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Sports Law 2023

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China: Law & Practice

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DaHui Lawyers

China: Trends & Developments

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CHINA

Law and Practice

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DaHui Lawyers has a sports practice that represents some of the world's most well-recognised sporting organisations, top-level and high-profile professional athletes and large-scale sports media companies. The firm's primary work in this area includes advising on licensing deals, sponsorship agreements, live-event implementation, market entry and corporate structuring matters, onshore and cross-border deal facilitation, PRC regulatory compliance, intellectual property protection and tax matters. The members of DaHui's sports practice have developed

a reputation as client-oriented, pre-eminent attorneys across the entire spectrum of sports matters. Whether assisting domestic PRC giants in their onshore or offshore ventures, or advocating on behalf of global companies in their cross-border sports projects, the practice has a growing reputation as a top choice for serious players within these key industries. Whatever the task and no matter how high the hurdle, DaHui's sports practice is as driven by winning as its clients.

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1. Regulatory

1.1 Anti-doping

Subject to the below exceptions, an athlete using a prohibited substance would not constitute a criminal offence under PRC law but would only trigger administrative sanctions from the authorities in China. However, the Criminal Law of the People's Republic of China (last amended in 2021; "Criminal Law"), criminalises doping-related actions such as inducing, abetting, or deceiving an athlete to use prohibited substances during important domestic or international competitions. The punishments applicable to such a crime include imprisonment of up to three years, criminal detention and a fine. Moreover, offenders who organise or force any athlete participating in a significant domestic or international sports competition to use stimulants shall be subject to a heavier punishment than what is provided above for an ordinary offence.

The 2022 amendment to the Sports Law of the People's Republic of China ("Sports Law") came into effect on the first day of 2023 and expressly prohibited the use of prohibited substances during sports events. Any athlete violating such regulation will be subject to disqualification from the sports event, annulment of any record or even

a suspension from participating in other sports events. The individuals or entities providing prohibited substances to athletes may be subject to fines or suspension from participating in sports management work or athlete assistance work.

The Prohibited Substance Catalogue, which is substantially similar to the WADA Prohibited Substance List, is jointly promulgated and renewed on a yearly basis by the General Administration of Sports of China (GASC), the Ministry of Commerce (MOFCOM), the National Health Commission of the People's Republic of China (NHC), the General Administration of Customs (GAC), and the National Medical Products Administration (NMPA). Some substances in the Prohibited Substance Catalogue, such as cocaine, marijuana, morphine and other traditional illegal drugs, are strictly prohibited by other laws, and the possession, production, transportation and sale of such substances may constitute criminal offenses.

The GASC promulgated the Administrative Measures on Anti-doping ("Anti-doping Measures") in July 2021, as an addition to the Regulations on Anti-doping promulgated by the State

Council (last amended in 2014, “Anti-doping Regulations”). Under the authorisation of the Anti-doping Regulations and the Anti-doping Measures, the GASC promulgated numerous anti-doping rules, which were eventually unified and amended to formulate the Anti-doping Rules, last promulgated by the GASC in December 2020, which are consistent with the principles of the World Anti-Doping Code (“Code”), and cover doping violations, inspections, investigation, testing, waivers, hearings, penalties for athletes and entities, dispute resolution and other rules in connection with anti-doping.

Further, as China is a member of the International Convention Against Doping in Sport and the World Anti-Doping Code, the GASC also translates the WADA Prohibited Substance List into Chinese for domestic implementation.

The China Anti-Doping Agency (CADA), an internal organ of the GASC, is the national anti-doping organisation in China. Its main purposes are to participate in the formulation of anti-doping catalogues, organising and implementing doping inspections and testing, organising and implementing investigations and hearings on doping violations, and constructing and managing doping test labs. CADA promulgates an annual work report on anti-doping work and doping violations on its official [website](#). According to CADA’s 2021 annual report, it prosecuted 31 doping violations in 2021.

1.2 Integrity

According to the Sports Law, athletes, coaches, and referees are prohibited from fraud, match-fixing, and malpractice. According to the Administrative Measures for Sports Events (“Sports Events Measures”), match-fixing and gambling on sports events will constitute administrative violations or even criminal offences. Although

there is not a specific crime of match-fixing, there are various applicable provisions in the Criminal Law against match-fixing, gambling on sports events, misconduct, bribery or fraud, such as anti-corruption, anti-bribery, and anti-gambling provisions. In 2021, the GASC, together with the Ministry of Public Safety (MPS) promulgated a circular related to match-fixing and gambling, under which the GASC and MPS emphasised the importance of fighting against match-fixing and gambling on sports events. The GASC and MPS will enforce more serious sanctions against match-fixing and gambling on sports events, which may also constitute criminal offences if the offender is a public servant. For example, in 2012, a number of GASC officials in charge of football, along with a number of football referees, were sentenced to five to ten years of imprisonment for accepting bribes to fix the outcomes of football matches. More recently, in November 2022, Li Tie, the former head coach of the Chinese National Men’s Football Team (“Football Team Coach”) was detained by the local Supervision Commission of China for corruption and bribery issues. In December 2022, 16 governors were disciplined and six other persons were prohibited from participating in football events organised by the Chinese Football Association (CFA) for engaging in match-fixing in a provincial sport event.

1.3 Betting

Betting is prohibited under PRC laws regardless of whether it is related to sports or anything else. According to the Sports Law, anyone who uses sports events to engage in gambling activities shall be investigated and sanctioned by law enforcement authorities. However, there are several kinds of lotteries related to sports events in China. According to the Regulations on Administration of Lotteries, such lotteries are strictly regulated and supervised under PRC laws. For

example, only central-government-permitted entities may issue such lotteries, which must be supervised by the GASC. As stated in **1.2 Integrity**, running gambling houses is a serious criminal offence under PRC laws. At the same time, betting is also an administrative violation. Such offences and violations are often subject to the jurisdiction of law enforcement authorities, instead of sports governing bodies.

