DISPUTE RESOLUTION SYSTEM}

i \hspace{1em} \textbf{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 already 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 such 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. Such measures typically include sanctions such as reprimands, fines, suspensions and expulsion.\textsuperscript{21} 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.\textsuperscript{22}

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.\textsuperscript{23} 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.\textsuperscript{24} On the other hand, decisions of sports governing bodies that affect personality or other rights of an athlete are open to appeal before the state courts.

\textsuperscript{20} Article 102, Paragraph 2 StGB.

\textsuperscript{21} BSK ZGB I-Heini/Scherrer, footnote 4, Article 70 Paragraph 18.

\textsuperscript{22} Hans Michael Riemer, ‘Vereinsinternes Verfahren bei Vereinsstrafen’, \textit{Causa Sport (CaS)} 2013, p. 297.

\textsuperscript{23} Such as, for example, the Laws of the Game of FIFA or the IIHF Official Rule Book.

\textsuperscript{24} Official Collection of the Decisions of the Swiss Federal Tribunal (Swiss Federal Tribunal) BGE 108 II 15, cons 3.
or an arbitration court, depending on the dispute resolution mechanism that applies.\textsuperscript{25} For 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.\textsuperscript{26} 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,\textsuperscript{27} the Swiss Federal Tribunal confirmed that the CAS is a true arbitral tribunal.

ii Sports arbitration

In Swiss domestic arbitration, the \textit{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).\textsuperscript{28} 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.\textsuperscript{29}

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.\textsuperscript{30} These are rights that the parties cannot freely

\begin{itemize}
\item \textsuperscript{25} BGE 120 II 369 cons 2; BGE 118 II 12, cons 2; BGE 103 Ia 410, cons 3b.
\item \textsuperscript{26} BGE 119 II 271, cons 3b.
\item \textsuperscript{27} BGE 119 II 271 and BGE 129 III 445.
\item \textsuperscript{28} For example, BGE 108 II 15, cons 1a.
\item \textsuperscript{29} For example, BGE 136 III 345.
\item \textsuperscript{30} For example, Swiss Federal Tribunal 4A_515/2012 of 17 April 2013, cons 4.3.
\end{itemize}
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 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, Paragraph 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.\(^{31}\) 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.\(^{32}\)

### 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 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.

On the other hand, 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.\(^{33}\) Therefore, they are not, as such, enforceable in accordance with the international treaties or domestic statutory provisions discussed above. That notwithstanding, such 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 such internal decisions of a sports governing body are not enforceable in the manner of


\(^{32}\) Swiss Federal Tribunal 4A_388/2012 of 18 March 2013, cons 3.3.

\(^{33}\) Ibid.
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).

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 effects pure financial damage through breach of a rule that by its purpose aims to protect against such damage. 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.

34 BGE 133 III 323, cons 5; BGE 132 III 122, cons 4.1; BGE 123 III 306, cons 4.
35 BGE 115 II 15, cons 3b.
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.\textsuperscript{36} 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.\textsuperscript{37} This ‘danger clause’ provides that the person who creates or maintains a dangerous circumstance must take the protective measures necessary to avoid damage.\textsuperscript{38} 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.\textsuperscript{39} 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.

On the other hand, 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.\textsuperscript{40} 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

\textsuperscript{37} BGE 124 III 358, cons 4.
\textsuperscript{38} BGE 124 III 297, cons 5b.
\textsuperscript{40} András Gurovits, ‘Die zivilrechtliche Haftung für Zuschauerverhalten’, \textit{CaS} 2014, p. 271 et seq.
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.41

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 compensation of damages but may also expose him 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 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 (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 of today 23 of 26 cantons acceded to the amended Concordat). Measures under the Concordat include, for actual and potential wrongdoers, the designation

41 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.
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.42 The Concordat can also result in an obligation for clubs to request that spectators show proof of their identity in order to ensure that no persons are admitted who are subject to a stadium ban or to other measures pursuant to the Concordat.43 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.44

In order 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.45 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.46

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.

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, supra) 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

42 Article 3b, Paragraph 2 of the Concordat.
43 Article 3a, Paragraph 3 of the Concordat.
44 Gurovits, footnote 40, p. 273 et seq.
45 Article 58, Paragraph 1, Letter (a) Police Act of the Canton of Zurich.
46 Gurovits, footnote 40, p. 275 et seq.
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 damages.

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.47

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.48

Copyright
Sport events are, as a rule, not protected by copyright because they are not works pursuant to the Copyright Act (URG).49 However, recordings of sports events are considered works pursuant to the URG50 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.51 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,52 and allowing the broadcasting organisation to retransmit and distribute its broadcasts.53

49 Article 2, Paragraph 1 URG.
50 Article 2, Paragraph 2, Letter (g) URG.
51 Thomas Hügi, Sportrecht, Berne 2015, p. 195.
52 Article 36 URG.
53 Article 37 URG.
Trademarks

Trademarks need to be registered in the trademark registry in order 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 in order 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 (ArG). 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.

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. 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, which provides, in general, higher burdens regarding admission to employment and residence, but also provides some exceptions in respect of professional athletes.

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 not more than four foreign players shall be on the roster for a particular game.

54 Articles 5 and 6 of the Trademark Protection Act.
55 Hügi, footnote 51, p. 276 et seq.
57 Article 23, Paragraph 3, Letter (b) AuG.
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.

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. 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. 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.

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 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. On the other hand, 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. In the Pechstein case, for instance, the Munich Higher Regional Court ruled that the arbitration clause of the International Skating Union (ISU), according to which disputes between athletes and the ISU must exclusively be determined by the CAS, is in breach of the German Cartel Act, as an athlete has no other choice than to sign the arbitration clause if he or she wants to participate at ISU competitions. The German Federal Court of Justice finally annulled on 7 June 2016 the decision of the Munich Higher Regional Court. In particular, the German Federal Court of Justice ruled that the fact that an athlete must sign the arbitration clause if he or she wants to participate at ISU competitions is not considered as an abuse of market power of ISU. Another important aspect of the decision was also the right of the athlete

58 Article 2, Paragraph 1 CartA.
59 Article 5, Paragraph 1 CartA.
60 Article 7, Paragraph 1 CartA.
61 'Fall Pechstein: CAS-Schiedsklausel kartellrechtswidrig', CaS 2015, p. 37 et seq.
to have the decision of the CAS reviewed by the Swiss Federal Court.\(^2\) This decision of the highest civil court of Germany is an important decision with respect to the validity of arbitration clauses from an antitrust perspective.

**VII SPORTS 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 such 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

---

Switzerland

correspond with the doping list of the World Anti-Doping Agency (WADA). In case that a substance or a method is not listed in the annex to the ordinance, it is from a criminal perspective not relevant (*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 shall be replaced by the Federal Gaming Act, which is currently being discussed in the Swiss parliament.

iii Match-fixing and manipulation in sports

At present, Swiss law does not provide specific statutory provisions aimed at banning match-fixing or manipulation in sports. While in specific cases a delinquent may become liable under the current legislation for fraud or corruption if the requirements of proof are fulfilled, the statutory framework currently in force does not provide any comprehensive and proper protection of clean sports in general.

A recent decision of the Swiss Federal Criminal Court\(^6\) attracted public attention for holding that football players allegedly involved in match-fixing could not be subject to criminal sanctions because unlike human beings, the electronic betting systems used in that particular case could not be deceived, and thus the players could not have committed any fraud in the sense of the StGB.

The Swiss Federal Council has launched an initiative to amend the current law and to introduce sanctions for a new crime called ‘sports fraud’. Among others, the Swiss parliament decided on 29 September 2015 to tighten the criminal legislation on private corruption (known as Lex FIFA). The provisions on private corruption have been moved from the Unfair Competition Act to the StGB, which means that corruption offences committed in the private sector in the course of professional or commercial activities are punishable irrespective

of whether they influence competition. In addition, private corruption is an ex officio crime, except in minor cases, where a complaint must be filed. The new legislation (Article 322 octies et seq. StGB) entered into force on 1 July 2016.

In addition, the Swiss parliament is currently discussing the new Federal Gaming Act, which shall replace 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 shall be considered: Manipulation of sports results shall be classified as a criminal offence; requirements shall be imposed on sports betting operators to combat the manipulation of sports results; and the exchange of information shall be ensured between authorities, sports organisations and betting operators.

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. 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. For these reasons, the Swiss Federal Council did not propose any new measures in this context.

IX  THE YEAR IN REVIEW

In the first edition of The Sports Law Review we described a case where a professional football player of the Swiss Super League team FC Aarau was shown a straight red card after a reckless tackle against an FC Zurich player, during a Swiss Super League match between FC Aarau and FC Zurich played on 9 November 2004, which caused a serious injury to the Zurich player’s knee. Following a criminal complaint by the injured player and FC Zurich, the Lenzburg-Aarau Public Prosecution Department opened an investigation. In May 2015, the FC Aarau football player was found guilty of intentional common assault and negligent serious assault and was, as a consequence, held liable for a suspended monetary penalty and a fine amounting to 10,000 Swiss francs. This decision was issued by the Lenzburg-Aarau Public Prosecution Department, which had first-instance decision power in the matter. The Public Prosecution Department considered itself competent to rule in an area where sports governing bodies usually claim to be autonomous and independent from the state authorities. This notwithstanding, the state authorities held the behaviour of the injuring player to be so serious that it must, in addition, be investigated by the criminal investigation authorities irrespective of any sanction of the football association. The decision was heavily discussed and disputed, not only in sports but also Swiss legal circles. After the FC Aarau football player appealed against the decision of the Public Prosecution Department, FC Zurich withdrew the criminal complaint in July 2016. The District Court of Aarau as well as the Public Prosecution Department accepted the decision, which corresponds to a verdict of

64  Interpellation No. 10.3078, Graumarkt für Tickets für Konzert- und Sportveranstaltungen.
65  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.
not guilty. Even though, the District Court of Aarau did not need to pass a final sentence, this case strikingly demonstrates that, despite a certain degree of autonomy that the sports world may enjoy, its stakeholders are not free to act completely outside the statutory law framework.

On 30 September 2016, the CAS ruled in the Maria Sharapova vs. International Tennis Federation (ITF) case. At the Australian Open 2016 the Russian tennis player tested positive for the substance meldonium, which had been included on the list of identifying prohibited substances and methods as per 1 January 2016. The athlete admitted to having taken the substance on prescription by her medical doctor for reasons of cardiac arrhythmia and diabetes. She explained that she had mistakenly not realised that the substance was on the list and that she had not taken substance with the aim of enhancing performance. While on 6 June 2016, the ITF sanctioned the athlete with a two-year ban, the CAS reduced the sanction to 15 months holding that there was no significant fault on the athlete’s side, but that she should have known that the substance was on the list of prohibited substances as per 1 January 2016.

On 11 July 2016, the CAS in Lausanne rendered its decision in the WADA v. Martin Johnsrud Sundby & FIS case. On two occasions the athlete was tested positive for the prohibited substance salbutamol, which is a substance to cure asthma. While the International Ski Federation (FIS) had decided not to sanction the athlete, the CAS, on appeal filed by WADA, held that the athlete had violated the applicable FIS anti-doping rules and sanctioned the athlete with a period of ineligibility of two months starting from the date of the award. In addition, the results obtained by the athlete on two competitions (13 December 2014 in Davos and on 8 January 2015 in Toblach) were disqualified.

On 2 March 2016, UEFA announced that Galatasaray AS will be excluded from participating in the next UEFA club competition for which it will qualify. The decision was taken after Galatasaray had failed to comply with the terms of a settlement agreement entered into with UEFA under the financial fairplay regime. On 11 March 2016, the club filed an appeal with the CAS. On 23 June 2016, the CAS, however, dismissed the appeal and confirmed the sanction imposed by UEFA.

On 16 September 2016, the Swiss Federal Council opened the consultation procedure on the approval of the Convention on the Manipulation of Sports Competitions (Convention) that the Member States of the Council of Europe signed in 2014. The purpose of the Convention is to combat the manipulation of sports competitions in order to protect the integrity of sports and sports ethics in accordance with the principle of the autonomy of sport. Pursuant to Article 3, Paragraph 4 of the Convention, ‘manipulation of sports competitions’ means an intentional arrangement, act or omission aimed at an improper alteration of the result or the course of a sports competition in order to remove all or part of the unpredictable nature of the sports competition with a view to obtaining an undue advantage for oneself or for others. The Convention proposes a number of measures that the signatory states shall implement, including measures on domestic cooperation, risk assessment and management, education and awareness raising, and information exchange. The Convention, subject to ratification, shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five signatories, including at least three Member States of the Council of Europe, have expressed their consent to be bound
by the Convention. The consultation procedure lasts until 23 December 2016. The necessary amendments with respect to the implementation of the Convention are included in the latest draft of the new Federal Gaming Act, which is currently being discussed in Parliament.  

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. Issues that are not covered, and where a loophole in the law could be identified, include certain methods of manipulation and betting. The Federal Council launched legal initiatives to close this gap, and this initiative led to a first result in that the new provisions on private corruption (Lex FIFA) came into force. In addition, the Federal Council started the consultation procedure regarding the approval of the Convention and the new Federal Gaming Act, which shall implement certain provisions of the Convention.

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 last 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. In the Pechstein case, the German Federal Court of Justice annulled the decision of the Higher Regional Court of Munich that had decided that the arbitration clause conferring jurisdiction to CAS was in breach of German cartel law, thus confirming conformity of the clause with German legislation. This decision may certainly be seen as strengthening CAS’s position as last instance in sport-related disputes.

---


www.coe.int/fr/web/conventions/full-list/-/conventions/rms/09000016801cdd7e (last visited on 19 October 2016).
I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

Organisational form

The corporate regulation of sports clubs and sports governing bodies is not governed separately by Ukrainian legislation. The functioning of clubs and sporting bodies as legal entities is regulated by general provisions applicable to all corporate entities, notably the Civil Code of Ukraine, the Law on ‘Business Entities’ and the Law on Civil Associations. Certain matters are regulated more specifically by the Law on Physical Culture and Sport, and indirectly by additional acts.

There are no limitations as to the organisational form of non-professional or professional clubs in Ukraine. Owners are free to determine a suitable organisational form according to the aims of the club, and the appropriate financing or taxation regime peculiar to that certain form.

As a result, among amateur clubs of all sports the most, if not the only, frequent organisational form is the non-governmental organisation (NGO) or non-profit association, which is ‘a voluntary association of natural persons or privately owned legal entities to exercise and protect the rights and freedoms, and satisfy community interests’. The reason for the popularity of this form among amateur clubs is explained by the simplicity of its creation, which became even less formal after amendments in 2015–2016, and of its bookkeeping, as

1 Anton Sotir is managing partner at GoldenGate Law Firm.
an NGO is not aimed at making a profit *per se*. The taxation of NGOs is simplified, while possibilities for third parties to finance NGOs are flexible and confer benefits. Therefore, municipal governments, private persons or even professional clubs may create an amateur club with private financing, attracting young athletes and contributing to the development of the sport.

