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CHAMBERS GLOBAL PRACTICE GUIDES

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# Sports Law 2024

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**Contributing Editor**  
Jamie Singer  
Onside Law



# Chambers

Global Practice Guides

## Sports Law

Contributing Editor

Jamie Singer

**Onside Law**

2024

# Chambers Global Practice Guides

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# INTRODUCTION

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**Onside Law** has been at the forefront of sports law for nearly two decades, and has offices in Geneva and Sydney in addition to its London HQ. Specialist advisers to clients across sport, media and entertainment, the firm provides practical and effective legal and commercial advice. Its team of 26 in London – supported by Geneva and Sydney – is able to provide the most informed advice needed in this increasingly complex and sophisticated sector. Onside Law prides itself on being seen as trusted advisers and problem-solvers by all its clients. It acts

for many of the major governing bodies and international federations, counts six FA Premier League clubs as clients and acts for some of the most high-profile sports people on the planet. Onside Law's specialist areas include disciplinary, integrity and anti-doping; major sport events; broadcasting and media rights; sponsorship, licensing and merchandising; investment in sport; acquisition of sports clubs and properties; and esports. The firm would like to thank James Tobias for his contribution to this chapter.

## Contributing Editor



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# INTRODUCTION

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### The Growth of Sports Law

Not so long ago, judges and academics scoffed at the suggestion that there was such a thing as “sports law”. There may have been a burgeoning sports industry, but it did not generate its own substantive body of law. Perhaps the idea that something as frivolous as sport could generate its own jurisprudence did not seem possible or even appropriate to a rather conservative judiciary.

With those commentators now clearly part of ancient history, Chambers publishes its fourth Sports Law Global Practice Guide. Sports law is now not only an internationally recognised legal discipline in its own right, but has also generated a significant body of legal precedent. In particular, it provides a crucial framework for the operation and regulation of an industry that has grown at an astonishing pace.

### Dispute Resolution

As sport as a business has developed, the contracts underpinning its commercialisation have become ever more sophisticated and the rules which governing bodies impose to control and regulate their sports have had to continually adapt. With higher value contracts and more detailed regulation, as with any industry, disputes have become both more common and more complex.

The first specialist court to hear sports-related disputes was created in Lausanne, Switzerland in 1983. Since then, the Court of Arbitration for Sport (CAS) has heard over 8,000 cases and expanded with further outposts in the USA and Australia. It has also created ad hoc divisions to provide quick resolution to “on-field” disputes at many of the world’s most significant sporting events. This demand for specialist dispute resolution for sport has in turn led to the creation of national bodies which exclusively serve the sports community, ranging from Sport Resolution in the UK to the National Sports Tribunal in Australia.

With the extraordinary growth in the financial value of football and, in particular, football transfer deals, not only has FIFA (*Fédération Internationale de Football Association*) created its own dispute resolution chamber, but this has spawned domestic equivalents with many national football dispute resolution chambers. Some standard transfer agreements now even refer to the “laws of FIFA”.

All of these tribunals and courts have contributed to a rich source of jurisprudence whose foundations remain the many decisions that have been published by CAS. This body of case law, taken alongside the rules and regulations underpinning international sport, has created the

# INTRODUCTION

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Lex Sportiva, a distinct international body of law specific to sport.

This guide summarises the key principles of sports law in 14 jurisdictions. Each jurisdiction is reviewed following the same 12-section format with sub-sections, allowing for easy comparisons on specific issues and concerns. It is designed to provide an easy-to-understand guide specific to each jurisdiction, whilst also demonstrating how certain areas of practice have reached a near homogenous position internationally.

## Anti-doping Rules

By way of example, as a result of the International Olympic Committee's (IOC) support for the World Anti-Doping Agency (WADA) and its requirements, anti-doping is regulated and enforced in much the same way across the globe through the WADA Code. The Code was revised in 2009, 2015, 2021 and 2022, providing a robust and uniform set of anti-doping rules applied by all 206 nations comprising the Olympic movement. In September 2023, WADA launched the first phase of the 2027 WADA Code & International Standards Update. This will involve the simultaneous review and update of the Code.

## Betting

Conversely, the regulation and exploitation of sports betting differs significantly in different jurisdictions. In the USA, prior to the Supreme Court decision in *Murphy v NCAA* (2018), sports betting was generally prohibited. That decision marked a sea change in American sports and over 34 states have now legalised sports betting. This, in turn, led to a flood of data and licensing deals between sports leagues and betting companies looking to offer accurate real-time betting services. In 2022, US sportsbooks revenue hit USD7.5 billion, an increase of over 75% from the previous year.

France took a similar position, reserving sports betting to *Francaise des Jeux*, a heavily regulated state monopoly throughout the 20th century and beyond. It is only in the last decade that, following pressure from the EU, France set up the National Gambling Authority with a remit to grant sports betting licences to carefully selected commercial operators.