1.4 Disciplinary Proceedings

The disciplinary proceedings set forth in the Anti-doping Rules, the Anti-doping Measures and other applicable laws and regulations are consistent with the Code and the relevant international standards; eg, the International Standard for Testing and Investigations and the International Standard for Code Compliance by Signatories.

Take doping as an example: it will be considered as a doping violation if the anti-doping test of an athlete is positive, an athlete refuses or dodges a test, or an athlete possesses prohibited substances.

The competent authority will take two samples from an athlete. If sample A is positive, the competent authority will require the athlete to give an explanation. At the same time, the competent authority will test sample B.

If the test of sample B is also positive, the competent authority will file an indictment with the hearing committee and the committee may enforce sanctions against the athlete.

A dispute involving international games or international-level athletes may only be submitted to the Court of Arbitration for Sport (CAS) for arbitration. Other disputes may be submitted to

a national dispute resolution agency under the CADA.

A disciplined athlete is only entitled to an appeal if the matter is of an international nature, but the hearing can be held by the CAS or the CADA. Any sanctions will not be suspended during the appeal process.

Taking the integrity offence of the Football Team Coach as an example (see **1.2 Integrity**), he was detained for corruption and bribery, and in addition to the CFA disciplinary measures, he will also be subject to the criminal litigation proceedings, which include investigation, prosecution and a court hearing.

2. Commercial Rights

2.1 Available Sports-Related Rights

Apart from sponsorship (see **2.2 Sponsorship**) and broadcasting (see **2.3 Broadcasting**) rights, there are various commercial rights related to sports; eg, merchandising and ticketing.

Merchandising usually includes the sale of goods related to the name, marks, logos, images and other intangible property of a club or an athlete. Usually, the club or the athlete will enter into an agreement with the manufacturer or the retailer, where the club or the athlete will grant the manufacturer or the retailer a licence to design, produce or sell products embodying the name, marks, logos, images or other intellectual property rights or intangible property rights. The agreement could be on a contingent basis; ie, the club or the athlete is entitled to a share of revenue gained by the manufacturer or the retailer. But as a more usual case, the manufacturer or the retailer will pay a non-refundable but

recoupable advance plus a royalty to the club or the athlete.

Ticketing is another source of revenue for a club. Usually, a club will not own a stadium but rent one for a sports event. There is usually text on the ticket stating that spectators shall not disseminate footage of the event. However, due to COVID-19, most professional sports events in China were carried out without spectators in 2021 and 2022, which heavily reduced clubs' ticket revenue. Although some events were allowed to attract an on-site audience, this was like a "drop in the bucket". Clubs, organisers, and law enforcement authorities are making every effort to fight against the resale of tickets. It is an administrative violation to "scalp" sports tickets under the Law on Penalties for the Violation of Public Security Administration of the People's Republic of China and a person committing such violation may face a fine of up to CNY1,000 or even administrative detention for up to 15 days.

2.2 Sponsorship

Sponsorship is one of the most important funding sources for sports events. Sponsors have great regard for the exposure opportunities provided by sports events. Generally, sponsors are classified into different categories with different rights, for example, sponsors to the league, the event, the clubs or the athletes. They promote their brand by a variety of means, for example, displaying their names, brands, or trade marks on billboards around the court, on the floor, or on athletes' jerseys, titling clubs, or displaying their commercials during halftime breaks or timeouts. However, the CFA promulgated a rule in 2020 stating that the name of a football club competing in the CFA Super League, Division A League, and Division B League must not contain the name of a sponsor starting from the 2021 season.

Usually sports right-holders will grant sponsors a bundle of rights in consideration of their provision of sponsorship, including:

- using the names, logos or trade marks of the sports right-holders in sponsors' products and services;
- stating the sponsorship relationship between the sponsor and sports right-holders;
- displaying images of athletes in sponsors' products, services or commercials; and/or
- displaying brands in the stadium, around the court, or on athletes' gear.

The key terms of a typical standard contract include:

- the class of the sponsor – ie, titling sponsor, official sponsor, strategic partner, etc;
- the sponsor fees and payment methods;
- the term and territory of the sponsorship;
- the scope and degree of any exclusivity;
- benefits for sponsors, including brand exposure, rights for certain events, use of sport right-holders' property;
- non-compete clauses – eg, the sports right-holder shall not attract other sponsors providing products or services similar to those the sponsor provides; and
- the allocation of intellectual property rights.

2.3 Broadcasting

The broadcasters for sports events include cable TV and webcasters. Cable TV usually generates profit from broadcasting rights through advertising and webcasters. Since all China TV stations are state-owned entities, they do not collect subscription fees directly from a public audience. The audience usually pays a very low rate for carriers to use their internet service and the cable TV service is usually bundled with that internet service. In this case, audiences do not

usually pay separately for cable TV. Cable TV broadcasters in China exploit their broadcasting rights though advertising during quarter breaks, halftime breaks or timeouts. With respect to webcasters, they usually generate profits from both advertising and subscriptions. For instance, a person has to pay subscription fees to watch China Basketball Association (CBA) games on Tencent Sport, one of the largest sport webcasters in China. In addition, there will be quarter and half-time commercials.

With the rocketing development of the sport market in China, sports right-holders usually do not have to put in much effort to attract broadcasters. Instead, broadcasters or licence resellers will pitch sports right-holders for exclusive broadcasting licences; and the price of such exclusive licences has increased sharply during recent years. For example, in 2015, China Sports Media paid the CFA CNY8 billion for a five-year CFA Super League exclusive broadcasting licence, which was later raised to CNY11 billion for a ten-year exclusive broadcasting licence. By comparison, the five-year bundle for 2007 to 2012 only cost CNY50 million.

3. Sports Events

3.1 Relationships

Usually, sports events are organised by sports associations and the participants; ie, athletes and clubs will participate in the sports events through registration. Without registration with the relevant association, no athletes or clubs are allowed to participate in the sports events organised by such association. There are various proprietary rights for sports organisers in China, such as the right to exclusively organise sports events, intellectual property rights and the right to control the access to the venue.