Because of the more complex structures involved, and their different aims (most of the professional clubs aim to profit from their sports activity, participation in tournaments or engagement of sponsors), professional sports bodies are incorporated as commercial entities. Taking football as an example of the most legally developed sport in Ukraine, of 45 professional football clubs, the majority are established in the form of a limited liability company (similar to the limited liability company (LLC) in the United States, a private company limited by shares (Ltd) in the United Kingdom or a company with limited liability (GmbH) in Germany). This form provides privately held legal entities with flexibility in conducting business, while enabling sharing of income and involvement of investments. Only one professional club is a private joint-stock company, with a more complex corporate regulatory regime (not listed). The rest of the clubs are organised as NGOs largely because their financing is held by municipal governments. The majority of the professional ice hockey and basketball clubs are established as LLCs, while one-third take the form of NGOs.

The Law on Physical Culture and Sport requires that sports governing bodies must be established in the form of NGOs. The aim of a sports organisation is to promote and develop a certain type of sport without earning profit, or, at least, not seeking to make profit as a principal activity. Therefore, all sports organisations are incorporated as non-profit associations. This also enables sports federations and associations to be financed by the state.

### Corporate governance

Ukrainian legislation does not provide any specific regulations on the corporate governance of sports legal entities. Some mandatory rules regarding sports organisations are contained in the Law on Physical Culture and Sport: the name of each particular organisation must indicate the type of sport it is connected with; also an organisation may have the status of a national organisation, provided that it is the only such organisation for that type of sport. Such national status confers additional benefits and possibilities for state financing.

For a long time there have been public discussions about the working draft of the new Law on Physical Education and Sport (Draft), which was prepared by the Ministry of Youth and Sports and might be adopted and was presented to the Parliament. In the Draft, regulation of corporate issues is subject to a slightly increased level of detail; for example, the status of athletes, coaches, clubs and sports organisations, and their registration, are better defined in the Draft. However, in September 2016 the Draft was considered by Parliament experts as requiring further improvements and was sent back to the drafters.

---

6 For more detailed information, see Section VI, *infra*.
7 Article 20 of the Law (http://zakon5.rada.gov.ua/laws/show/3808-12/print1443796940928362).
8 *Ibid*.
9 http://dsmsu.gov.ua/media/2014/10/16/1/Proekt_Zakony_FKS.pdf (in Ukrainian).
Because of the specificity of the sphere and the fact that most national sports organisations incorporate internal rules and regulations, those adopted by international sports bodies, sports organisations and their members are largely self-regulated. Ukrainian law on associations enables this.

iii Corporate liability
There are no specific provisions regarding the corporate liability of the managers and officers of sports organisation. All issues are regulated by general provisions common to ordinary entities. Thereby, the managers and officers of any sports corporate entity may be liable for the breach or excess of its duties through administrative or criminal sanctions. By way of example, such persons may be held liable for bribery, appropriation of assets or engaging in illegal schemes aimed at earning personal profit, etc.

II THE DISPUTE RESOLUTION SYSTEM
i Access to courts
According to the Constitution, any person is free to seek from the Ukrainian courts the protection of rights, without any limitation. This implies that any internal procedure to resolve disputes within a corporation or organisation is not binding and the person may refer directly to the courts. This rule applies to sport.

However, the recourse to national courts has an impact on the relations between person and sports organisation: while the case may be successful in the courts and the organisation or other entity (club) will be obliged to comply with the court decision, the person may be subject to disciplinary sanctions or even exclusion from the organisation because of taking recourse to the courts instead of following the sports body's internal dispute resolution procedure. In such a situation the absolute right to go to the courts and the obligation to comply with the regulations of the sports organisation will simultaneously apply to the person.

Nevertheless, most sports organisations have implemented effective mechanisms for resolving disputes and provide the possibility of appeal to the independent international tribunals. While the structure varies from organisation to organisation, most of them have internal dispute-resolution bodies (for disciplinary matters, eligibility) and a possibility of appeal in favour of the Court of Arbitration in Sport (CAS) in Lausanne (or, for basketball, the Basketball Arbitral Tribunal (BAT) in Geneva).

Recourse to the courts in many cases would not be efficient and would not produce the same result as referral to the sports judicial bodies. Foremost, Ukrainian judges are not familiar with specific sports issues and would be very unlikely to apply the relevant sport's internal rules and regulations. Moreover, enforcement of court decisions may be more problematic than going through an internal sports system. In any case, under the disciplinary rules of many sports organisations, recourse to the courts would lead to imposition of a disciplinary sanction.

The option for an athlete or a club to challenge a governing body’s decision at the national courts arises only when all legal remedies are exhausted, including an appeal to the

international arbitral tribunals. As a rule, such recourse after the final arbitral award has been rendered is meritless, or, at least, the respondent may recognise an award in Ukraine and object to any litigation on the basis of the principle of *res judicata*.

**ii Sports arbitration**

So far no specialised sports arbitration tribunal has been created in Ukraine for the resolution of sports-related disputes. Although the creation of such a tribunal is constantly discussed among lawyers, at the very least, the relevant legislation would have to be amended to enable the tribunal's effective functioning. Foremost, it is important to understand what disputes would be resolved by such a tribunal and in what types of sport. The majority of disputes concern employment-related disputes and disciplinary matters, while the most frequent 'clients' of such a tribunal could be football, basketball and other athletes on doping-related matters. Football and basketball in Ukraine have their own effective internal systems for resolving all types of dispute, with established jurisprudence and independent appeals procedures. Furthermore, arbitrability of employment-related disputes is excluded by Ukrainian law. Consequently, the creation of a separate sports arbitration tribunal in Ukraine would require amendments to many laws and may not find support from major sports organisations. In any event, some of the latter have created their own quasi-arbitration venues to resolve all types of dispute.

In general, Ukraine is considered an arbitration-friendly country and awards rendered by CAS or BAT are subject to recognition and enforcement in Ukraine.\(^\text{12}\) The requirements for arbitration agreements, contained in the Law on International Commercial Arbitration,\(^\text{13}\) are similar to those of the UNCITRAL Model Law\(^\text{14}\) and the New York Convention.\(^\text{15}\)

One of the examples of an effective quasi-arbitration tribunal in Ukraine is the Dispute Resolution Chamber (DRC) of the Football Federation of Ukraine (FFU).\(^\text{16}\) It may not be considered a pure arbitration venue as it resolves disputes only in football and on the basis of the FFU statutes and regulations rather than an arbitration agreement. It functions by analogy with the FIFA Dispute Resolution Chamber. Since its creation in September 2012, the DRC has resolved over 240 disputes between football clubs, players and coaches. Most of the cases concern employment-related disputes, while 20 per cent of cases relate to disputes over training compensation and transfer disputes between football clubs. The DRC's internal rules constitute its 'procedural law', while the 'substantive law' is composed primarily of the contract in dispute, the internal football regulations and, subsidiarily, Ukrainian law. Any DRC decision is subject to direct appeal to CAS, providing an effective and independent control. The DRC was initially created following the model recommended by FIFA and is composed of equal numbers of representatives from the clubs or leagues and the players. Such a quasi-arbitration body is an excellent example of how sports organisations may

---


\(^{15}\) www.uncitral.org/pdf/english/texts/arbitration/NY-conv/XXII_1_e.pdf.

\(^{16}\) The author of this chapter is a deputy chairman of this Chamber.
resolve internal disputes at national level, without the involvement of the national courts but simultaneously securing the principles of the right to be heard, fair proceedings and effective control through appeal.

iii Enforceability
The decisions of sports organisations are subject to internal enforcement proceedings, which vary according to the respective regulations. As a rule, sports organisations adopt a set of sanctions that may apply to persons (athlete, coach or club) for non-compliance with their final decisions or CAS or BAT awards. As a rule, the final decision of the sports judicial body may not be set aside or challenged.

The situation may be different when the party is seeking to enforce an arbitral award through the national courts of Ukraine on the basis of the New York Convention, which establishes general grounds for setting aside such awards.17

III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator
The absence of any specific legislation regulating the sphere of sports events or relations between the organiser and spectators in Ukraine offers flexibility. All sports events are organised and conducted on the basis of private contracts and regulations. In other words, such matters are regulated ad hoc. The only exception was the hosting by Ukraine of the 2012 UEFA European Championship, or Euro 2012, in football, which led to the adoption of specific laws and regulations exclusively for the event.

ii Relationship between organiser and athletes or clubs
Any relations between the organiser and spectators, athlete, club, municipal government or sponsors are subject to a private agreement between them. Ukrainian law on contracts is silent on any specific provisions that regulate the organisation of sports events, leaving room for the contractors themselves to define all main terms and conditions. In such circumstances, we may assume the dominant role of the principle of contractual freedom.

In contrast to privately held sports events, the government may also be an organiser and sponsor of sports events, adopting the rules and other internal provisions at a governmental level.18 In such a situation, sports organisations or governmental bodies are free to determine the rules of the competition, entrance requirements, timing, venue, awards and other important issues.

There are no specific mandatory rules in this regard. The main requirement is that any activity, arrangement or contract must comply with the general provisions of Ukrainian legislation and should not violate basic human rights and freedoms. When a sports event is taking place in a venue not specifically equipped or designed for it (e.g., racing on the


18 See, for example, the Procedure for Conducting the All-Ukrainian Skydiving Competition for 2015 (www.dsmsu.gov.ua/media/2015/05/26/28/polojenja.pdf, in Ukrainian).
streets), special approval from the police and the relevant municipal body is required. Another example of particular regulation in this sphere is the special measure adopted by the Cabinet of Ministers of Ukraine, the Order on the Organisation of Public Order and Public Security during Football Matches,¹⁹ whereby special provisions on the conduct of spectators, the organisation of security and cooperation with police or internal military forces are set forth. Obviously, such specific mandatory provisions must be taken into account by the organisers of sports events.

iii Liability of the organiser

The issue of the liability of the organiser is not a legally developed area, nor is it supported by any jurisprudence. In practice, it is very difficult to find an organiser liable for any misconduct or breach; this applies in relation to spectators or other third parties. When an event organiser has entered into a commercial agreement with someone (sponsor, building company, goods supplier, etc.) any civil liability will derive from such an agreement. Meanwhile, spectators (even those bearing a ticket) claiming damages from an organiser are unlikely to succeed. First, it is difficult to prove any damage or that the damage was caused by the actions of the organiser and to that particular person. Moreover, the person who has suffered damage may also face challenges in identifying the person against whom to bring the claim: usually several companies are involved in organising an event and it may be difficult to find the proper one; furthermore, such companies are usually established only for the event, and while the person is preparing the claim, the respondent may cease to exist or will have no assets to pay out as damages, making such a claim useless.

Criminal liability in Ukraine is applicable to natural persons only (with certain exceptions not applicable to sports events). Therefore, only persons personally responsible for an incident may be found guilty of a criminal offence and bear criminal responsibility. Criminal proceedings may be initiated by the victim or ex officio. Nevertheless, in the hypothetical situation of any incident resulting in the serious harm or death of a spectator, it is unlikely that the organiser would be found guilty, unless their direct negligence caused such consequences.

iv Liability of the athletes

Liability of athletes during sports events is not specifically regulated and is governed by general principles of civil and criminal liability in Ukraine. Apart from disciplinary sanctions provided under internal sports rules, any misconduct that causes harm or damage to spectators or other third parties will be subject to general tort or criminal litigation in courts. Importantly, for obvious reasons, any incident on the pitch (e.g., in boxing, other martial arts, punches during basketball, football) is not investigated ex officio in Ukraine, and in the majority of such cases the offenders face disciplinary liability only, unless the circumstances are extraordinary and the harm is very significant. Athletes may be liable for any manipulation of match results, which is now considered as criminal offence.

v Liability of the spectators

Liability of spectators is subject to general regulations, in the absence of any specific regulations. Any claim, particularly civil, places a heavy burden of proof on the aggrieved party, although in the context of sports events this is sometimes easier to achieve because of the presence of video recording. As regards civil liability, there was a case in which a football club obliged by the UEFA to pay a fine for a firework thrown onto the pitch filed a claim against the spectator who threw it, and the Ukrainian court awarded damages to the club, obliging the person to repay the fine.\(^\text{20}\) In such circumstances, it is important to prove that the damage was caused by a particular person (here using video recordings) and the nature of the damage caused by that person’s actions (in this case a fine imposed by UEFA). When any of these elements is missing, chances of success are significantly lower. Regarding criminal or administrative liability of spectators, if their actions cause harm or general disturbances in the course of the event, it is possible to make them criminally or administratively responsible on the basis of general provisions of criminal or administrative law (sanctions usually vary from fines to imprisonment) for hooliganism or other disturbances. In any event, such jurisprudence is a positive step by Ukrainian courts towards effective regulation of legal issues within sports events, and a good example of how to bring liable persons to book.

vi Riot prevention

The prevention of riots during sports events is regulated in football only by the Order on the Organisation of Public Order and Public Security during Football Matches.\(^\text{21}\) It defines the set of organisational measures that must be taken by the organiser (stadium owner or hosting club) and local police services to organise security at the stadium. In particular, the organiser or football club is responsible for stewarding, which must be provided at the stadium, while the police should control the territory outside the stadium. A financial contribution for measures taken by police to prevent riots at sports events is not required in Ukraine.

IV COMMERCIALISATION OF SPORTS EVENTS

i Types of and ownership in rights

There are no specific laws that regulate exploitation of sports-related rights in Ukraine. Any matters in this sphere are regulated by general provisions of the Civil Code and specific intellectual property laws, notably the Law on Copyright and Related Rights.\(^\text{22}\) There are no restrictions, hence any kind of right, including sponsorship, broadcasting, merchandising, endorsement and image rights, may be exploited.

As a rule, the initial owner of the relevant right is the creator or author of a particular right. In the case of sponsorship, merchandising or endorsement of any brand, the initial owner is the holder of a brand title. In the case of broadcasting, authors or operators of particular video recordings are considered as the initial owners of the rights, while the company that organises the broadcast or produces the TV show will be the final owner (usually on the

\(^{21}\) See footnote 18, supra.
basis of assignment contracts). Moreover, given that broadcasting assumes the participation of athletes or clubs, they also bear rights over such broadcasts and, according to the Law on Copyright and Related Rights, are entitled to a reasonable compensation. However, participation in sports events involving broadcasting *per se* requires assignment of the rights to the broadcaster (in the case of inter-club competitions, the clubs may negotiate the deal themselves or through a league, while in single-athlete competitions athletes, in signing the participation form, usually renounce their right to claim any compensation). Image rights that are inherent to athletes only may also be assigned to the club or a third-party user of such rights; income or other financial benefits from image-rights exploitation is subject to ad hoc deals between the athlete (or the athlete's club) and a commercial entity.

ii Rights protection

Ukrainian legislation on protection of IP rights is highly developed, following international standards and principles (Ukraine is a signatory to many international conventions), providing means for effective legal protection. Although there is nothing in this sphere exclusively in relation to sports-related rights, any infringement of trademarks (in the case of sponsorship, merchandising, endorsement of particular brand) or other rights, Ukraine is friendly towards IP rights owners, providing, *inter alia*, such remedies as cessation of any illegal use of the right, payment of damages arising from infringement, removal of the trademark or confusingly similar designation from the goods or destruction of counterfeit goods.