According to the Sports Law, the Sports Events Measures and other relevant laws and regulations, the national comprehensive sports events, such as the National Sports Games, shall only be organised by the GASC and its authorised organisations and the national individual sports events shall only be organised by the national association for such individual sports, for example, the National Football CFA Super League shall only be organised by the CFA. Due to such exclusivity, the organisers control all rights and interests arising from the sports events.

According to the Sports Events Measures, the names, marks, organising rights, broadcasting rights and other intangible property rights may be exploited by sports events organisers. Due to the aforementioned exclusivity, the original owners of those rights are always sports events organisers. For example, according to the CFA Statutes, the CFA is the original owner of all of the rights emanating from competitions and other events coming under its jurisdiction, including but not limited to intellectual property exploitation rights, merchandising rights and other rights generated from the sports events organised by the CFA.

According to the Sports Law, without the permission of sports event organisers and other relevant rights-holders, it is not permissible to collect or disseminate live pictures, audio and video and other information about sports events for profit-making purposes. Furthermore, access to the venues is controlled based on property rights. The venues are usually leased by the organisers and the organisers may set rules for entering the venue and spectators' conduct. Usually the spectators are informed that they are not allowed to film events or act in other ways which may infringe rights of the organisers.

As stated above, nationwide sports events are organised by the GASC or national sports associations. The participants are also members of respective associations. Those members may be governed by the statutes of their respective associations; if there is any violation, the associations may impose sanctions on their members.

3.2 Liability

According to the Sports Law, organisers shall perform their safety guarantee obligations, provide safety conditions that meet applicable requirements and formulate safeguard measures such as risk prevention and emergency response plans. According to the Sports Events Measures, organisers shall assign competent professionals; implement measures related to medication, hygiene, safety and other aspects; and carry out other protective plans for sports events. Furthermore, organisers shall suspend sports events in the event of natural disasters, accidents, and public health or public safety events. In addition, if an organiser plans to organise a high-risk sports event, it has to apply for permits and bear a heavier duty of care. On 1 January 2023, the GASC and six other government agencies promulgated the Catalogue of High-Risk Sports Events (First Batch), which sets out 17 high-risk sports events in the areas of scuba-diving, aviation, mountain climbing, rock climbing, ski mountaineering and motor vehicle racing. Any violation of the applicable duty of care may be subject to fines and even suspension of qualification for organising sports events.

Under PRC law, organisers bear a duty of care relating to organising sports events. Such duty of care originally arose from the duty of care under the Civil Code of the People's Republic of China ("Civil Code"). Under the Civil Code, operators and managers of stadiums will bear tort liability if they fail to fulfil their duty of care. Apart from civil

liability, organisers may also be subject to criminal liability if serious consequences occur due to their failure to fulfil the duty of care. For example, in a cross-country race held in Gansu Province in 2021, 21 deaths and eight injuries were caused by extreme weather, and five organising staff members were arrested for their breach of the duty of care when organising the race and failing to take precautions regarding possible weather changes.

According to the Civil Code, under the principle of "assumption of risks", if a person suffers injuries when participating in sports events, and if those sports events contain inherent risks and such damages cannot be attributed to other participants' intentional conduct or gross negligence, then the injured person may not seek remedies against other participants. In a case in Beijing applying the "assumption of risks" principle, a person was hit by a badminton shuttlecock smashed by the other player, resulting in serious injury to his right eye. But the other player was not held liable because there are inherent risks in badminton and the other player did not intentionally or with gross negligence violate any rules of the game.

To avoid violence or disorder, the organisers usually hire professional security guards, and everyone entering the stadium has to go through a security inspection. Some stadiums even have screens in front of the audience seats to prevent the spectators from rushing or throwing anything onto the game grounds.

4. Corporate

4.1 Legal Sporting Structures

Most professional clubs in China are limited liability companies (LLCs) or corporations.

According to the Administrative Regulations on the Registration of Social Organisations (“Social Organisation Regulations”), social organisations or non-governmental organisations (NGOs) are allowed to be involved in profit-making business. Professional clubs have to attract investment and sponsorship, sell tickets, and carry out other profit-making business. In such cases, professional clubs have to be commercial entities. But non-professional clubs have various forms: some are LLCs or corporations, while others are NGOs. The governing bodies in China are usually governmental agencies or governmental organisations (GOs).

4.2 Corporate Governance

China does not have sport-specific corporate laws. The operation of sports clubs is governed by the laws regulating the type of entity that a given sports club is formed as, for example, the Company Law of People’s Republic of China (“Company Law”) and the Social Organisation Regulations. If a club violates relevant laws and regulations, sanctions or penalties will be imposed by the competent authorities, which are the State Administration of Market Regulation (SMAR) for LLCs and corporations and the Ministry of Civil Affairs for social organisations and NGOs.

However, some sports associations do have certain regulations applicable to the corporate governance of sports clubs and other relevant entities. For example, as stated in **2.2 Sponsorship**, the name of a professional team in Division A or B of the CFA Super League shall not contain any sponsor’s name. In addition, according to the CFA Statutes, a natural person or a legal entity shall not control more than one club or football organisation. If a club violates any of the aforementioned regulations, the CFA may suspend or deregister the club’s membership. Under such

circumstance, the club may not participate in any of the events organised by the CFA, which means all nationwide football games, because (as stated in **3.1 Relationships**) all nationwide games for a certain sport can only be organised by the national association for such sport.

Since sports associations are not LLCs or corporations, there are no directors of sports associations in China. Sports associations have only a president and committee members who are responsible for the daily operations. As to professional clubs, the officers do owe the directors’ duties stipulated in the Company Law.

According to the Company Law, the director or manager of an insolvent company is not allowed to be a director, supervisor or senior officer of another company within three years after the liquidation date of that insolvent company.

4.3 Funding of Sport

As mentioned in **2.2 Sponsorship**, sponsorship is the main funding stream for sports events. Government agencies will take the lead in organising sports events and provide some preferential policies, such as the specific lane for Olympic vehicles. The central government will fund a nationwide comprehensive sports event at the kick-off stage, but the main sources of funds are still sponsorship, advertising and commercial operations.

4.4 Recent Deals/Trends

According to unofficial statistics, the total investment amount in the sports industry in China decreased from CNY11.256 billion in 2021 to CNY1.742 billion in 2022, a 84.62% shrinkage. The most active investment areas are fitness/yoga and outdoor gear. Investment in fitness is particularly active because of rising public awareness of personal health.

5. Intellectual Property, Data and Data Protection

5.1 Trade Marks

According to the Trademark Law of the People of Republic of China (“Trademark Law”) any natural person, legal entity or other organisation may submit an application with the China National Intellectual Property Administration (CNIPA) to register a trade mark and CNIPA will issue a trade mark certificate upon approval. According to the Trademark Law, the following marks shall not be used as trade marks:

- those identical with or similar to the name, national flag, national emblem, national anthem, military flag, army emblem, military songs, medals, etc, of the People’s Republic of China;
- those identical with the names and signs of central state organs, names of the specific locations thereof, or names or devices of landmark buildings;
- those identical with or similar to the names, national flags, national emblems or military flags of foreign countries, unless permitted by the government of the country;
- those identical with or similar to the names, flags, or emblems of international inter-governmental organisations, unless permitted by the organisation concerned or unlikely to mislead the public;
- those identical with or similar to an official sign or inspection seal that indicates control and guarantee, unless it is authorised;
- those identical with or similar to the names or signs of the Red Cross or the Red Crescent;
- those discriminating against any race;
- those of fraud that may easily mislead the public in characteristics such as the quality of goods or place of production;

- those detrimental to socialist morals or customs, or having other insalubrious effects;
- the geographical names of administrative divisions at or above the county level;
- foreign geographical names well-known to the public;
- generic names, devices or model numbers of the goods;
- those simply indicating the quality, main raw materials, function, use, weight, quantity or other features of the goods; and
- those lacking distinctive characteristics.

A mark will get comprehensive protection after registration with the CNIPA. No other person is allowed to use the trade mark without written consent of the trade mark owner. If a mark is not registered, the protection for such mark will be limited to the geographical area where the owner’s business is located and the scope of the owner’s business. A notable example is a Chinese company winning a case against MUJI Japan for trade mark infringement because the Chinese company registered the trade mark “MUJI” before MUJI Japan came into China.

5.2 Copyright/Database Rights

Similar to the counterparts of other signatories of the Berne Convention, the Copyright Law of the People’s Republic of China (“Copyright Law”) protects audio-visual works, paintings, photographs and compiled works, etc. Registration is not required under the Copyright Law; ie, a copyrightable work is copyrighted immediately upon its completion. However, registration is still encouraged as evidence of copyright ownership. A notable principal under the Copyright Law is that a sports event itself is not copyrightable. Audio-visual works and photographs derived from the sports event (eg, the broadcasting images) are copyrightable and will be protected by the Copyright Law.

The most common defence under the Copyright Law is fair use. Usually a person will not commit copyright infringement if such person uses a work without the consent of the copyright owner provided that such use is for personal study, research or appreciation.

Another scenario where fair use can be applied is where a person will not commit copyright infringement if such person invokes parts of the other's work for the purpose of introduction or comment.

There is no standalone database right under the Copyright Law. Databases are usually protected as compiled works. If the selection, editing or compilation of data reflects the originality and creativity of the compiler, such database is copyrightable. For example, a compilation of the telephone numbers of all restaurants in Shanghai is not copyrightable but a compilation of hot sports news in China in the year 2021 may be copyrightable.

Notable Sports Copyrights Cases

The Sina.com v iFeng.com case and CCTC v Baofeng.com were both tried in first-instance and second-instance proceedings, and were only concluded by retrial in 2020. The facts in the two cases were quite similar: ifeng.com re-broadcast CFA Super League games to which Sina.com enjoyed exclusive live broadcasting rights, and Baofeng.com rebroadcast 2014 FIFA World Cup games to which CCTC had exclusive broadcasting rights. These two cases set the standard rule for copyright protection for live broadcasting of sports games. Before these two cases, live broadcasting of images/video clips taken from the live broadcasting of a sports event were often treated as video recordings, which enjoy limited protection under the Copyright Law; ie, prohibited from unauthorised

duplication, distribution, leasing and making available to the public. Video recordings do not enjoy broadcasting rights, which means if the live broadcasting image is not treated as a work but rather as a video recording, such broadcasting, which is the most important right for broadcasters, is not protected under the Copyright Law. In these two cases, the retrial court eventually ruled that the live broadcasting of images and video clips constitutes copyrighted "work" under the Copyright Law, which deserve more comprehensive protection under the Copyright Law. Thus, unauthorised use of the images/video clips taken from the live broadcasting of the games constitutes copyright infringement. The aforementioned cases both set a benchmark for other similar cases, after which broadcasters, both TV stations and webcasters, have received more comprehensive protection for their broadcasting.

Further to the above benchmark cases, in December 2022, a district court in Shanghai granted, in the CCTV.com v rphello.org case, an injunction against rphello.org from re-broadcasting the 2022 FIFA World Cup. In this case, CCTV.com had the exclusive right to provide online broadcasting of the 2022 FIFA World Cup. Rphello.org re-broadcast the 2022 FIFA World Cup, and CCTV.com applied for injunctive relief against rphello.org with a district court, and the court granted the injunction within 24 hours.

Another recent notable case is the anti-trust proceeding against CFA Super League Co. As mentioned in **3.1 Relationship**, the CFA is the only permitted organiser of the CFA Super League, and the CFA licensed the CFA Super League Co. to exploit all its rights in the CFA Super League. The CFA Super League Co. attracted a company through the public bidding process and granted it exclusive permission to provide photography

services for CFA Super League games from 2017 to 2019. Another candidate in the bidding process filed a suit against CFA Super League Co. and the photography company for abuse of a dominant market position. In July 2022, the Supreme People's Court of the People's Republic of China finally ruled that (i) the exclusive right to organise the CFA Super League events and (ii) the exclusive right authorised by the CFA to exploit all rights arising from the CFA Super League together with the exclusive right to provide photography services by the photography company put the CFA Super League Co. and the photography company in a dominant market position. However, the exclusive licence was lawful and reasonable and was granted through due process; ie, public bidding. In this case, the conduct of the CFA Super League Co. and the photography company did not constitute abuse of a dominant market position.