The most problematic practical issue is in relation to evidence production within court proceedings and the absence of any means of stopping the infringement immediately.

The special regime adopted for Euro 2012 is, however, a good example of the potential flexibility of Ukrainian legislation for a particular sports event, notably in the context of IP rights protection.

iii Contractual provisions for exploitation of rights

As mentioned, absence of any specific regulations provides for a degree of discretion and contractual freedom. Flexibility of the contract is preserved and parties are free to determine any provisions they deem appropriate. The option to assign sports-related rights is prescribed by the law.

V PROFESSIONAL SPORTS AND LABOUR LAW

i Mandatory provisions

Labour law in Ukraine desperately requires amendments. The Labour Code of Ukraine currently in force was adopted in 1972,²⁴ and there is an absence of any provisions on sports matters. Although there are some mandatory provisions (salary must be paid twice per month, right for holidays, double compensation for work completed during non-working hours), in the sports sphere such provisions are not effective given that they do not consider the particularities of sports (i.e., the fact that an athlete’s working day is different and that weekend working is an integral part of sports activity).

Because of the absence of specific regulations, many sports are self-regulated, implementing international standards and minimum requirements from international sports bodies. An excellent example of self-regulation is football: the FFU and the Football Labour Union have for a long time implemented minimum requirements for players contracts, which all clubs must comply with. Such an initiative was also confirmed at international level, leading to the adoption of minimum standards within UEFA territory.²⁵

ii Free movement of athletes

Sports governing bodies in Ukraine have a wide freedom to decide on internal matters, including limiting the number of foreign athletes allowed to compete in a championship. Nowadays, such limitations are established in football, basketball and ice hockey. Although these limits have never been considered by the courts or formalised on a national level, they are unlikely to be abolished. Employment relations between athlete and club are regulated by the employment contract, providing for the payment of a salary in exchange for professional services, not for participation in sports events. The limits discussed apply only to the number of foreigners who can simultaneously play on the pitch; the clubs are not limited in the number of such players to whom they can pay a salary, to attend training or even to keep on the bench. Such a limitation does not infringe or restrict any of the player’s employment rights but rather constrains the club in its use of its players, making the limitation legal in Ukraine.

iii  Application of employment rules of sports governing bodies

The laws of Ukraine are silent on any objection to incorporating employment-related provisions of international bodies into employment agreements. Employment law is based on the principle of discretion: anything that is not directly forbidden by law is allowed. Therefore, sports organisations are vested with broad powers to regulate such issues themselves, and to draw on the developments and practice of their international governing bodies.

VI  SPORTS AND ANTITRUST LAW

Ukrainian legislation on antitrust law is silent on any matters relating to sports. It applies generally to any sphere of commercial life in Ukraine. Antitrust law does not play as dominant a role (if any) in Ukrainian sports law as it does, for instance, in the United States.26

Hypothetically, antitrust law may apply to sports if there were to be any violation of unfair competition law or antitrust law in general (e.g., coordinated anti-monopoly actions, abuse of monopoly status, concentration). However, in practice it is difficult to imagine a situation in which clubs or organisations would act in violation of antitrust law, given that most issues relate to price-fixing of goods for third parties or unfair competition between clubs in a commercial sense. So far, there have been no cases or disputes publicly known in Ukraine in this regard. In theory, there might be a violation if clubs were to collectively and secretly agree to establish the maximum salary rate for players or coaches (which is very unlikely because of the competition between clubs and their unwillingness to cooperate), to set the minimum and unfair price for stadium tickets, or to adopt unfair and unreasonable sports organisation regulations (abuse of monopoly status).

VII  SPORTS AND TAXATION

All issues regarding taxation in Ukraine, including sports-related matters, are regulated by the Tax Code.27 Taxation regime of athletes, clubs and sport organisations varies depending on their corporate status.

Sports organisations are established as NGOs, which are per se non-profit entities, and as such exempt from taxation. Only the profit made as a result of conducting business activity for third parties (not its members) is subject to taxation (e.g., selling of goods, provision of services).28 If a sports organisation is fully financed by the government, it is also exempt from taxation, including land tax.

The taxation of sports clubs directly depends on their corporate form. If a club is incorporated as a limited liability company or public joint-stock company, both profit-making structures, it is subject to a general tax regime. In such a situation, it is irrelevant that a company is acting in the sports sphere. Currently, the corporate tax rate is 18 per cent. Where the clubs are structured as NGOs, their main activity is exempt from income tax, with

26 Limitations may apply in the sports sphere, on the basis of the Sherman Antitrust Act, to relations between professional leagues and athletes, amateur sports, etc.
the aforementioned reservations. Persons from Ukraine who make earmarked donations to amateur clubs or organisations are exempt from income tax on the amount donated, which in some way encourages the development of sports in Ukraine.

Athletes are responsible for their own taxation matters. The general rate of 18 per cent is payable on any income from sports activity unless it is a monetary award for a Ukraine national champion or international competition medallist, including disabled sportspeople (any such award is exempt from income status).

The Tax Code also provides for taxation of foreign athletes who earn monetary awards as a result of their sporting activity in Ukraine. The rate of 18 per cent shall be withdrawn upon payment, unless otherwise mentioned in double taxation treaties.

Taxation for participation in international events for clubs or athletes is not explicitly provided for in the Tax Code, and should be regulated by the laws of the country where the event takes place, unless otherwise mentioned in double taxation treaties.

At present, Ukraine has signed treaties with 73 countries on avoidance of double taxation.29

**VIII SPECIFIC SPORTS ISSUES**

### i Doping

Issues relating to doping violations in Ukraine are regulated by a separate Law on Anti-doping Control in Sports30 and additional acts signed and ratified by Ukraine.31 Adoption of recently updated regulations is currently pending. Established in 2002, the National Anti-Doping Centre is authorised by the Cabinet of Ministers of Ukraine to conduct any activity in this sphere.

General principles and disciplinary sanctions for anti-doping violations are identical to international ones. In addition to disciplinary sanctions, inducement of minors to practise doping is considered a criminal offence and subject to sanctions ranging from a fine and prohibition against undertaking certain activity to imprisonment of up to eight years if the offence were to cause serious harm to a minor’s health. Doping is defined as substances and methods prohibited by the former Olympic Movement Anti-Doping Code, though courts use the definition provided by more up-to-date regulations.

Although the Ukrainian legislation still requires amendments, this area of sports law is probably the most regulated in Ukraine because of the seriousness of anti-doping violations and the importance of its regulation at the national level.

ii  Betting

Betting is prohibited in Ukraine. The main legislation is the Law on the Prohibition of Gambling Business, defining gambling business as any activity related to, inter alia, the organisation of gambling in betting offices. However, this Law has a number of loopholes owing to which the betting business is rapidly developing in Ukraine in circumvention of the legislation. In particular, some betting offices are registered abroad and online betting is considered as taking place outside Ukraine. Moreover, the term ‘lottery’ is not clearly defined, and as this activity is excluded from the prohibited list of activities, betting companies are free to name their activity as being a ‘lottery’, thereby enabling such business.

As has been noted by the Ministry of Finance, loopholes in the gambling legislation mean that it is possible to conduct activities that are actually betting, and the economy of Ukraine is thus deprived of potential income.

One example of this paradoxical situation is the fact that the current main sponsor of Ukrainian Premier League football is betting company Pari-Match. This company has not conducted any activity in Ukraine since 2009, being registered at Curacao, while it presents itself as a ‘patrons of Ukrainian sports’.

Over the past three years, the draft of the new Law on Betting Activities has been constantly discussed and developed, with a view to allowing betting in Ukraine with some restrictions. This, in turn, would enable the government both to control such activity by issuing licences and to collect taxes. This Law is expected to be adopted very soon.

At present, taking part in any unsolicited gambling activity is an administrative offence leading to sanctions ranging from a warning to a small fine and confiscation of the gambling equipment. Conducting a prohibited gambling business is considered a criminal offence, although, as mentioned above, betting companies avoid such responsibility.

iii  Manipulation

Finally, after many years of discussion, the manipulation of sports results (or match-fixing) is considered as criminal or administrative offence in Ukraine. In November 2015 a new law ‘On prevention of the influence on the official events results of the corruption offences’ was finally adopted. The Law governs a wide range of people from the ministries and federations to the players, referees, organisers of the competition, agents (intermediaries), coaches, club owners, etc. Even the medical staff who serve and treat athletes are subject to the Law.

The objective criteria for determining an offence is the fact of sports betting (obtaining financial benefit from influence over the match). The Law prohibits all athletes and sports persons from betting on official competitions in which they (or their team) are involved. Failure to follow this rule leads to administrative or criminal liability, depending on the amount of the bet and frequency of violations. Responsibility is also sought for sports corruption in general (bribery of athletes or other sports persons with aim of influencing the outcome of sports competitions). For example, if someone knew about the corruption and was offered a bribe but did not prevent the offence by reporting to the appropriate authorities, this could also lead to liability.

32 http://zakon2.rada.gov.ua/laws/show/1334-17
34 For more detailed information see www.ua-football.com/ua/ukrainian/high/1449058722-ne-zvazhaye-pidvodni-kameni-zakonu-pavelka.html (in Ukrainian).
The most severe punishment is provided for the organisation of match-fixing, the influence on the results of the competition, bribery or actions related to minors.

In particular, a new article in the Criminal Code implemented under the Law provides the sanction of a fine or imprisonment of up to five years for influencing the results of official sports events through bribery, duress or conspiracy aimed at obtaining illegal benefits for person or third parties.

### Grey market sales

The sale of tickets on the ‘grey market’ is not regulated in Ukraine. Theoretically, any person may buy tickets through the official channels and resell them to third persons. Because of the difficulties in controlling such activity, preventive measures are taken by event organisers. For instance, the stadiums (e.g., Olimpiyskiy Stadium or Arena Lviv) in their internal rules prohibit the resale of tickets, the violation of which may lead to cancellation of season tickets or other benefits for the offenders. Also, as a rule, the number of tickets that can be bought by one person is usually limited.

In general terms, any illegal sale on the streets of any goods (including tickets) is considered an administrative offence and subject to the sanction of a small fine.

### IX THE YEAR IN REVIEW

From a legal point of view the past year was quite significant as regards Ukrainian sports law. Although some legislative initiatives are still pending, the adoption of the law fighting against match-fixing and corruption in sports brought evident benefits. In September 2016, the first decision in relation to match-fixing was adopted, punishing the footballers who ‘sold’ the match. The positive impact of this law is expected in the following years.

The adoption of the 2016 WADA prohibited list, including meldonium, created havoc with national sports. This drug was quite popular among athletes in Ukraine and its ban led to a number of sanctions and disqualifications, against which many of the athletes had to appeal.

In football, the implementation of the Regulations on Working with Intermediaries has shown up problems and lack of organisation. While the system of intermediary services in football has been changed, real activity has completely moved to a ‘shadow market’ owing to an unwillingness to register deals and comply with formal requirements, while the FFU, by not sanctioning the players and clubs, actually favours it. Besides this, changes were made in the football Premier League, decreasing the number of teams to 12 and modifying the play stages, mainly owing to financial difficulties for a few clubs that went bankrupt.

Because of the difficult financial situation facing many sports (e.g., football and basketball) the number of employment-related disputes regarding non-payment of salaries by clubs continues to increase.

---


36 GoldenGate Law Firm was directly involved in drafting the regulations. For detailed information about this topic see [http://goldengate-law.com/pdf/qa/qa_regulations_on_working_with_intermediaries_in_ukraine.pdf](http://goldengate-law.com/pdf/qa/qa_regulations_on_working_with_intermediaries_in_ukraine.pdf).
X OUTLOOK AND CONCLUSIONS

Sports law is developing in Ukraine. Although many important issues are constantly under public discussion, the adoption of new regulations on a national level, particularly by the Parliament, requires considerable time and effort. Adoption of the Law on Physical Education and Sport will not drastically change the situation, as its current draft requires serious amendments and modifications. However, in recent years there has been clear progress in developing sports law as a separate legal discipline.

The situation in the betting and match-fixing sphere has changed to the good with the adoption of a new law. The same relates to labour law, although the adoption of a new code may take another few years. The positive trend is that the current government is introducing a lot of reforms and national sports development may also be influenced by these changes in general.

Significant interference by state bodies in all sports-related issues may, however, impede rather than assist progress. As is evident in practice, many sports organisations in Ukraine are successfully dealing with all legal matters by themselves through internal self-regulatory instruments. Nevertheless, special laws adopted at a national level and applicable to all kinds of sport may facilitate and develop certain issues in the sports sphere (i.e., anti-doping, organisation of events, specific IP rights protection, betting, grey market ticket sales, protection of professional athletes, etc.). The attraction for Ukraine of international top-level events (Kiev will host the final of the UEFA Champions League 2018/2019) can only have a positive impact on the development and implementation of new regulations at a national level, as was seen with Euro 2012.
Chapter 19

UNITED ARAB EMIRATES

Steven Bainbridge, Ivor McGettigan and Laila El Shentanawi

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Organisational form

Before considering the organisational forms and legal position of sports-related bodies in the United Arab Emirates (UAE), it is important to note that the UAE is a dynamic and developing market in many respects. Not least among these is the fact that the UAE is host to numerous ‘free zones’ within which specific legal rules – and particularly the types of legal entities permitted and requirements for establishing the same – vary significantly. For the purpose of our discussion concerning organisational forms, unless otherwise expressly noted, we will confine our remarks primarily to discussing organisations and entities established within the civil law-based legal jurisdiction of the UAE or ‘onshore’ (i.e., not those established within any of the free zones).

UAE law requires that sporting activity should be pursued under the aegis of the General Authority of Youth and Sports Welfare (GAYSW),2 which is the supreme governmental authority responsible for the welfare of the youth and sport sector in the country.3 The GAYSW is responsible for ensuring that there is a national governing body

---

1 Steven Bainbridge is the regional head of sports law and events management, Ivor McGettigan is a partner in the employment department and Laila El Shentanawi is a senior associate in the arbitration and dispute resolution practice at Al Tamimi & Company.
2 Originally established pursuant to Federal Law No. 25 of 1999, as amended.
3 As per Federal Decree-Law No. 7 of 2008.
(typically a federation or an association⁴) in existence to sanction events⁵ and carry out any required governmental 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 GAYS W 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 GAYS W 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 GAYS W 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.⁶ 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 GAYS W and certain supporting documentation submitted (including an application form for registration; a statute or constitutional document of the club, union or association; documented approvals of the stakeholders; a copy of the minutes of the meeting of the constituent assembly; the names of the founding members; and a board resolution authorising one of its members to provide publicity).⁷ The GAYS W 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 such clubs and associations.

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, and approached the relevant department of economic development (the seven emirates within the UAE federation each have their own administrative departments) and chosen their preferred corporate vehicle, it will be referred to the GAYS W if a proposed activity on their trade licence involves the sports sector. Any such commercial endeavour will be subject to compliance with the standard established requirements for corporate set-up (the limited liability company is the most common choice in the UAE, but there are other corporate structuring options) along with an additional requirement for GAYS W 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.

---

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 Anecdotally, there may be cases in which new sporting events could be held prior to the establishment of an NGB (e.g., an exhibition match of a sport new to the UAE); however, this would need to be done in conjunction with the GAYS W 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).

Although it is beyond the scope of this chapter, it is noteworthy that for reasons that reportedly include geographical convenience, strategic market factors or ease of doing business, a number of international sports federations have already or are currently in discussions to potentially formalise a presence in the UAE market.8

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 any dispute with other legal people. A company can only enjoy those rights and incur those liabilities through decisions made by the parties that own, control or are one or more directors or managers of 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, although many of these developments in terms of, inter alia, required internal committees, external auditor oversight and whistle-blower hotlines, have naturally developed with public joint-stock companies or large private joint-stock companies in mind. However, 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.

When a director departs from sound principles, the question becomes what is the liability of that director for any unlawful act and what remedies can be sought? Under UAE law, a manager of a limited liability company can be held personally liable (with his or her personal assets at risk) for any fraudulent or criminal act in dealing with creditors of the company9 (see also below).

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. Further, as part of this broader movement towards strong corporate governance and best practices that raise expectations for sound management in UAE-based entities, the UAE has implemented a comprehensive Anti-Money Laundering and Counter-Terrorist Financing Law (AML Law),10 which was last amended in 2014, and is supported by regulations and circulars issued by the Federal Cabinet and the Ministry of Justice as necessary.

iii Corporate liability

Sporting organisations, incorporated or held by a single person as a company, 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.11 Companies are defined

---

8 Including within free zones.
10 Federal Law No. 4 of 2002 as amended.
11 Exempted industries include oil as well as power generation; there is no express exemption for companies that operate in the sports industry.
as economic enterprises aiming at profit. If a company is not validly incorporated, persons concluding contracts in its name are individually and jointly liable for the performance of obligations arising out of those contracts. Managers authorised to manage the company must work for the benefit of the company by exercising the care of a prudent person (e.g., their powers must be exercised to maximise benefits for the company).

Any provision in the memorandum or articles of association authorising the company, or any of its subsidiaries, 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 or the contract appointing the managers owing to any negligence or errors on the part of the managers in performing their job, or owing to their failure to perform their job with the diligence of a prudent person. Further, each manager is liable for any fraudulent acts, the improper use of power, the contravention of any law, the memorandum of association or the contract appointing the manager, or for any gross error on his or her part. These are mandatory provisions of UAE law (i.e., any provision to the contrary in the memorandum of association or a manager’s contract would be void).

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 the UAE local courts. 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 (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.

Given the special nature of sports dispute resolution and the requirement in certain sporting contexts to abide by specific international sports procedures, the UAE legislature is aware of the potential benefits of having a forum dedicated to resolving disputes in the sports sector. The UAE Minister of Youth, Culture and Community Development formed a
committee with a mandate to create the articles of association of a UAE arbitration centre. The Decision expressly referred to a decision of the UAE National Olympic Committee, inter alia, approving the establishment of a national sports arbitration centre.

Following the Decision, a draft law creating a National Sports Arbitration Court (NSAC) was prepared. The draft law provides the NSAC with jurisdiction to decide on appeals challenging decisions of sports governing bodies. At the time of writing, the draft law has not yet been promulgated. Therefore, a deviation from the right of resorting to the ‘natural judge’ as it currently stands in the UAE, depends on the terms of the registration or membership form that the relevant parties signed with the sport governing body, particularly regarding the designated dispute resolution forum.

By way of example, the UAE Football Association (UAE FA) has issued regulations regarding dispute resolution committees or arbitration committees that have jurisdiction of disputes relating to football. The UAE FA regulations, namely the Appeal Regulations, regulate appeals related to the decisions of its Dispute Resolution Committee. Moreover, the UAE FA Regulations, namely the Arbitration Committee Regulations, regulate appeals filed both 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.

ii Sports arbitration

Domestic arbitration

Generally, arbitration is a significant feature of commercial sporting life in the UAE, and as the national courts may be slow or may lack the necessary specialisation to interfere in a sports dispute resolution process, parties may tend to prefer arbitration. If, despite agreeing to arbitrate, a party brings an action before the local courts, the courts would usually refer the case to arbitration (when asked to do so by one of the parties) unless the court were to find that the subject matter of the dispute is non-arbitrable. Specifically, arbitration is not permissible in matters in which conciliation is allowed (e.g., disputes relating to public policy and labour disputes). Therefore, and save for non-arbitrability, there is no legal limitation on the types of sports claims that may be brought to arbitration. However, to ensure the validity of an arbitration agreement, parties must also comply with the requirements of UAE law including that the agreement to arbitrate be made in writing and by persons having legal capacity or necessary authorisation to enter into that agreement.

The CAS

For some time, individuals and entities within the sports sector from the UAE have taken relevant cases to the Court of Arbitration for Sports (CAS); and, the importance of the CAS’s role in providing a neutral and efficient mechanism by which sports disputes can be resolved.

20 UAE General Authority of Youth and Sports Welfare, Chairman’s Decision number 26/2013 dated 17/02/2013.
21 UAENOC General Assembly decision number 33, dated December 2012.
22 As per Article 46 of the UAE FA Arbitration Committee Regulations.
23 Article 2014 paragraph 4 of the CPC.
is widely acknowledged in the UAE. In order to facilitate optimal access to the CAS, the Abu Dhabi Judicial Department entered into a cooperation agreement with the CAS in 2012, launching a CAS Alternative Hearing Centre in the UAE.\(^\text{25}\)

### 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. Arbitral awards may be enforced voluntarily by the parties. However, if enforcement is not carried out voluntarily, enforcement can be sought through the relevant UAE court.

The rules applicable to enforcement of arbitral awards differ depending on whether the award is foreign or domestic. A domestic arbitral award (i.e., arising from arbitration seated in the UAE) must first be ratified by the national courts before it may be enforced in the UAE. Chapter 3 of the CPC regulates enforcement of and challenges to arbitral awards. Article 216 of the CPC stipulates the possible grounds for challenge of arbitral awards including the existence of (1) invalidity of the arbitration agreement, (2) the invalidity of the appointment of the arbitrators or (3) voiding the arbitral proceedings or award that affects the award.

For foreign arbitral awards, enforcement is made in accordance with the relevant international or regional convention. The UAE is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards\(^\text{26}\) (New York Convention). Accordingly, foreign arbitral agreements and awards made in other contracting states are to be recognised, enforced and challenged in accordance with the provisions of the New York Convention.

### III ORGANISATION OF SPORTS EVENTS

#### i Relationship between organiser and spectator

As noted in Section I.i, supra, the UAE is primarily a civil law jurisdiction, and the UAE Civil Code\(^\text{27}\) and the Commercial Transactions Law\(^\text{28}\) 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. The Civil Code is a statute of significant length and detail and, although not expressly binding with the force of stare decisis, previous court decisions can be persuasive, so a full examination of the Civil Code’s possible application to spectator and organiser dynamics at sporting events is beyond the scope of this chapter. 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

---


26 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, acceded to by the UAE in accordance with Decree No. 43 of 2006.

27 Federal Law No. 5 of 1985.

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 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). Health and safety management of sports and major events goes beyond the obvious protection of crowds against slips, trips and falls. 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.29

Notable among federal laws applicable to organisers of sporting events is the recent introduction of implementing regulations to an existing law concerning sports facilities, fan conduct and corruption in bidding for sports events30 (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.31 Most notably, all sporting events should have a flexible administrative and organisational guide,32 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.33 Older buildings are subject to the requirement to bring fire safety equipment up to date. In Abu Dhabi, additional instruments requiring compliance are in force.34 Depending upon the date of construction of the building, the owner or lessee must either comply with the international requirements, or with local requirements to retro-fit updated fire-fighting equipment. 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.

32 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.
34 Including a 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.
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 previously. 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 such event.

iii Liability of the organiser

Civil liability in the UAE arises under the law of contract or tort. 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. Tort-based liability will arise where there is a harmful act (or omission) by one party in breach of his or her duty, damage or loss incurred by the other party, and causation between the breach and the damage or loss. 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.\(^{35}\) For example, the organiser of an event would have liability for harm caused by the collapse of a building unless he or she was not guilty of any wrongdoing or default.\(^{36}\)

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).\(^{37}\) 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 such 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 we would note anecdotally that event organisers routinely take measures to reduce the likelihood of such liability.\(^{38}\) Any contractual condition purporting to provide exemption for the organiser from responsibility (such as a limitation of liability clause) shall be void.\(^{39}\)

---

36 Article 315 of Federal Law No. 5 of 1985.
37 Article 313 of Federal Law No. 5 of 1985.
38 For example, 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.
With respect to *ex officio* investigations, in the UAE a criminal act is, in principle, punishable in and of itself. The relevant state actors (police, etc.) are authorised to take action and do not require a specific complaint before taking measures to uphold UAE law. For example, the Publications Law proscribes certain advertising. In particular, some advertising in contravention of that Law could amount to a criminal act. Although it is often the case that an investigation of a crime is initiated through complaints or reporting, it would not be necessary for a complaint to be made to the authorities for action to be taken: any duly authorised official or police officer could take action.

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 and 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 in such circumstances but it does complement 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.

There are numerous other restrictions but generally speaking 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.

v Riot prevention

As noted above, the Resolution clarifies the Sports Facilities and Events Security Law, requiring organisers to coordinate safety and security for events with the authorities so that potential crowd control and other security risks are proactively managed and 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 or racially abusing or gesturing other people, disregarding facility rules and using a venue for political purposes. Breaches of the law may lead to fines and imprisonment.

40 Federal Law No. (3) of 1987 (the Penal Code).
41 See Article 22 of Federal Law No. 8 of 2014; see also, Haneen Dajani, UAE Sports Law against racism will see offenders fined… *The National*, thenational.ae (online) 27 December 2015.
IV COMMERCIALISATION OF SPORT EVENTS

i Types of and ownership in rights

The UAE is a sophisticated transactional market, and although still developing, it should be noted that 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.\(^3\)

The chain of ownership in such rights reflects this reality. Entities that design and organise events own the commercial rights to such 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 specifically noted in Section IV.ii, infra, UAE law recognises and protects such rights as an element essential to development and sustainability.

ii Rights protection

In relation to the commercial aspects of sporting activities in the UAE, protecting the rights of those who invest as sponsors, broadcasters or merchandisers is perceived as fundamental to sustainability by encouraging continued investment. UAE law aims to protect intellectual property on a number of fronts. Laws regarding intellectual property in the UAE include trademarks,\(^4\) copyright\(^5\) and related rights, industrial property,\(^6\) and press and publications law.\(^7\) 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.\(^8\) The primary statutory tool of the copyright law (which includes, inter alia, prison terms), taken together with a


\(^5\) Federal Law No. 7 of 2002 Concerning Copyrights and Neighboring Rights.


\(^7\) Federal Law No. 15 of 1980 Concerning Publications and Publishing.

recently formed Anti-Piracy Coalition\(^{49}\) including leading networks and various elements of government from the CID and the departments of economic development at the emirate level, have led to significant enforcement activity in 2015.

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 the 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. With specific reference to illegal merchandise sales or broadcast piracy, for example, the primary concerns are identifying and then locating the infringer before engaging the machinery of the state to sanction transgressions of copyright. Experienced wrongdoers may leverage jurisdictional arbitrage to draw revenues from the sale or distribution of illegal set-top decoders into the UAE market without ever establishing a corporate presence or even exposing significant assets in the UAE.

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 (as discussed at length above). One particular difference in the UAE is more practical than legal, but is nonetheless one that should 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 are often absent. This can introduce an element of risk and speculation that may reduce the cost. For example, in the context of an event sponsorship agreement, even a globally recognised sporting event may not draw premium sponsorship revenues for its first or second iteration in a new market. This provides an opportunity to benefit from lower prices, but also an opportunity to increase the term or build in renewal options and link increases in fees to success through escalator clauses. 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 North America and Western Europe may require greater attention for detailed and tailored drafting. This can include an appreciation of the local publications laws\(^{50}\), 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, 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 (who often seek to roll out product distribution in the region in tandem with sponsorship campaigns) should be aware of the rights of registered agents for sales and distribution under the Commercial Agencies Law 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 dispute. Where there are non-exclusive agency agreements, the operation of the Civil Code and the Commercial Transactions Law can also impose certain extra-contractual obligations, as noted above.

V PROFESSIONAL SPORTS AND LABOUR LAW

i Mandatory provisions

Federal Law No. 8 of 1980 (Labour Law) sets out the basic employment requirements for private sector employees in the UAE, including professional athletes.

Given the relatively short careers of top-level athletes and the high risk of premature career-ending injury, the vast majority of athletes are employed on fixed-term contracts. This is also the case with managers and head coaches. Support staff and ancillary coaches are usually employed on an unlimited duration basis.

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 time (depending on the status of the employer). If the employment continues beyond the expiry of the fixed term then the contract will automatically convert into an unlimited term contract. All other terms of employment (e.g., salary, vacation allowance) will remain the same.

In relation to 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 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:

---

51 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.

United Arab Emirates

It should be noted, however, that gross misconduct is defined in the GCC countries and narrowly so. 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 misconduct 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 is unlikely to be prepared 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 non-national, it is no surprise that there are no internal restrictions on foreign athletes taking part in all the major sports. The limitations arise on an international level where the international ruling bodies set the eligibility requirements for athletes representing countries. For example, at the 2014 Asian Games, three members of the UAE team were sent back after it was ruled that they failed to meet the three-year residency rule for naturalised citizens.

iii Application of employment rules of sports governing bodies
The UAE National Anti-Doping Committee (UAE NADO) is a signatory to the World Anti-Doping Agency (WADA) Code and is recognised by WADA. Accordingly, the WADA Code applies to all participants in events organised by the General Authority of Youth and Sports Welfare in the UAE, and to all national sports federations and authorities.

VI SPORTS AND ANTITRUST LAW

The UAE Competition Law53 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.

53 Federal Law No. 4 of 2012.
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.

Currently, we do not feel that there are concrete concerns that directly impact sports rights holders or governing bodies.

VII SPORTS AND TAXATION

There are presently no specific tax considerations with respect to sporting activities under UAE law. More broadly, a VAT Law has been prepared by the authorities and is tentatively scheduled for introduction in 2018.

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, a National Olympic Code was adopted by the National Olympic Committee in 2013 that, 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-Doping and established the UAE NADO, which, subject to coordination with the GAYSW and the National Olympic Committee, is responsible for overseeing the implementation of the UAE National Anti-Doping Code. As noted in Section V.iii, supra, the UAE NADO is a signatory to the WADA Code and is recognised by WADA. Accordingly, the WADA Code applies to all participants in events organised by or under the auspices of an entity subject to oversight by the GAYSW in the UAE, including all national sports federations and authorities.

The UAE NADO is cognisant of WADA’s efforts during the past decade to harmonise testing and sanctions in comparable cases across international sport, 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.

54 UNESCO 2005.
Recently, framework legislation has been enacted in the UAE that criminalises doping in horse racing and equestrian events. 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. It is an offence, inter alia, to place or attempt to place any banned substances on a horse, to inject or attempt to inject a horse with a banned substance, or to use a banned substance for any purpose such as research, without first obtaining a licence from the Ministry of Environment and Water.