5.3 Image Rights and Other IP

According to the Civil Code, every natural person's image is protected, of course including the image of athletes. Any unlawful use of a person's image will constitute a tort under the Civil Code and such person is entitled to reimbursement for losses arising from such unlawful use.

5.4 Licensing

Sports bodies may license their IP in sports events. As stated in **3.1 Relationships**, almost all valuable nationwide sports events such as the CFA Super League and CBA League are organised by their respective national association. All IP derived from the sports events are also proprietarily reserved by those national associations. For example, it is stated in the CBA Statutes that all rights arising from the sports events organised by the CBA – including IP, exploitation rights and other rights – are the property of the CBA. There are similar provisions in the CFA Statutes.

In that case, the athletes themselves usually do not have any copyright over the sports events or broadcasting streams.

There are few restrictions on assignment of IP in China. For copyright licensing or transfer, a written agreement is required. Such an agreement generally contains certain provisions related to the type of right, exclusivity, territory, term, fees, payment, and liability for breach. The transfer of trade marks needs to be approved by the CNIPA because the CNIPA will issue a new trade mark certificate to the new trade mark owner. Likewise, a written agreement is required for trade mark licensing and transfer.

5.5 Sports Data

A range of hi-tech devices are commonly used in sports events and daily training to collect sports data of athletes. This data is normally used to improve the athlete's performance. Any abuse of such data may violate the laws and regulations of China or constitute criminal offences under serious circumstances.

Spectator data, on the other hand, is usually collected for "big data" analysis purposes; eg, to study the age groups, commodity preferences, etc, of the spectators of sports games. The sports events organisers usually use the data to make more precise pitches to sponsors, and sponsors may also use the data to place advertisements more precisely.

5.6 Data Protection

The GDPR does not apply in China. Instead, China has its own set of data protection laws, which in part reflect the principles of the GDPR. For example, both the Personal Information Protection Law of the People's Republic of China ("PI Protection Law") and the Data Security Law of the People's Republic of China ("Data

Security Law”) were enacted in 2021. Under the PI Protection Law, personal information (PI) is “any kind of information related to an identified or identifiable natural person as electronically or otherwise recorded, excluding information that has been anonymised.” There is also a category called “sensitive personal information”, which includes biometric data, religious belief, specific identity, medical and health issues, financial accounts, personal location tracking and other information.

Under the aforementioned laws, an individual’s PI is strictly protected, and the processing and export of PI is also strictly regulated. The protection measures for sensitive PI are stricter. For example, one may obtain general consent from individuals to process their PI but needs to obtain so-called “specific consent” from individuals to process their sensitive PI. Abuse of PI will be subject to administrative liability or criminal liability. An entity abusing PI may face a fine of up to CNY50 million according to the PI Protection Law. An entity may face a fine of up to CNY10 million for violating the Data Security Law. An individual abusing PI may face up to seven years’ imprisonment pursuant to the Criminal Law.

For the further protection of personal information, the Cyberspace Administration of China (CAC) and 12 other government agencies jointly issued the Measures for Cybersecurity Review in December 2021, the CAC issued the Measures for the Security Assessment of Data Exports, which came into effect in September 2022, which was followed by the Guide to Applications for Security Assessment of Outbound Data Transfers (First Edition), and the Opinions of the Communist Party of China Central Committee and the State Council on Building Basic Systems for Data and Putting Data Elements of

Production to Better Use, which came into effect in December 2022.

6. Dispute Resolution

6.1 National Court System

The courts in China have limited jurisdiction over disputes related to sports. According to the Sports Law, a court may only revoke a sports arbitral award upon application under the following circumstances:

- there are errors in applicable laws and regulations;
- the matters ruled on do not fall within the scope of sports arbitration;
- the composition of the arbitral tribunal or the arbitration procedure violates the relevant provisions sufficiently to affect the impartiality of the award;
- the evidence on which the award is based is forged;
- the other party has concealed evidence sufficient to affect the fairness of the ruling; and
- the arbitrator has solicited or accepted bribes, engaged in any malpractice for personal gains or perverted the law when arbitrating the case.

6.2 ADR, Including Arbitration

The Sports Law for the first time provides relatively clear sports arbitration rules. The following disputes may be submitted for sports arbitration:

- disputes arising from dissatisfaction with a disqualification, a cancellation of competition results, the forbidding of participation in competitions and other decisions made by sports social organisations, athlete management units, and sports event organisers

in accordance with doping management or other management provisions;

- disputes arising from the registration of and communication with athletes; and
- other disputes arising in competitive sports activities.

The Sports Law also provides that disputes stipulated in the Arbitration Law of the People's Republic of China and labour disputes stipulated in the Law of the People's Republic of China on Mediation and Arbitration of Labour Disputes are not under the jurisdiction of sports arbitration.

Accompanying the sports arbitration rules delineated in the Sports Law, the GASC has promulgated the Organisational Rules of the China Sports Arbitration Committee and the Sports Arbitration Rules to formulate the by-laws of the China Sports Arbitration Committee, the first national Sports Arbitration Committee in China, and its arbitration rules, including but not limited to the jurisdiction, seats, hearing procedure and awards.

Associations usually have their own arbitration institution and all the above disputes under the jurisdiction of an association are encouraged by the Sports Law to be submitted to the relevant arbitration institution. If a sports association has no internal dispute resolution mechanism or has an internal dispute resolution mechanism that fails to handle disputes in a timely manner, the parties may apply for sports arbitration.

6.3 Challenging Sports Governing Bodies

The Sports Law empowers sports governing bodies to enforce sanctions against their members. In addition, the governing bodies usually declare their power to enforce sanctions against their members and athletes. Typically, sports

governing bodies impose fines, point deductions, revocations of results, bans, and revocations of membership.

If a sanction is enforced by a governmental agency such as the GASC or its local agencies, the sanctioned party may appeal to the court for trial. But if the sanction is enforced by an association, the sanctioned party may submit the dispute to the China Sports Arbitration Committee.

7. Employment

7.1 Sports-Related Contracts of Employment

Sports clubs and athletes usually enter into a contract which is not simply an employment contract. According to the Opinions on Strengthening and Improving Labour Protection Management of Professional Football Clubs, clubs may agree on terms according to the unique characteristic of the football industry. For example, according to the Labour Contract Law of the People's Republic of China ("Labour Contract Law"), an employee may resign without any cause with 30 days' notice, which is not practical in the sports industry. For example, it is customary for a sports club to require an athlete to pay liquidated damage for early termination.

Salary caps are applied to certain sports games in China. For example, the seasonal salary cap for a CFA Supreme League domestic player is CNY5 million (tax inclusive), and EUR3 million (tax inclusive) for expatriate players. Likewise, for CBA League domestic players, the salary cap is CNY6 million.

7.2 Employer/Employee Rights

As stated in 7.1 Sports-Related Contracts of Employment, the relationship between players

and sports clubs is complicated. Some courts have ruled that the rights of players are protected under the Labour Contract Law, as stated in **6.1 National Court System**, but others have ruled that employment disputes between clubs and athletes do not fall under the Labour Contract Law and should be heard not by a court but rather by the China Sports Arbitration Committee.

7.3 Free Movement of Athletes

Foreign athletes are free to compete in sports tournaments/competitions. However, some associations may limit the total number of foreign athletes a club may deploy in a single game. Foreign athletes have to apply for a visa to participate in sports events in China. If the athlete is a top-eight Olympic Games or World Cup player, a medal winner at the Asian Games, or hired by a top tier club, such as a club in the CFA Super League or CBA League, an R-Visa may be applied for. Other athletes hired by clubs may apply for Z Visas (work visa). If the athlete is invited to attend a competition in China, the athlete can apply for an F Visa (visit visa).

8. Esports

8.1 Overview

Esports was first listed in the sports industry catalogue by the GASC in 2019 and became part of formal competition at the Asian Games 2022. The esports industry has been developing rapidly in recently years. According to market research, China's esports market reached CNY167.3 billion in 2021, an increase of 13.5% compared with 2020. The total number of users reached more than 500 million in 2021. However, due to the impact of multiple lockdowns in 2022, China's esports market decreased to CNY144.5 billion in 2022. In 2018, the total investment

amount in China's esports industry was approximately CNY10.4 billion but in 2019, it decreased by 91.3% to just under CNY1 billion. The total amount in 2020 was CNY2.3 billion and the total amount in 2021 was CNY2.4 billion.

In April 2022, the National Radio and Television Administration and the Publicity Department of the CPC Central Committee issued the Circular of the Department of Online Audio-Visual Programmes, which forbade platforms from providing webcasting for games not approved by the appropriate government agencies.

9. Women's Sport

9.1 Overview

Women's sports are developed to an equal, if not superior, level to men's sports in China. Almost all professional leagues organise women's sports events, for example the WCBA and CFA Women's Super League. The GASC and three other government agencies issued the China Women's Football Reformation and Development Plan (2022–35), aiming to improve the environment for and development of women's football in China by improving the management of women's football organisations and games and developing women's football education. Statistics indicate that from 2013 to 2020, the number of female athletes over National Grade 2 increased by 141,000, and 480 of these were at international level, accounting for 57.1% of the total of new international level athletes. As of 2020, there were 7,434 professional level female coaches in China; 298 Chinese female athletes participated in the Tokyo Olympic Games 2020, accounting for 69.1% of the total number of Chinese athletes, and among 88 Chinese medal winners, 53 of them were female. In the Beijing Winter Olympic Games 2022, 176 Chinese ath-

letes participated and 87 of them were female. Chinese female athletes won 14 medals in the Winter Olympics, accounting for 53.8% of the total medals won by Chinese athletes. The national women's football team recently won the 2022 AFC Women's Asian Cup; Alipay declared that they would pay the team CNY13 million in awards. Women's sports is attracting more and more attention from the public in China. For example, the viewing figures for the Women's Volleyball Nations League 2021 in China surpassed those for the men's European Cup and the World Cup 2022 qualifiers.

10. Non-fungible Tokens (NFTs)

10.1 Overview

NFTs are a relatively new concept in the Chinese sports market, and market players tend to be cautious toward the application of NFT technologies for sports collectibles. This may be in response to the hard line taken against private cryptocurrencies by the Chinese government. Since 2017, regulators have instituted an outright ban on cryptocurrency exchanges and ICOs in China and also imposed severe restrictions on the use of cryptocurrencies and relevant trading services. The Interpretation of the Supreme People's Court of Several Issues on the Specific Application of Law in the Handling of Criminal Cases about Illegal Fund-Raising, which was amended in February 2022, further expressly provides that the "trade of virtual currency" as a means of illegal fund-raising may be considered a crime under PRC law. However, the trading of virtual items is not a new concept in the Chinese market, far preceding the recent boom in NFTs. In January 2023, a Hangzhou Intermediary People's Court ruled that NFTs that are designed as mere virtual collectibles are considered virtual property and are protected by PRC law.

11. Regional Issues

11.1 Overview

There are no significant issues not already raised elsewhere in this chapter.