The Ministry and federal or local bodies responsible for horse racing and equestrian sports in the UAE develop a national monitoring programme, take samples to detect violations of the law and announce sample results, and also design and implement training and awareness programmes. Offenders may be punished with fines ranging from 20,000 to 200,000 dirhams, which shall be doubled for repeat offenders commissioning another offence within three years from the date of commission of a previous offence. In addition, the Ministry and federal or local bodies may ban offenders from participating or working in the sport and any related industry establishments where violations have occurred (including those trading in horse feed, supplements and veterinary medicines) for up to three years or cancel their trading licences, or both. Those who reoffend will be struck from the records of horse racing and equestrian sports.

ii Betting
Gambling in the UAE 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 Law 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. 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.

Cheating, fraud or corruption in gaining rights to host a sporting event can now be punishable by a fine of up to 1 million dirhams, plus liability for certain costs and potential suspension of relevant activities for a minimum of two years. Moving forward, it will be interesting to monitor the interpretation and scope of enforcement of this provision within

55 Federal Law No. 7 of 2015.
56 Article 7 of Federal Law No. 7 of 2015.
57 Article 10 of Federal Law No. 7 of 2015.
58 Federal Law No. 5 of 2012 (concerning Combating Information Technology Crimes).
59 Federal Law No. 3 of 1987 as amended.
the Resolution, to see if 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 (typically termination and damages, but damages would need to be proven
to be recovered). 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 such sales could constitute a crime under the Penal
Code would depend on the particular circumstances (e.g., if there were elements of fraud
or misrepresentation involved). If and to the extent that there are civil or criminal breaches,
auctioning grey market online would not be a barrier to enforcement, as the Cyber-Crimes
Law would potentially apply.

IX THE YEAR IN REVIEW
The implementation of the Resolution is bringing greater oversight and regulation to the
sports sector in the UAE and while the full implementation and impact is yet to be seen, the
changes are potentially far-reaching in their scope. These measures should be welcomed in
terms of trying to ensure that the UAE, which already hosts some of the world’s most popular
sporting events, remains at the forefront of the global sporting events sector.

The potential for an active NSAC in the UAE as well as the possibility of greater use
of the CAS Alternative Hearing Centre are also very encouraging developments matching the
rapid rise of participation in sports and the hosting of major sporting events, so we anticipate
growth in the use of such forums.

X OUTLOOK AND CONCLUSIONS
Interest in sport is not a new phenomenon in the UAE. The UAE’s sporting calendar is
becoming increasingly packed with events that have included, inter alia, the annual F1 race
in Abu Dhabi to top-class professional cycling events in both Dubai and Abu Dhabi, as
well as the annual horse racing World Cup, well-established professional tennis and golf
events, FINA swimming and FIBA basketball tournaments, marathons and ocean yacht
racing. We anticipate this growth will continue in the UAE as sponsors continue to identify
such 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 consumption61 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.

61 Cabinet Resolution No. 24 of 2013, on the Federal Anti Tobacco Law.
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.\(^1\)

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 in order 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

\(^1\) Steve Silton is a partner and James Minor is an associate at Cozen O’Connor.
\(^3\) Id. at 747.
\(^4\) Id..
\(^5\) Id..
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.
Since a partnership is created by contract, a given partner cannot sell or transfer his or her
interest to a party outside of 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 partnerships, the only difference being that a limited partner
is only as liable as his or her 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 is operated. 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: first when they are earned at a corporate tax rate and again when they are

6 Id.
7 Id. at 748.
8 Id.
9 Id. at 749.
10 Id.
11 Id. at 750.
12 Id.
13 Id.
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

i Sports arbitration

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 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.16 The SPCs also provide a given league’s Commissioner with independent disciplinary authority.17

The National Football League (NFL) has a personal conduct policy that pertains to all persons associated with the league and not just the players.18 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.19 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.20 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.21

The NFL Commissioner’s disciplinary authority is governed by three documents: the Constitution and Bylaws of the National Football League (League Constitution), the CBA and the NFL’s SPC.22 The League Constitution is a contract that defines the authority of the league and its member clubs.23 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.24

14 Id.
16 Id.
17 Id.
19 Id.
20 Id.
21 Id. at 186.
22 Id. at 190.
23 Id. at 191.
24 Id.
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.25 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.26 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 and it is the CBA that determines how much authority for punishment the players will accept.27

Similar to the NFL, the Major League Baseball (MLB) Commissioner is provided with a wide scope of authority to punish for matters that affect the integrity of baseball and the 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 regards 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 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

25 Id. at 192.
26 Id.
27 Id.
30 Withers, supra note 28, at 153-154.
31 Id. at 153.
33 Id.
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 due 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 as a result of the financial impact of
the Commissioner’s decision.36 However, in such a 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

III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator

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.38 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.39 To succeed in an assumption
of the risk defense, venue owners must show that (1) the plaintiff had personal knowledge
of the risk (claims of ignorance of the risk have generally failed), (2) the risk was obvious
and apparent to a reasonable and prudent person under the circumstances, or (3) there was
seating provided behind a protected screen that the spectator chose not to sit in.40 Venue
owners have also tried using liability releases to limited effectiveness.41 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.42 Regardless, 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

34 Flood v. Kuhn, 407 U.S. 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); Foote, supra note 32, at *5.
35 Pacifici, supra note 29, at 102.
36 Pacifici, supra note 29, at 102.
37 Id.
38 20 COA2d § 361 (2010).
40 20 COA2d § 361 (2010).
41 Id.
42 Id.
rink to put protective netting above the Plexiglas behind the goal nets in order to protect fans from flying pucks.\textsuperscript{43} Further still, 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.\textsuperscript{44}

In MLB, courts have held there is no duty to warn spectators of the possibility that a ball or bat may enter the stands.\textsuperscript{45} 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.\textsuperscript{46}

In professional football, a fan is considered to be aware 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.\textsuperscript{47}

Alcohol consumption is also an area of concern for venue owners. In order to protect players and coaches from fans running onto the field during a game, some teams employ security guards armed with Tasers.\textsuperscript{48} The concern does not end with the game’s final score. Approximately 10 per cent of fans leave a sporting event intoxicated.\textsuperscript{49} 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.\textsuperscript{50} 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.\textsuperscript{51}

\textbf{IV COMMERCIALISATION OF SPORT EVENTS}

Athletes are celebrities. The general public admires their fame and fortune.\textsuperscript{52} 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.\textsuperscript{53} This rise in celebrity status has allowed

\begin{thebibliography}{9}
\bibitem{44} Sciarrotta \textit{v.} Global Spectrum, 944 A.2d 630, 641 (N.J. 2008).
\bibitem{47} Cledonia, supra note 43, at 131.
\bibitem{50} Id.
\bibitem{52} James T. Gray, \textit{Sports Law Practice} § 7.01 (Matthew Bender, 3rd ed. 2014).
\bibitem{53} Id.
\end{thebibliography}
professional athletes to increase their earnings off the field.\textsuperscript{54} A 1990 \textit{Sports Magazine} issue estimated US companies spent more than $580 million to have professional athletes promote their products.\textsuperscript{55} During 2014, \textit{Forbes Magazine} estimated that Cristiano Ronaldo, LeBron James, Lionel Messi, Kobe Bryant, Tiger Woods, Roger Federer, Phil Mickelson and Rafael Nadal earned a combined $320 million in endorsement revenues.\textsuperscript{56}

\begin{enumerate}
\item \textbf{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.\textsuperscript{57} 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.\textsuperscript{58} In fact, often, a player's contract will require a certain number of appearances in connection with licensing agreements made by the league.\textsuperscript{59} 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.\textsuperscript{60}

\item \textbf{Contractual provisions for exploitation of rights}

The Federal Trade Commission (FTC) has established guidelines concerning the use of endorsements and testimonials in advertising.\textsuperscript{61} 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, such 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

\textsuperscript{54} Id.
\textsuperscript{55} Id.; Complete, Corporate America's Team, \textit{Sport Magazine}, June 1990, at 80.
\textsuperscript{56} Id.
\textsuperscript{58} Id.
\textsuperscript{59} Id.
\textsuperscript{60} Id.
\textsuperscript{61} Id. at § 7.05.
\textsuperscript{62} Id.
\textsuperscript{63} 16 C.F.R. Ch. I, Subch. B, Pt. 255.1(a).
\textsuperscript{64} 16 C.F.R. Ch. I, Subch. B, Pt. 255.1(b).
\textsuperscript{65} 16 C.F.R. Ch. I, Subch. B, Pt. 255.1(c).
\textsuperscript{67} Id.
by another company. 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.

Although the terms of an endorsement contract are negotiable between the company and the athlete, certain provisions are commonplace. Endorsement agreements should identify with specificity the products or services the athlete will endorse during the term of the contract. 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. Thus, if an athlete is endorsing a certain type of basketball, the endorsed product should not be referred to in terms of a ‘basketball product’ because this term is too broad.

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 because of the profitable benefits of increased revenue and spending the stadiums generate. Aside from the increased revenue, having a stadium allows locals to follow their home team as well as draw people into a city’s downtown area.

2016 saw the opening of the latest professional football stadium, 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 $1.061 billion. The new stadium is widely anticipated to bring revenue to the surrounding area. Super Bowl LII is already scheduled to be played in the new US Bank Stadium in 2018. Many estimate this event alone will bring $400 million to the area. Stadiums often have secondary benefits. Wells Fargo recently relocated 5,000 employees to a new regional headquarters built next to the US Bank Stadium. Apartments, restaurants and shops have also opened up near the

68 Id.
69 Id.
70 Id.
71 Id.
72 Id.
73 Id.
77 Yotter, supra note 80.
stadium, resulting in more than $1 billion worth of additional investments in the area.\footnote{Robert Gray, Here Are 5 Amazing Things About the Minnesota Vikings’ New Stadium, Fortune (27 August 2016 9:00am), \url{http://fortune.com/2016/08/27/nfl-minnesota-vikings-stadium/}.} Furthermore, the 2019 NCAA Final Four is scheduled to be held at the US Bank Stadium, bringing in an estimated $200 million alone.\footnote{Yotter, \textit{supra} note 80.}

Along with the new stadium, the Minnesota Vikings also recently received formal approval from a neighbouring city for a new headquarters and training facility. The complex is to make an expanding use of a 40-acre parcel of land and be complete by the spring of 2018. The facility is expected to cost $500 million, all of which will be privately funded.\footnote{William Bornhoft, Vikings release Video of Progress on New Facility in Eagan, Egan Patch (14 October 2016, 6:22pm), \url{http://patch.com/minnesota/egon/vikings-release-video-progress-new-facility-egon}.}

There is currently a trend of building high-profile training facilities. The Dallas Cowboys recently opened their new training facility in mid-2016, naming it The Ford Center at The Star.\footnote{Gil Brandt, The Star is Born: Cowboys’ New $1.5B Facility Lives Up to Hype, NFL: The Brand Report (11 October 2016, 1:48pm), \url{www.nfl.com/news/story/0ap3000000719290/article/the-star-is-born-cowboys-new-15b-facility-lives-up-to-hype}.} The Star is located 25 miles north of Dallas in Frisco, Texas, and will serve 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 up-scale hotel, a sports medicine facility and a fitness centre.\footnote{Jean-Jacques Taylor, How Jerry Jones is Changing Game with Cowboys’ New Training Facility, ESPN (3 March 2016), \url{www.espn.com/nfl/story/_/id/14878969/how-jerry-jones-dallas-cowboys-changing-game-new-training-facility}.}

The Green Bay Packers have begun construction on what is to be known as Title Town District, a 34-acre complex adjacent to Lambeau Field, home to the NFL team. The Title Town District will provide a large park dedicated to fitness-related activities, cultural happenings and game-day celebrations. The complex will also provide an up-scale hotel, a restaurant, town homes and a sports medicine clinic.\footnote{Todd Bragstad, See the Construction Progress on the Title District Near Lambeau Field: Slide Show, \textit{Milwaukee Business Journal} (3 May 2016, 6:00am), \url{www.bizjournals.com/milwaukee/news/2016/05/03/see-the-construction-progress-on-the-titletown.html}.}

The NBA’s Minnesota Timberwolves and the Minnesota Lynx of the Women’s National Basketball Association (WNBA) recently opened a new practice facility and corporate headquarters at the 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 due to its repurposing of an existing urban structure into a full-sized arena. Before it was a training facility the real estate housed a movie theatre.\footnote{Grand Opening Held Today for Timberwolves and Lynx Courts at Mayo Clinic Square, NBA.Com, \url{www.nba.com/timberwolves/grand-opening-held-today-timberwolves-and-lynx-courts-mayo-clinic-square} (last visited 27 October 2016).} Today, it provides a training area complete with two basketball
The Minnesota Lynx are now the first WNBA team to have their own court and training area. Finance & Commerce declared the facility as one of the Top Projects of 2015.

VI PROFESSIONAL SPORTS AND LABOUR LAW

The SPC is an outgrowth of the respective league’s CBA. The SPC is written by the individual team the player is signing with; as such, any ambiguity is interpreted against the team. The SPC specifies the player’s obligations, including his or her performance outside of the sport, and explains the employer or team’s control over the player. The SPC provides for penalties in cases of prohibited conduct. In addressing the penalties, the SPC explains all of the elements of a given infraction. 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.

i Mandatory provisions

Generally speaking, players have very little control over non-monetary terms of their contract. The exception to the rule is a player like LeBron James who has an exceptional talent or skill so rare that accommodating the player’s stipulations is still a bargain. This sort of clout allows a player to negotiate several provisions of his or her contract. An average professional player still might be able to negotiate some parts of his or her contract. 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.

86 Id.
89 John O. Spengler, et al., Introduction to Sport Law 111 (Myles Schrag et al. eds., 2009).
91 Id.
92 Id. at § 16:3.
93 Id.
94 Id.
95 Id.
96 Id.
97 Id.
98 Id. at § 16:2.
99 Id.
The SPC also incorporates collateral agreements.\(^{100}\) For example, an SPC will contain a clause incorporating the league’s constitution and by-laws.\(^{101}\) This means that when a player signs the 10-page SPC he or she is also binding him or herself to the 300 pages of other material usually from the league’s CBA.\(^{102}\) Better known collateral agreements include the signing bonus and the no-cut clause.\(^{103}\) The signing bonus is payment simply for signing 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 obligated 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.\(^ {104}\) They typically protect a player from being terminated due 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.\(^ {105}\)

ii Free movement of athletes

It is possible for a player 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.\(^ {106}\) In baseball, a player with five years on one team and 10 years of experience can veto a proposed trade.\(^ {107}\) A player might want a no-trade clause if he or she has substantial business ties with the location of the signing team.\(^ {108}\)

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: (1) the Sherman Act; (2) the Clayton Act; (3) the Norris-LaGuardia Act; and (4) the National Labor Relations Act (NLRA). Each is noteworthy.