Trends and Developments

Contributed by:

Cloud Li and Chris Beall

DaHui Lawyers

DaHui Lawyers has a sports practice that represents some of the world's most well-recognised sporting organisations, top-level and high-profile professional athletes and large-scale sports media companies. The firm's primary work in this area includes advising on licensing deals, sponsorship agreements, live-event implementation, market entry and corporate structuring matters, onshore and cross-border deal facilitation, PRC regulatory compliance, intellectual property protection and tax matters. The members of DaHui's sports practice have developed

a reputation as client-oriented, pre-eminent attorneys across the entire spectrum of sports matters. Whether assisting domestic PRC giants in their onshore or offshore ventures, or advocating on behalf of global companies in their cross-border sports projects, the practice has a growing reputation as a top choice for serious players within these key industries. Whatever the task and no matter how high the hurdle, DaHui's sports practice is as driven by winning as its clients.

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The logo for DaHui Lawyers, featuring the word "dahui" in a bold, lowercase, red sans-serif font.

Rapid Growth in China's Sports Industry

In recent years, the strength of China's sports industry has grown significantly, the global allocation of sports resources has continued to improve and the international influence of the sports industry has continued to increase. Statistics indicate that the total market size of China's sports industry has increased from CNY1.71 trillion as of the end of 2015 to CNY3.12 trillion as of the end of 2021, of which the sports service industry accounts for 70%.

As of the end of 2019, there were more than 5.05 million people working in China's sports industry. The number of legal entities in China's sports industry increased from over 192,000 as of the end of 2015 to almost 289,000 as of the end of 2019. As of the end of 2021, there were 3.97 million sports venues in the country, with an area of 3.4 billion square meters. Such sports venues include those for basketball, football, volleyball and badminton.

Taking advantage of the Beijing Winter Olympic Games 2022, the winter sports industry has developed rapidly in China. Market research shows that as of October 2021, the number of people participating in winter sports nationwide was 346 million, and the participation rate for

winter sports exceeded 24%. In the snow season 2020–21, the number of Chinese winter leisure tourists reached 230 million, the income of winter leisure tourism exceeded CNY390 billion, and the general market size of winter sports was CNY624.65 billion in 2021 and is expected to grow to CNY1 trillion in 2025.

According to a report of CGTN (a state-run foreign-language news channel based in Beijing), China's outdoor sports industry is expected to exceed CNY3 trillion in value by 2025 as the country promotes sports consumption. According to China's 14th Five-Year Plan (2021–25), the total production value of China's sports industry is set to hit CNY5 trillion by 2025 with residents' sports consumption exceeding CNY2.8 trillion, with more than 8 million people working in this sector.

According to the Outdoor Sports Industry Development Plan (2022–25) issued by the General Administration of Sport of China (GASC) and seven other government agencies in November 2022, the number of people participating in outdoor sports nationwide exceeded 400 million by the end of 2021 as more people took interest in popular sports such as hiking, marathon

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running, cycling and skiing. Statistical analysis also indicates that the PE/VC investment in the outdoor-sports-related area accounts for almost 20% percent of the total PE/VC investment in the sports industry.

The sports-related consumer market is also expected to grow rapidly. In 2021, the per capita GDP of China exceeded CNY81,000. The huge market demand generated by the nation's rising middle class has led to the growth of the sports industry in China. According to a survey by Morgan Stanley, 35% of residents choose to play sports games in their leisure time. This is expected to translate into increased consumer demand for professional sports. According to GASC data, the sports-commodity-related industry increased by CNY343.3 billion in 2021. Nowadays, Chinese customers have a wide variety of choice in the sports activities. Outdoor sports activities, including mountaineering, cycling and camping, are seeing rapid growth. In parallel, niche sports including paddle boarding, frisbee and flag football are also popular.

COVID-19

The development of the Chinese sports market is not without challenges. COVID-19 must be one of the biggest challenges of all. In the past three years, the COVID-19 pandemic has seriously affected the sports industry. Many important sports events, such as the 2022 Asian Games and F1 China, were cancelled and many matches, such as the qualification games for the 2022 World Cup, were played in foreign countries. Due to the adverse impact of COVID-19, the value of those sports events decreased sharply, not only because there were fewer matches in a season but also because of the lack of sponsor and broadcaster payments. For example, the title sponsorship fee of the CFA Super League was decreased from CNY200 million for the

year 2019 to CNY100 million for the year 2023. In addition, in 2015, China Sports Media paid the China Football Association (CFA) CNY8 billion for a five-year CFA Super League exclusive broadcasting licence. But due to the COVID-19 pandemic and the reduction in games, the contract was revised to CNY11 billion for a ten-year exclusive broadcasting licence.

However, the end of 2022 saw China's sporting events, including those run by the China Basketball Association (CBA) and the CFA, returning to normal operation. For example, there were more than 10,000 spectators at the first CFA Super League game to be open to the public, in June 2022.

Private investment in sports

Private equity investment in the winter sports industry is growing in China. In 2019, the State Council promulgated its Opinions on Promoting the Nationwide Fitness Programme and Sports Consumption to Boost High-Quality Development of the Sports Industry (the "Opinions"). Thereafter, the GASC promulgated the Sports Development Plan for the 14th Five-Year Plan in October 2021. Both of these aim to encourage the development of investment in the sports industry in China, including through state-owned investment funds and private capital, such as private equity investment funds, including establishing a number of private investment funds that specifically target the sports industry. However, due to a number of lockdown measures imposed by local government, the total private investment market decreased 34% in 2022. Correspondingly, the total amount of private investment in the sports industry decreased from CNY11.3 billion in 2021 to CNY1.4 billion in 2022.

Regulatory guidance and IP protection

In their determination to boost the market, Chinese authorities have also expended great legislative effort in providing systematic and regulatory guidance and protection to the market and its players. For example, the amended Sports Law of the People's Republic of China (the "Sports Law") came into effect in January 2023. The length of the amended Sports Law has significantly grown, and for the first time clearly sets out a framework, principle, and cause of action for sports arbitration. A national sports arbitration committee shall be organised by the administrative department for sports under the State Council (currently the GASC). In addition, the GASC shall also formulate the arbitration rules. Following the Sports Law, the GASC promulgated the Organisational Rules of the China Sports Arbitration Committee and the Sports Arbitration Rules to formulate the by-laws of the China Sports Arbitration Committee, the first national sports arbitration committee in China, and its arbitration rules, including but not limited to the jurisdiction, seats, hearing procedure and awards.