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’.\(^ {109}\) *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

\(^{100}\) Id. at § 16:4.
\(^{101}\) Id.
\(^{102}\) Id.
\(^{103}\) Id.
\(^{104}\) Id.
\(^{105}\) Id.
\(^{106}\) Id.
\(^{107}\) Id.
\(^{108}\) Id.
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 further examine it under the rule of reason.\textsuperscript{110}

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 is known as the ‘statutory labor exemption’.\textsuperscript{111} The statutory labour exemption allows labour unions to enter into agreements between themselves, which might result in the elimination of competition from other unions, essentially allowing for monopolies by unions.\textsuperscript{112}

The Norris-LaGuardia Act allows employees to bargain as a collective unit, this is referred to as a CBA. Bargaining collectively allows an employer to negotiate a contract that is binding on all parties within the collective unit. The Act, along with §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.\textsuperscript{113}

The NRLA 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 does not require either party to concede on a point, or agree to a certain proposal, in the name of coming to an agreement.\textsuperscript{114} Under the NRLA, 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 period 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 bargaining agreement cannot be reached.\textsuperscript{115}

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.\textsuperscript{116}

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 became a free agent and could be signed by a different team than the one he was previously on.\textsuperscript{117} If a player did switch teams, the new team was required to compensate the old team

\textsuperscript{110} Id. at 222.
\textsuperscript{111} Id. at 220.
\textsuperscript{114} Id.
\textsuperscript{115} Id. at 223.
\textsuperscript{116} See *Mackey v. NFL*, 543 F.2d 606 (8th Cir. 1976).
\textsuperscript{117} Id. at 610-611.
for its loss.\textsuperscript{118} Compensation was determined by the Commissioner and was in the form of money, additional players and future draft picks.\textsuperscript{119} In 1976, a court determined the Rozelle Rule restricted players’ movement between teams, thereby constricting salaries. Therefore, the court held that 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.

Conversely, in \textit{Wood v. NBA}, the court examined a salary cap limiting the amount a team can pay its players.\textsuperscript{120} Although the cap hampered a player’s ability to maximise his 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.\textsuperscript{121} The cap only affected the parties to the CBA, it involved mandatory subjects of the CBA, and was the result of good faith negotiations.\textsuperscript{122}

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.\textsuperscript{123} 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.\textsuperscript{124} League management can block a team’s attempt to relocate to a more lucrative city. There are several examples of states’ attorney generals being blocked from even investigating antitrust activity by the MLB or team owners owing to this immunity from antitrust laws.\textsuperscript{125}

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 college athletes for using their image or likeness were subject to antitrust laws.\textsuperscript{126} The case began when Ed O’Bannon, who played basketball at UCLA from 1991–1995, noticed his image was being used in a video game.\textsuperscript{127} His original claim argued student athletes should be paid for the use of their likeness by the NCAA upon graduation from college. The NCAA responded by arguing that paying a student athlete would contradict the amateur nature of college sports. The Court ruled that the NCAA is a business and requiring student athletes to sign over

\begin{itemize}
  \item \textsuperscript{118} \textit{Id.} at 611.
  \item \textsuperscript{119} \textit{Id.}
  \item \textsuperscript{120} See \textit{Wood v. NBA}, 602 F.Supp. 525 (S.D.N.Y. 1984).
  \item \textsuperscript{121} \textit{Id.}
  \item \textsuperscript{122} \textit{Id.}
  \item \textsuperscript{124} David Greenberg, Baseball’s Con Game, Slate (19 July 2002, 10:36am), www.slate.com/articles/news_and_politics/history_lesson/2002/07/baseballs_con_game.html.
  \item \textsuperscript{125} \textit{Minnesota Twins Partnership v. State ex rel. Hatch}, 592 N.W.2d 847 (Minn. 1999); \textit{Major League Baseball v. Butterworth}, 181 F. Supp. 2d 1316 (N.D.Fla. 2001).
  \item \textsuperscript{126} See \textit{O’Bannon v. NCAA}, 802 F.3d 1049 (9th Cir. 2015).
  \item \textsuperscript{127} Eden Laase, O’Bannon vs. NCAA Results Explored, \textit{The Gonzaga Bulletin} (26 October 2016), www.gonzagabulletin.com/sports/article_2bcaddc9-bd7-11e6-b3dd-e7ca37a83d69.html.
\end{itemize}
rights to their likeness in order to be eligible to play violated antitrust laws. As a result, students no longer have to sign away the rights to their likeness in order 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.

VIII SPORTS AND TAXATION

In the United States one of the most fundamental aspects of taxation is determining a person’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. 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.

In the United States, state tax rates vary from state to state. The majority of states use a bracket system to determine a player’s income tax. In California, for example, a person who earns over $1 million per year is taxed at a rate of 13.3 per cent, whereas a person who earns less than $17,500 is taxed at 2 per cent. Colorado, Illinois, Indiana, Massachusetts, Michigan, Pennsylvania and Utah apply a flat tax rate, meaning that every individual, regardless of income, is taxed at the same percentage. In contrast, Texas, Alaska, Florida, Nevada, South Dakota, Washington and Wyoming do not have any individual income tax. State taxes are generally deductible on federal income tax returns. 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.

128 Laase, supra note 132.
133 Id.
134 Id.
136 Pogroszewski, supra note 135, at 414.
Generally, the US government uses a bracket system similar to that of many states like California. Similar to state taxes, US tax law allows the taxation of a US citizen regardless of where they live in the world. 

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 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 off season 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 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 Agency. However, unlike the NFL and MLB, the NHL does not perform tests during the offseason, 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 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.

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.

145 Lipscomb, supra note 145, at 311.
149 Id. at 217.
151 Goodfellow, supra note 150, at 21.
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.\(^\text{152}\)

### 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 FBI for possibly hacking a database owned by the Houston Astros.\(^\text{153}\) The Astros had reported cyber security 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.\(^\text{154}\)

### iv Grey markets 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.\(^\text{155}\) Other states have laws against reselling tickets but a closer examination of the law shows that the prohibitions are very nuanced. For instance, in Arizona reselling tickets is only illegal within 200 feet of the venue.\(^\text{156}\) Other states, such as Georgia, New Jersey and New York, require a licence to sell or resell tickets.\(^\text{157}\)

Regardless of the state jurisdiction, anti-scalping legislation is directed at the seller of the tickets and not the buyer. Patrons who buy tickets should be alerted to the fact that the tickets themselves might be forgeries. It is not uncommon for scalpers to sell tickets to seats that don’t even exist in a given venue.\(^\text{158}\) Patrons who 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.\(^\text{159}\)

---

\(^{152}\) Id.


\(^{154}\) Id.


\(^{157}\) Id.

\(^{158}\) Id.

\(^{159}\) Christine Paluf, Streisand Tickets Cancelled Due to Credit Card Fraud, Ticket News (29 August 2006), www.ticketnews.com/streisand-tickets-cancelled-due-to-credit-card-fraud/.
THE YEAR IN REVIEW

Concussion suits

More than 4,500 former NFL players sued the NFL (beginning in 2011) alleging the league concealed the long-term dangers of concussions. Before the start of the 2013 season, a settlement was reached providing any former NFL player showing symptoms consistent with long-term damage caused by concussion would be eligible for awards up to $5 million. The presiding US District Judge Anita B Brody would not approve the settlement. Her concern was over the amount of money, $765 million, not being enough to cover all the possible claims. Eventually a settlement was reached in April of 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 can only be diagnosed 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. It is estimated the uncapped deal will provide more than $1 billion to a class of over 20,000 retired players.

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.

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 receive compensation.


161 Id.


165 Id.


167 Id.
injuries to sue their colleges.\textsuperscript{168} The previous $75 million settlement raised concerns it might do away with otherwise-valid injury claims. The new agreement would allow students to sue their school directly, but only on behalf of fellow players in a given sport.\textsuperscript{169}

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.\textsuperscript{170} The suit alleges the NHL hid the harmful effects of head injuries.

\textbf{ii Media rights}

In 2016, Disney and Time Warner signed extensions of their 2014 rights to televise NBA games.\textsuperscript{171} Under the new nine-year contract Disney outlets (ABC and ESPN) will pay up to $1.4 billion for the rights to show 100 games a season, more than double what the company was paying under the previous contract.\textsuperscript{172} Time Warner, who will be playing 64 NBA games a season, will pay up to $885 million, which is over a 90 per cent increase. These increases in contract price make NBA games the most expensive in regard to per-viewer costs.

\textbf{iii Premier League soccer}

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 $1 billion and provided NBC with the rights to broadcast 380 live matches every year.\textsuperscript{173} Although the network admitted the deal itself is not profitable, the NBC Sports Network stated it adds to its profitability overall.\textsuperscript{174}

\textbf{iv Daily Fantasy Sports}

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. In

\begin{footnotesize}
\begin{itemize}
\item[169] \textit{Id}.
\item[172] \textit{Id}.
\end{itemize}
\end{footnotesize}
May 2016, the Wild filed a suit alleging breach of contract and unjust enrichment, seeking $1.1 million, plus 1.5 per cent interest per month, along with $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. Although a piece of state legislation aimed directly at DFS gaming did not pass earlier this year, it is not clear that the state of Minnesota considers the practice illegal. Federal regulation leaves such a determination up to the states. Currently Minnesota has not rendered an opinion on the topic. Still, Emil contends that to enforce the contract would mean DraftOps would have to operate illegally.

XI OUTLOOK AND CONCLUSIONS

i Concussions
The NFL is approximately a $12 billion-a-year industry. Fallout from concussion litigation will continue to impact the NFL decisions going forward. One issue on the horizon is related to insurance policies. The known risks related to concussions threaten how players will be able to protect themselves in the future. Haruki Nakamura, a five-season veteran of the NFL, filed a lawsuit in July 2016 after Lloyd’s of London denied his attempt to collect on a $1 million policy. According to the complaint, Nakamura received a career-ending concussion in 2013. Medical specialists have since determined that Nakamura is permanently disabled. According to the claim, the insurance company has called into question whether his injuries are concussion-related. The resolution of this case could have serious implications for how players can protect themselves in the future.

NFL Commissioner Roger Goodell has stated that making the game safer is the NFL’s number one priority. In an open letter, Goodell outlined the NFL’s new initiative ‘Play Smart, Play Safe,’ which is composed of several new steps the League intends to take to

179 Id.
180 Id.
address concussion related injuries and their long-term effects. The initiatives include an additional $100 million for medical research, engineering advancements and the creation of an independent, scientific advisory board to advise and steer scientific research regarding concussions. Furthermore, in the next League labour negotiation, Goodell intends to address what the League can do to better serve retired players.

Soccer
Globally, soccer is considered to be a $28 billion-a-year industry. It is estimated the Premier League alone contributes $4.14 billion to the United Kingdom's GDP. The top 10 soccer clubs in the world earned $2.07 billion in commercial revenue (this includes sponsorships, merchandising and other commercial operations) during the 2013/2014 season. NBC Sports Network's purchase of the Premier broadcasting rights is a significant sign of what is to come for soccer in the United States. In 2014, Major League Soccer (MLS) sold its 2015 media rights package for $90 million per year for seven years. That is over three times what the media rights were sold for the previous year. In September 2015, some 36,000 fans attended the US Women's Soccer v Haiti match in Birmingham, Alabama. The Greater Birmingham Convention and Visitors Bureau estimated the economic impact of that single game was $10 million. Soccer's popularity is rising in the United States. In 2015, the average MLS team was worth $157 million, up 52 per cent from 2013 estimates. In 2013, the MLS averaged 18,600 attending fans per match; in 2015 that number increased to 21,100 fans per game. Those numbers put MLS attendance ahead of both the NBA and the NHL.

189 Id.
190 Id.
Appendix 1

ABOUT THE AUTHORS

GERARDO LUIS ACOSTA PÉREZ
P&A Grupo Consultor
Lawyer (National University of Asunción – Paraguay) – Master’s in Law, Economic and Management of Sports (University of Limoges – France) – Master’s in Sport Law (University of Lleida – Spain) – Executive Master’s in Management of Sports Organisations – MEMOS (University of Lovain – Belgium) – Professor in Sport Law (National University of Asunción – Paraguay) – Director Master’s in Management of Sport (National East University – Paraguay) – Arbitrator in CAS List.

STEVEN BAINBRIDGE
Al Tamimi & Company
Steven Bainbridge has experience advising on a wide array of transactions underpinning the sports sector from sponsorship deals to athlete endorsement agreements; anti-ambush marketing strategies; player contracts; broadcasting agreements; merchandising and licensing agreements; disciplinary issues; and varied sports-specific venue management arrangements.

Mr Bainbridge heads the region’s first dedicated sports law practice, which has grown rapidly with key advisory roles representing numerous foreign law firms, individuals, corporate entities, governing bodies and institutions on matters spanning motorsports, horseracing, triathlons, MMA, cycling, golf, tennis, cricket and football across Al Tamimi’s 17 offices in nine countries.

Called to the bar in Canada and an attorney in New York, Mr Bainbridge also spent a number of years at one of the largest law firms in Tokyo representing clients advising on broadcast rights and entertainment contracts in connection with events including FIFA World Cups and X-Games, PGA tour sponsorships, video game licensing, stadium naming rights and athlete endorsement deals.

An adjunct professor at St John’s University’s LLM in International Sports Law and an editorial board member to Law In Sport, Mr Bainbridge frequently presents at conferences and seminars and is a regular contributor to radio, television, print and online media in respect of sports law issues.
AUDE BENICHOU  
*Joffe & Associés*

Aude Benichou is an associate in the sports and business law department of Joffe & Associés. With a wealth of international experience, she spent several years working in South America (Argentina) before joining Joffe & Associés. Aude is specialised in business law.

ADOLPHO JULIO CAMARGO DE CARVALHO  
*Pinheiro Neto Advogados*

Adolpho Julio C de Carvalho has been a partner at Pinheiro Neto Advogados since 2005, where he has worked since 1993. He has a diverse practice, advising clients on project financing, aviation and maritime law, mergers and acquisitions, sports and related projects.

Mr Carvalho holds a bachelor's degree in law from the Pontifical Catholic University of São Paulo (1995) and a specialisation degree in international business law (LLM) from the London School of Economics and Political Science (1999) with a dissertation on the sociology of law. During the next two years, he acted as a foreign associate at Allen & Overy, also located in London.

He has written several articles for national and international books and magazines. He is consistently ranked as a leading lawyer by specialised publications worldwide.

Mr Carvalho was president of the Aviation Committee of the Brazilian Bar Association, São Paulo Chapter (OAB/SP) in 2012, and chair of the International Relations Committee of the British Chamber of Commerce and Industry in Brazil in 2010.

In 2008, he received the AirFinance Latin America Deal of the Year Award for a financing operation in which TAM Linhas Aéreas acquired 32 Boeing 777 aircraft.

In 2015, Mr Carvalho was awarded with the AirFinance Latin America Deal of the Year for the structuring of an enhanced equipment trust certificate operation in which LATAM financed more than 10 aircraft that will operate in Brazil.

He is fluent in Portuguese, English and German.

SUNIT CHHABRA  
*Allen & Gledhill LLP*

Sunit heads the tax practice at Allen & Gledhill LLP. He specialises in tax and revenue law. Sunit advises extensively on income tax, stamp duty and GST matters, including tax implications in relation to mergers and acquisitions, corporate restructurings, capital markets transactions and funds. He also represents clients in settlement of disputes with the Singapore tax authorities and in tax hearings before the courts.

He has been recognised as a leading tax practitioner in Singapore by *Chambers Asia-Pacific* and ranked in Band 1 since 2010.

Sunit is a chartered accountant of Singapore and a member of the Institute of Singapore Chartered Accountants and Association of Chartered Certified Accountants (ACCA).

Sunit graduated from the University of London with an LLB (Hons) degree in 1995 and obtained an LLM degree from the University of London in 1999. He is called to the English Bar and Singapore Bar.

SVEN DEMEULEMEESTER  
*Altius*

Sven Demeulemeester is a partner in Altius’ employment and sports law department. *The Legal 500* describes Mr Demeulemeester’s approach as ‘the perfect balance between legal
insight and business acumen. He heads Altius’ sports law practice, advising players, clubs and
governing bodies on contentious and day-to-day matters in the sports industry. He is also a
member of the International Association of Football Lawyers.

PIA EK
Castrén & Snellman Attorneys Ltd
Pia Ek’s fields of expertise include IT, outsourcing, IP, licensing and e-commerce, as well
as sports, media and entertainment. Ms Ek is one of the few sports law experts in Finland,
and has been involved in numerous assignments involving national sports federations and
organisations, top-level sports clubs, broadcasting and media companies and sponsors, such
as advising the Finnish Olympic Committee on a continuous basis. She has been a member
of the Finnish Sports Arbitration Board for several years and has served as member of the
board of the Finnish anti-doping agency, FINADA. Ms Ek frequently lectures on IT, IP and
sports law to both academic and commercial audiences.

International publications such as Chambers Global, Chambers Europe, The Legal
500 and Best Lawyers rank Ms Ek among the leading legal experts in Finland in her fields.

JON ELLIS
Charles Russell Speechlys LLP
Jon Ellis is a commercial litigator, with a particular specialism in sports law.

He is joint head of Charles Russell Speechlys’ sports sector group. He acts for sports
governing bodies, teams, broadcasters and individuals in High Court litigation, arbitration
proceedings (including before the Court of Arbitration for Sport), regulatory matters and
disciplinary cases.

He has acted for the Football Association (FA) for more than 10 years. He also acts
for Chelsea FC and has considerable experience in representing European football clubs in
proceedings before UEFA’s disciplinary bodies.

Away from football, his recent experience includes acting for the Welsh Rugby Union
in High Court proceedings, the Indian cricket team in disciplinary proceedings, Nike on
contentious matters, Premiership Rugby in relation to the operation of its salary cap and the
tennis governing bodies (the ITF, ATP, WTA and Grand Slams) in relation to an independent
review of integrity in tennis.

He is ranked as a leading individual by Chambers and Partners, The Legal 500 and
Who’s Who Legal, and has twice been listed by SportBusiness as one of the top 20 influential
lawyers working within the sports sector.

He lectures on the BASL/DMU postgraduate certificate in sports law, is a co-editor of
World Sports Law Report and is a contributor to Sport: Law and Practice.

His is admitted to practise in England and Wales.

LAILA EL SHENTENAWI
Al Tamimi & Company
Laila El Shentenawi is a qualified lawyer in Egypt and a senior associate in Al Tamimi &
Company’s arbitration and dispute resolution team. Laila’s practice focuses on international
commercial arbitration, investment arbitration, mediation and sports dispute resolution.
Her clients include governments, regional organisations, international organisations,
multinational companies, banks, investors, international athletes and sports bodies.

Laila worked with different arbitration rules including the ADCCAC, CRCICA,
DIAC, DIFC-LCIA, ICC, ICSID, LCIA, LMAA and the UNCITRAL. Laila is a CEDR
accredited mediator; she is a listed mediator with the CRCICA as well as the Investors Dispute Resolution Center affiliated to the General Authority for Investment and Free Zones in Egypt (GAFI). She trains on mediation and negotiation with the CEDR Faculty and she teaches arbitration with different graduate programmes. She also holds several positions including; member of the ICC Arab Arbitration Group, Middle East and Africa Representative for the IBA Mediation Committee, UAE Representative for the IBA Arbitration Subcommittee on the Recognition and Enforcement of Awards; and co-chair for the IBA Mediation Subcommittee for Young Mediators.

Laila studied at the Cairo University, Egypt, Bucerius Law School and Otto Beisheim School of Management, Germany, and Queen Mary University of London, UK.

ALEXANDER ENGELHARD
Martens Rechtsanwälte
Alexander Engelhard, MA, is a dispute resolution and commercial lawyer with a focus on advising clients on contentious and non-contentious issues in sport. He regularly represents clients before judicial bodies of sport associations, the Court of Arbitration for Sport as well as state courts. In addition to acting as legal counsel and ad hoc clerk in national and international arbitration proceedings, he advises clients on the drafting of rules and contracts, particularly those falling within the scope of copyright law and media law.

Before joining Martens Lawyers in 2013, Mr Engelhard was a trainee in the dispute resolution department of Freshfields Bruckhaus Deringer in Frankfurt and worked for the German Federal Foreign Office in Berlin. He holds a legal degree from the University of Heidelberg and a diploma in German and international arbitration from the University of Frankfurt. After qualifying as a lawyer, he obtained a joint MA degree in sports management from universities in England, Italy and Switzerland. He is a member of various arbitration and sports-related organisations.

RENÉ FISCHER
Niederer Kraft & Frey Ltd
René Fischer is a senior associate at Niederer Kraft & Frey Ltd, Zurich, Switzerland. His main areas of practice include corporate and commercial law, mergers and acquisitions as well as pension law.

Mr Fischer regularly advises corporations and other entities of different sizes active in various industries on a broad range of matters of corporate and commercial law as well as mergers and acquisitions (including corporate restructurings). He also acts as a consultant on various matters relating to sports law.

MARIA LAURA GUARDAMAGNA
Guardamagna e Associati
Maria Laura Guardamagna is a partner of Studio Guardamagna e associati. She is a lawyer qualified both in Italy and Luxembourg, and obtained an LLM degree from the University of Pennsylvania.

Maria Laura is a member of the UCI Disciplinary Commission.

She deals with international issues related to sports, corporate and copyright law. She represents athletes and sports organisations in disciplinary doping and civil matters. Maria Laura speaks Italian, English and French.
ANDRÁS GUROVITS

_Niederer Kraft & Frey Ltd_

Dr András Gurovits is a partner at Niederer Kraft & Frey Ltd, Zurich, Switzerland. His main areas of practice are arbitration and litigation, sports, TMT and corporate governance.

He is a listed arbitrator with the Court of Arbitration for Sport (CAS) in Lausanne, a member of the legal committee of the International Ice Hockey Federation and a member of the board of directors of the Neue Grasshopper Fussball AG, the corporation operating the professional football activities of the Swiss multisport club Grasshopper Club Zurich.

Dr Gurovits regularly advises clients in civil and commercial disputes before state courts and arbitral tribunals, as well as in administrative proceedings before the relevant state authorities. Further, he regularly acts as sole arbitrator, member of a panel or chairman in arbitration proceedings before the CAS. His corporate governance experience includes, in particular, the planning and implementation of organisational regulations, codes of conduct and similar instruments to ensure the proper conduct of commercial entities, sports governing bodies and sports organisations. His sports practice covers all aspects of sports-related issues, such as commercialisation of sports rights, organisation of sports events and management of sports organisations.

LARS HILLIGER

_Advice Law Firm_

Lars Hilliger is an attorney-at-law and, in 2010, was a co-founder of Advice Law Firm in Copenhagen. Since his appointment in 2005, Mr Hilliger has served as an arbitrator at the Court of Arbitration for Sport in close to 100 arbitrations. He is also a member of the FIBA Appeals Panel and chairman of the Appeals Panel for the Danish FA Club Licensing System. As a legal practitioner, he advises clubs, athletes and national federations on sports law, in addition to providing advice to businesses on M&A, business law, intellectual property law and employment law.

KEES JAN KUILWIJK

_AKD_

Kees Jan Kuijlwijk is counsel at AKD. He focuses his practice on EU competition matters across a wide variety of industries and business sectors, including air and maritime transport, broadcasting, consumer goods, internet and e-commerce, film, TV, music and media, oil and gas, telecoms and technology, and professional sports.

Kees Jan has over 20 years’ experience in competition law, including advising on European Commission investigations in cartel and abuse of dominance cases, merger filings, and all aspects of competition litigation. A significant element of his practice relates to complex cases that involve the interface of intellectual property and antitrust.

In addition, Kees Jan has extensive experience counselling clients under antitrust law on a broad variety of commercial agreements including R&D and production joint ventures, sales joint ventures, information exchange systems, various forms of horizontal cooperation, trademark, patent, know-how and copyright licensing, exclusive and selective distribution agreements, online platforms, franchising and other vertical agreements.

Kees Jan holds a first degree in business law from Leyden University and a PhD in European Law (with distinction) from the European University Institute in Florence. He also studied in Germany (Tübingen and the Max-Planck Institute in Heidelberg) and the United States (Harvard). During his career, he worked for several UK law firms and an American firm.
AARON LLOYD

*Minter Ellison Rudd Watts*

Aaron Lloyd assists clients with problem-solving and risk management in a range of areas, including sports law, employment law, and criminal and white-collar defence and advisory work. His principal focus is on litigation avoidance, and strategic and risk management advice, although he continues to represent clients before all of New Zealand’s courts, including the High Court, the Court of Appeal and the Employment Court. His work in the sports industry includes representing athletes and sports organisations on disputes, disciplinary matters, and in relation to anti-doping and other integrity matters.

Mr Lloyd acts as judicial officer in a range of sports, including basketball, netball and Rugby League. He has appeared as counsel at over 30 rugby judicial hearings, including at iRB/World Rugby and SANZAAR competitions. He is ranked by *Who’s Who Legal* as one of the world’s leading sports lawyers, and has worked with a number of elite-level athletes and organisations including the Volvo Ocean Race, the Argentinian, South African, Welsh and Italian rugby teams, board-sailor JP Tobin, rugby players and officials Ma’a Nonu, Jean de Villiers, Bakkies Botha, Sergio Parisse, Sir Graham Henry, Sir John Kirwan, John Mitchell, Daniel Carter, Jerome Kaino and James Haskell, the Australian Grand-Prix Corporation and the AUT Millennium Institute (New Zealand’s National High Performance Training Centre).

JORDI LÓPEZ BATET

*Pintó Ruiz & Del Valle*

Jordi López Batet, lawyer, was admitted to the Barcelona Bar Association in 1999. He has been a partner at the Spanish law firm Pintó Ruiz & Del Valle since 2008, and managing partner of the firm since 2015. He is focused on advising national and international clients of the corporate and sports law department of the firm, including athletes, clubs, leagues, federations and other sports institutions. He is an arbitrator at Tribunal Arbitral de Barcelona and Tribunal Arbitral del Fútbol. Until 2012, he acted as ad hoc clerk for the Court of Arbitration for Sport (CAS) in Lausanne. He is also a member of the Licences Committee of the Spanish Football League, and acts as a professor on several courses and master’s courses related to sports law.

IAN LYNAM

*Charles Russell Speechlys LLP*

Ian is a non-contentious sports lawyer and joint head of the sport group at Charles Russell Speechlys.

He has expertise in a wide range of areas including sponsorship agreements, financial regulation of sport (including salary caps and financial fair play), mergers and acquisitions in sport, financing, governance, rules and regulations, transfers, player contracts and image rights.

He advises many high-profile footballers including Raheem Sterling, Cesc Fabregas, Thierry Henry, Riyad Mahrez, Ilkay Gundogan, Asmir Begovic, Alex Song, Gael Clichy, Alex Oxlade Chamberlain, Reece Oxford and Emmanuel Adebayor. Other clients he advises include Premiership rugby, Paddy Power Betfair, Nike, Everton FC, Middlesbrough FC, IMG and the WRU.

He is ranked as a leading individual in sports law by *Chambers* and *The Legal 500* and as one of the nine ‘Most Highly Regarded Individuals’ for sports law globally by Who’s Who Legal.
He regularly contributes to legal journals on sports law issues and writes an intermittent column for *The Guardian*. He regularly speaks at conferences and lectures on the BASL/DMU postgraduate certificate in sports law and University College Dublin's master's in sports management. He is also a contributor to the leading sports law text *Sport: Law and Practice and The Negotiator's Desk Reference*.

He is admitted to practise in England and Wales, Ireland and New York.

**HILMA-KAROLIINA MARKKANEN**  
*Castrén & Snellman Attorneys Ltd*

Hilma-Karoliina Markkanen specialises in intellectual property law and advises clients in various industrial property rights and copyright-related matters. Her main practice areas also include consumer protection, sports, advertising law, technology and life sciences. Miss Markkanen is a frequent lecturer on IP and marketing law topics in Finland.

**DIRK-REINER MARTENS**  
*Martens Rechtsanwälte*

Dr Dirk-Reiner Martens is the principal of Martens Rechtsanwälte, which he founded in 2009. Before that, he was a partner of a major international commercial law firm for over 35 years.

His special interest is national and international arbitration: since 2000, he has acted in more than 180 proceedings relating to commercial law or sports law, either as a party-appointed arbitrator or president of the tribunal.

In 2007, he established the Basketball Arbitral Tribunal (BAT), a means of speedy and cost-effective dispute resolution between professional players, agents and clubs. Since the BAT was set up, more than 900 cases have been brought before it. The BAT is administered by Martens Rechtsanwälte. Building on the BAT success story, in 2015 Dr Martens launched the Court of Innovative Arbitration (COIA), which applies some of the key features of the BAT to commercial arbitration.

**IVOR MCGETTIGAN**  
*Al Tamimi & Company*

Ivor McGettigan is a partner in the employment practice and a key member of Al Tamimi’s dedicated sports law practice. He is a highly experienced employment lawyer with more than 17 years of professional experience, having also acted for sports federations, clubs and teams in a range of cases.

He has advised employers on all aspects of the employment relationship, including contracts of employment, drafting of policies, disciplinary proceedings and termination agreements.

Mr McGettigan regularly speaks and presents on employment law matters. He has also spoken on radio and TV on employment issues and contributed to many employment law publications.

**JAMES MINOR**  
*Cozen O’Connor*

James Minor is an associate at Cozen O’Connor.
KARL OLE MÖLLER

Advokatfirman Nordia

Karl Ole Möller is a partner and head of the sport sector at Nordia. He has vast expertise in a wide range of areas within the sport sector, including dispute resolution, sponsorship agreements, mergers and acquisitions in sport, governance, rules and regulations, transfers, player contracts and image rights. His recent experience includes acting for former world 1,500m champion Abeba Aregawi in her doping proceedings. He also advises numerous other Swedish high-profile athletes within ice hockey, football, tennis and golf, including Daniel Sedin and Henrik Sedin (Vancouver Canucks of NHL), Edwin Hedberg (KHL Zagreb of KHL) and former hockey player Mats Sundin (Toronto Maple Leafs of NHL). Other clients he regularly advises include IMG, CAA Sports, International Stadia Group and sport governing bodies, including the Swedish Athletics’ Association and the Swedish National Team of Athletics.