Accompanying the Sports Law, the GASC amended the Administrative Measures for Sports Events, outlining the competent organisers for different sports events, the rights and obligations of those organisers, and liability for violations. Most importantly, it liberalised the administrative procedures for international sports events held in China. Such games, except in the case of some special categories of sports or world-class games, now only need to gain approval from provincial-level government instead of from the GASC itself.

The market has also seen strengthened protection for economic benefits derived from the sports market. In 2020, the Beijing High Court

heard two benchmark cases, the Sina.com v iFeng.com case and the CCTC v Baofeng.com case, both at retrial stage, to confirm that sports broadcasting rights are copyrightable and to scrutinise unauthorised use of images or video clips taken from live broadcasting of sports games.

According to the Sports Law, without the permission of sports event organisers and other relevant rights-holders, it is not permissible to collect or disseminate live pictures, audio and video and other information about sports events for profit-making purposes. In 2021, the amended Copyright Law of the People's Republic of China (the "Copyright Law") was enacted. The Copyright Law further clarifies that audiovisual works are not limited to motion pictures, episodes, documentaries and animations, but sports broadcasting images may also be copyrightable. The Copyright Law also clarifies that webcasting is in the scope of broadcasting, and rebroadcasting and unauthorised webcasting also constitute infringement of broadcasting rights.

Further to the above benchmark cases and the amended Copyright Law, a district court in Shanghai granted an injunction against a website rebroadcasting the 2022 FIFA World Cup. In this case, CCTV.com v rphello.org, CCTV.com had the exclusive right to provide online broadcasting of the 2022 FIFA World Cup in China. Rphello.org rebroadcast the 2022 FIFA World Cup. CCTV.com applied for injunctive relief against rphello.org with a district court, and the court granted the injunction within 24 hours.

Also in July 2022, the Supreme People's Court of the People's Republic of China finally ruled that the exclusive right to organise the CFA Super League events and the exclusive right author-

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ised by the CFA to exploit all rights arising from the CFA Super League, together with the exclusive right to provide photography services by the photography company that had won the bidding process the CFA had organised, although putting the CFA Super League Co. and the photography company in a dominant market position, was lawful and reasonable, and did not constitute abuse of a dominant market position. This was considered a milestone case for antitrust and competition law in terms of exclusive licences to rights in sports events.

Extant legal issues and regulatory challenges

The Sports Law outlines the causes of action that may be submitted for arbitration as those challenging disqualification, cancelation of competition results, the forbidding of participation in the competition and other treatment decisions made by sports social organisations, athlete management units, and sports event organisers in accordance with doping management or other management provisions, and the registration of and communication with athletes. The Sports Law also states that disputes stipulated in the Arbitration Law of the People's Republic of China and labour disputes stipulated in the Law of the People's Republic of China on Mediation and Arbitration of Labour Disputes are not under the jurisdiction of sports arbitration. The Sports Law also sets the circumstances under which the court may revoke a sports arbitration award.

However, in contrast to the old sports law, the Sports Law does not expressly provide whether a party may file a lawsuit directly with the court for a cause of action under the jurisdiction of the Sports Arbitration Committee. Furthermore, the Sports Law prohibits the Sports Arbitration Committee from hearing employment contract cases that are under the jurisdiction of the employment arbitration committee. It is disput-

able, however, whether there is an employment relationship between a club and a player. The Sports Law's exclusion of such case may complicate the procedure for employment-related dispute resolution in the sports industry.

The potential impact of new technologies

The Chinese market has seen wide application of new technologies in the sports industry. In 2019, Premier Keqiang Li first raised the concept of "Internet + Sports" in a government work report, which indicated that the research, development and application of AI in the sports industry are on the agenda of the country's development plans and are of significance in the quest to turn China into a major sports power.

The Chinese market has seen a wide application of new technologies revamping the sports industry, with applications across in-game activities, post-match analysis as well as the audience experience. For example, it is reported that AI technologies are being used to train Chinese athletes in a variety of sports ranging from freestyle skiing aericals to table tennis. Big data analytics is also widely used to profile the age groups, preferences, etc, of sports audiences and consumers. The application of new technologies also calls for new legislation; eg, for the protection of personal information and other sports-related data. In this regard, similar to the GDPR, in 2021, China enacted the Personal Information Protection Law of the People's Republic of China (the "Personal Information Protection Law") and the Data Security Law of the People's Republic of China (the "Data Security Law"), both of which govern the protection of personal data.

By the end of 2022 and in early 2023, the world witnessed booming popular interest in AI caused by the appearance of ChatGPT. This trend of next-generation AI has only just appeared, yet it

would be reasonable to anticipate that the application of new technologies also calls for new legislation; eg, for the protection of personal information, sensitive personal information and other varieties of sports-related data. In this regard, in 2022, China passed a series of pieces of legislation and regulation to supplement the previously issued Personal Information Protection Law and the Data Security Law.

NFTs have also been a hot topic in the market recently. However, as a general rule, NFTs designed in ways similar to virtual currencies or crypto tokens will likely be subject to China's strict prohibition against the trade of virtual tokens. China's Supreme People's Court recently expressly criminalised illegal fund-raising by way of trade in virtual currency, and therefore NFTs that are similar to virtual currencies are also likely to face significant legal risks in China. Conversely, NFTs that are designed as mere virtual

collectibles and may not be traded as currency (but only as virtual items in meta/virtual worlds) are regarded as virtual property under Chinese laws. In January 2023, a Hangzhou Intermediary People's Court ruled that NFTs that are designed as mere virtual collectibles are considered virtual property and are protected by PRC law.

In summary, China has recently witnessed the end of its zero tolerance policy against COVID-19 and the resurgence of domestic sports. With these favourable government policies, rapid legislative development and a booming market, the sports law landscape in China is expected to see vibrant and constant change, and market players are advised to consult with professional legal counsel about any legal challenges or uncertainties.

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