He contributes to legal journals on sports law issues and writes columns for the Swedish sports business sector. He regularly speaks at conferences and appears in the main stream media as a sports law expert.

He is admitted to practise in Sweden.

PABLO A PALAZZI

Allende & Brea

Pablo Palazzi obtained his degree at the School of Law of Universidad Católica Argentina. In May 2000 he obtained a master’s in Law (LLM) from Fordham Law School in NYC with a focus on IP and IT matters. Mr Palazzi is admitted to practise law in Argentina and in NYC. He has provided clients advice on matters related to intellectual property and internet law including data protection. His clients include internet companies, social networks, online payment systems, hardware and software manufacturers and online retail companies. He has broad experience in trademark and patent prosecution, intellectual property litigation, domain name dispute resolution and also in national and transnational e-discovery. Mr Palazzi has written several books and articles on his expertise for local and foreign publications. He is a member of AMCHAM, MARQUES, INTA and the IPC and also a WIPO panellist.

BEN REES

Charles Russell Speechlys LLP

Ben is an associate in the commercial dispute resolution team at Charles Russell Speechlys. He has a particular focus on the sports sector, working closely with sports governing bodies, teams, broadcasters and other commercial parties in High Court litigation, arbitral proceedings, disciplinary cases and regulatory matters. His recent experience includes acting for the FA in arbitration and disciplinary proceedings, for the Welsh Rugby Union (WRU) in High Court proceedings and for the tennis governing bodies (the ITF, ATP, WTA and Grand Slams) in relation to an independent review of integrity in tennis. He also has considerable experience in advising on regulatory matters, including for the FA, WRU and Premiership Rugby. Ben has spent time on secondment with both the FA and Nike.

MARCO RIZZO JURADO

Allende & Brea

Marco Rizzo Jurado is a senior associate at Allende & Brea’s intellectual property department. He obtained his degree at the Universidad Austral in Buenos Aires and in 2012 he obtained a master’s in intellectual property law at the same university. He joined Allende & Brea
in 2012. Mr Rizzo Jurado has broad experience in trademark prosecution and intellectual property litigation. He has provided advice to local and foreign clients on matters related to intellectual property and internet law, domain names, entertainment, consumers or unfair competition, copyright, trade secrets, regulatory affairs, privacy and data protection. Mr Rizzo Jurado has been cited as a leading practitioner in intellectual property law by, among others, *Chambers and Partners Latin America* and *Managing Intellectual Property* (IP Stars). He is a member of AAAPI, INTA, Marques and Amcham. He is also member of INTA's Internet Subcommittee and Marques’ International Trademark Law and Practice Team. He is professor at the Universidad Austral (Master in Intellectual Property) and at the School of Law of the University of San Andres.

**RAMESH SELVARAJ**  
*Allen & Gledhill LLP*

Ramesh's areas of practice encompass a wide array of corporate and commercial disputes including claims in contract, shareholders’ disputes and claims involving breaches of directors’ duties as well as employment disputes. He has experience handling claims in tort (such as defamation) and in professional negligence.

Ramesh is also active in the field of international arbitration, appearing as a lead counsel in complex infrastructure and commodity related international arbitrations.

Ramesh is recommended by *The Legal 500 Asia Pacific* (2015, 2016) for his expertise in dispute resolution. He is cited in *The Legal 500 Asia Pacific* (2011) as an ‘excellent attorney’ in the field of international arbitration and as one who provides ‘cogent, timely answers’.

Ramesh graduated from the National University of Singapore (NUS) with an LLB (Hons) degree in 2004, having been consistently placed on the Dean’s List. He joined Allen & Gledhill in 2005.

He is a Fellow of the Singapore Institute of Arbitrators. He is also accredited as an associate mediator of the Singapore Mediation Centre.

**PAUL SHAPIRO**  
*Charles Russell Speechlys LLP*

Paul is an associate in the commercial team at Charles Russell Speechlys and is a member of the firm’s sports group. He advises on a wide range of commercial and regulatory matters in the sports industry, with particular experience in sponsorship, merchandising and licensing along with football transfers and image rights structures. He has experience of advising governing bodies, clubs, sponsors and athletes. He lectures on commercialisation of sport on the BASL/De Montfort Law School diploma in sports law and practice and contributes to a range of publications on sports law matters. 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. He is recommended in *The Legal 500* for sports law.

**DAREN SHIAU**  
*Allen & Gledhill LLP*

Daren Shiau, PBM, is head of competition and antitrust at Allen & Gledhill LLP. He is a competition law specialist, and his practice covers antitrust litigation, international cartels, merger control and sectoral competition regimes.
In 2012, Daren was named one of the world’s most talented competition lawyers under the age of 40 by Global Competition Review: 40 Under Forty, and considered in Who’s Who Legal 100 (2013) to be ‘very skilled’ and ‘one of the finest antitrust lawyers in the region’.

Daren has worked in London and Brussels competition practices on European Commission and Office of Fair Trading matters. He presently sits on the Competition Roundtable of the Competition Commission of Singapore (CCS), and has been appointed Singapore’s first non-governmental adviser at the International Competition Network (ICN).

He has also advised parties on the first international cartel investigation by the CCS, and the only abuse of dominance appeal to Singapore’s Competition Appeal Board.

Daren is also a commissioned trainer of the high-level ASEAN Experts Group on Competition (AEGC), and has unparalleled experience in competition law and policy in South-east Asia.

Daren graduated on the Dean’s List of the National University of Singapore, and is District Councillor of the Central Singapore District.

STEVE SILTON
Cozen O’Connor
Steve 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 the firm’s board of directors.

Steve is a frequent author and lecturer and most recently taught a class at the University of Miami Law School entitled ‘Representing a Professional Sports Franchise’. His co-instructors included Danna Haydar, associate general counsel at 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 the Top 20 Law Firms in the Professional Sports Team Industry.

The firm held its third 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, college and university programmes and the major leagues.

LUÍS SOARES DE SOUSA
Cuatrecasas, Gonçalves Pereira
Luís Soares de Sousa has been a partner at Cuatrecasas, Gonçalves Pereira since 2001.

In recent years, he has advised on matters such as incorporating and licensing charter air transport companies, including advising on regulatory law; cross-border leasing transactions; mergers and acquisitions in the transport, construction and entertainment sectors; business restructurings; structuring and developing real estate investments; and project finance.

He has also advised clients on privatisations in the Portuguese-speaking African countries and on public procurement.
He is recommended by several directories, including *Chambers Europe*, for his work in the area of transportation (aviation).

He has been a member of the Portuguese Bar Association since 1985.

He has been a legal adviser of several international companies on privatisation operations in Portuguese-speaking African countries, and of airlines, banks, manufacturers and leasing companies on cross-border leasing transactions; and was a legal adviser of Junta Autónoma das Estradas between 1997 and 1999 on the launching of the shadow tolling system.

He gained his law degree from the Free University, Lisbon, in 1984.

**ROMAIN SOIRON**
*Joffe & Associés*

Romain Soiron is a partner in Joffe & Associés sports law department.

Lecturer in master's degrees of Sports law at the University of Panthéon Sorbonne and University of Aix-Marseille, Romain is widely known for his substantial sports-related work. According to clients quoted by *Chambers Europe 2016*, ‘Romain Soiron receives glowing reviews from clients, who praise his availability and responsiveness. He is recommended for handling media and broadcasting rights as well as contractual agreements.’

**ANTON SOTIR**
*GoldenGate Law Firm*

Anton Sotir is a managing partner at GoldenGate Law Firm. He regularly represents his clients in various international disputes, commercial arbitration and sports law cases. His experience includes handling arbitration proceedings at many institutions, including CAS, FIFA, ICC, LCIA and SCC, and before ad hoc tribunals. Recently his work has centred largely on sports law and sports arbitration, with football issues being the main focus.

He also serves as an arbitrator adjudicating commercial disputes, and acts as Deputy chairman in the Dispute Resolution Chamber of the Football Federation of Ukraine. In addition, he has wide experience in enforcing arbitral awards and foreign court decisions in Ukraine. Besides his private practice, he acts as a consultant at Lombardi Associates, with a special focus on the central and eastern European regions.

As well as holding a bachelor's degree (*summa cum laude*) from the Yaroslav Mudryi National Law University, Anton earned an LLM degree in international commercial arbitration law from Stockholm University, an LLM in international sports law from ISDE, Madrid (from which he graduated top of the class) and obtained a certificate of advanced studies from the University of Cambridge in the field of international sports law.

**THAM KOK LEONG**
*Allen & Gledhill LLP*

Kok Leong is the head of the technology & corporate intellectual property practice group. His practice area centres on technology and intellectual property transactions, agreements and advice. He has substantial experience in advising on, negotiating and drafting a wide range of commercial agreements related to intellectual property and IT, outsourcing, e-commerce, e-banking, telecommunications, contract manufacturing, technology transfer, research and development, merchandising, franchising, licensing, sports, media and publishing, sales and agency and distributorships.

Kok Leong is recognised as a leading lawyer for technology, media and telecommunications in Singapore by leading legal publications such as *Chambers Asia-Pacific*.
and *The Legal 500 Asia Pacific*. *Chambers Asia-Pacific* (2016) notes that peers of Kok Leong ‘credit him as being “very active in this space, especially in the technology sphere”’. *Chambers Asia-Pacific* (2015) mentioned that he ‘is widely acclaimed for his broad involvement in the local TMT market’. *The Legal 500 Asia Pacific* (2014) also noted that he provides ‘careful and detail-oriented legal advice and drafting’.

He also contributed the Singapore chapter of the 2009, 2010 and 2011 editions of *The International Comparative Legal Guide to Telecommunication Laws & Regulations* published by Global Legal Group Ltd.

**YAGO VÁZQUEZ MORAGA**  
*Pintó Ruiz & Del Valle*

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 of 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 (CAS) in Lausanne (Switzerland), assisting the court as ad hoc clerk. He also provides legal advice to clubs and professional athletes, both at a national and international level.
## Appendix 2

### CONTRIBUTING LAW FIRMS’ CONTACT DETAILS

<table>
<thead>
<tr>
<th>ADVICE LAW FIRM</th>
<th>AL TAMIMI &amp; COMPANY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Toldbodgade 57, 1st Floor 1253 Copenhagen, Denmark</td>
<td>Dubai International Financial Centre 6th Floor, Building 4 East, Sheikh Zayed Road, PO Box 9275, Dubai, United Arab Emirates</td>
</tr>
<tr>
<td>Tel: +45 26 25 56 04 Fax: +45 33 23 84 24 <a href="mailto:lh@advicelaw.dk">lh@advicelaw.dk</a></td>
<td>Tel: +971 4 364 1641 Fax: +971 4 364 1777 <a href="mailto:s.bainbridge@tamimi.com">s.bainbridge@tamimi.com</a> <a href="mailto:i.mcgettigan@tamimi.com">i.mcgettigan@tamimi.com</a> <a href="mailto:l.elshentenawi@tamimi.com">l.elshentenawi@tamimi.com</a></td>
</tr>
<tr>
<td><a href="http://www.advicelaw.dk">www.advicelaw.dk</a></td>
<td><a href="http://www.tamimi.com">www.tamimi.com</a></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ADVOKATFIRMAN NORDIA</th>
<th>ALLEN &amp; GLEDSHILL LLP</th>
</tr>
</thead>
<tbody>
<tr>
<td>PO Box 70389, SE-107 24 Stockholm, Sweden</td>
<td>One Marina Boulevard #28-00, Singapore 018989</td>
</tr>
<tr>
<td>Tel: +46 8 563 08 100 Fax: +46 8 563 08 101 <a href="mailto:karlole.moller@nordialaw.com">karlole.moller@nordialaw.com</a></td>
<td>Tel: +65 6890 7188 Fax: +65 6327 3800 <a href="mailto:ramesh.selvaraj@allenandgledhill.com">ramesh.selvaraj@allenandgledhill.com</a> <a href="mailto:tham.kokleong@allenandgledhill.com">tham.kokleong@allenandgledhill.com</a> <a href="mailto:daren.shiau@allenandgledhill.com">daren.shiau@allenandgledhill.com</a> <a href="mailto:sunit.chhabra@allenandgledhill.com">sunit.chhabra@allenandgledhill.com</a></td>
</tr>
<tr>
<td><a href="http://www.nordialaw.com">www.nordialaw.com</a></td>
<td><a href="http://www.allenandgledhill.com">www.allenandgledhill.com</a></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>AKD</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Gustav Mahlerlaan 2970 1081 LA Amsterdam, Netherlands</td>
<td></td>
</tr>
<tr>
<td>Phone: +31 88 253 50 00 Fax: +31 88 253 52 58</td>
<td></td>
</tr>
<tr>
<td><a href="http://www.akd.nl">www.akd.nl</a></td>
<td></td>
</tr>
</tbody>
</table>
ALLENDE & BREA
Maipu 1300, 11th floor
C1006ACT, Buenos Aires
Argentina
Tel: +54 11 4318 9900
Fax: +54 11 4318 9999
pap@allendebrea.com.ar
mrj@allendebrea.com.ar
www.allendebrea.com.ar

COZEN O’CONNOR
33 South 6th Street
Suite 4640
Minneapolis, MN 55402
United States
Tel: +1 612 260 9036
Fax: +1 612 260 9096
ssilton@cozen.com
jminor@cozen.com
www.cozen.com

ALTIUS
Tour & Taxis Building
Havenlaan – Avenue du Port
86C Box 414
1000 Brussels
Belgium
Tel: +32 2 426 14 14
Fax: +32 2 426 20 30
sven.demeulemeester@altius.com
www.altius.com

CUATRECASAS, GONÇALVES PEREIRA
Praça Marquês de Pombal, No. 2
1250-160 Lisbon
Portugal
Tel: +351 21 355 38 00
Fax: +351 21 353 23 62
lsoaressousa@cuatrecasas.com
www.cuatrecasas.com

CASTRÉN & SNE LLMAN ATTORNEYS LTD
PO Box 233 (Eteläesplanadi 14)
00131 Helsinki
Finland
Tel: +358 20 7765 370
Fax: +358 20 7761 370
pia.ek@castren.fi
hilma-karoliina.markkanen@castren.fi
www.castren.fi

GOLDENGATE LAW FIRM
70 Saksaganskogo St
Business Center ‘Saksagansky’
PO Box 195, Kiev 01030
Ukraine
Tel: +38 044 37 92 851/
+38 067 77 66 130
Fax: +38 044 24 80 009 P 4700
anton.sotir@goldengate-law.com
www.goldengate-law.com

CHARLES RUSSELL SPEECHLYS LLP
5 Fleet Place
London
EC4M 7RD
United Kingdom
Tel: +44 20 7203 5000
Fax: +44 20 7203 0200
jon.ellis@crsblaw.com
ian.lynam@crsblaw.com
paul.shapiro@crsblaw.com
ben.rees@crsblaw.com
www.charlesrussellspeechlys.com

GUARDAMAGNA E ASSOCIATI
Piazza San Pietro in Gessate, 2
20122 Milan
Italy
Tel: +39 02579601
Fax: +39 0257960299
mlguardamagna@gealex.eu
www.gealex.eu