At the other end of the spectrum, sports betting in the UK has been an integral part of the commercial landscape for decades, with betting sponsors now accounting for 35% of the front of shirt sponsors in the English Premier League and a total investment of almost USD72 million. However, as the USA and France liberalise sports betting, in the UK a review of the Gambling Act 2005 has begun to restrict betting sponsorship of sport, with a ban of these industry deals coming into force in the 2026–27 season. Meanwhile, jurisdictions such as India continue to treat sports betting as, principally, an illegal activity.

## Commercial Rights

The exploitation of sport's commercial rights has been one of the biggest growth industries of all in the past 25 years or so. In 2023, the sports industry has been estimated to be worth over USD500 billion according to the Business Research Company, a huge figure compared to its value at the turn of the millennium and despite the impact of the COVID-19 pandemic and ongoing war in Ukraine disrupting the economy.

As this guide demonstrates, different countries take different approaches to the creation and ownership of the sports rights creating this extraordinary value. In the UK and the USA, there is no standalone right in a sporting event or spectacle. Hence, the rights are exploited by a combination of commercial contracts, rights of access and a variety of intellectual property



# INTRODUCTION

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rights. Conversely, in France, event organisers enjoy automatic rights in the sporting spectacle itself, owning and controlling the commercial rights flowing from the events they organise.

However, regardless of how sporting rights accrue, their exploitation is very much an international business. The contracts granting broadcasting, sponsorship, merchandising and licensing rights are now carefully tailored industry-specific documents ensuring the vagaries of national regulatory systems do not devalue the international nature of their exploitation.

Termination of commercial agreements continues to be the subject of significant debate. The war in Ukraine has led many right-holders to consider whether contracts can be terminated where brands are simply based in or linked to Russia. There are also a few examples of sponsors attempting termination of contracts with clubs due to player behaviour. For example, Kurt Zouma's mistreatment of a cat led to sponsors arguing they were entitled to terminate contracts with Zouma's employer, West Ham.

Disputes will invariably follow as the interpretation of "reputation-based" termination rights are scrutinised.

## Broadcast Rights

Traditionally, broadcast rights have been the most valuable of these commercial rights. The IOC generates over USD4 billion in its four-year cycles capturing summer and winter versions of the Olympics. FIFA have a similar aggregation model, with one men's World Cup every four years generating nearly USD3 billion, and the women's World Cup now generating more than USD570 million, for example. In these cases, such figures constitute well over half of their income. The contractual framework and legal system underpinning their exploitation has had

to withstand the constant evolution of the means of production and distribution as well as, latterly, the viewing platforms available for consumption. Broadcasting now encompasses multiple techniques for delivering a feed to a consumer and requires a suite of specific contracts to paper those transactions.

The effects of the COVID-19 pandemic within the sports industry continue to live on, albeit with much less severity. Due to the hardships suffered in the primary COVID-19 years, the industry continues to adapt to ensure any future pandemics come at a smaller cost. Commercial contracts and particularly force majeure clauses have been scrutinised, with the future of some of these organisations resting on how a "boilerplate" clause was drafted. The force majeure clause will now be a key element of commercial negotiation rather than an afterthought, as was often the case before. The consequences of COVID-19 and the interpretation of affected contracts will fuel litigation and disputes for years to come.

## The Question of Insurance

Insurance is another area coming under scrutiny and development as a result of the pandemic. The All England Lawn Tennis Club (AELTC), owners of the Wimbledon Championships, were praised for their foresight as one of the very few organisations to have taken out event cancellation insurance which specifically included cancellation due to a pandemic. Their acumen ensured the protection of their financial position, despite cancellation (and in turn protected the share of profits which England's tennis association, the Lawn Tennis Association (LTA), relies upon). Going forward, insurance will be a key consideration for legal and finance directors, although the increased premiums will reduce the pool of event organisers who can even consider it.

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## Freedom of Goods and Services

In Europe, COVID-19 is not the only major event that sport has had to navigate in the last few years. In December 2020, the European Union Withdrawal Act was passed by the UK Parliament and the UK left the EU on 1 January 2021. An immediate impact has been felt with regard to the transfer of professional athlete contracts, particularly in football. The fundamental principle of the free movement of goods and services within EU countries was critical to the operation of the football transfer system, as well as to many other sports. Those systems are having to adapt to the new reality and it will be interesting to see how they fare.

Since early 2022, we have been seeing the devastating consequences of the war in Ukraine also affecting sport. Initially, this led to many federations banning Russian and Belarusian teams from competition and withdrawing hosting rights – also affecting individual athletes across the world in all disciplines of sport. Already, Russia has launched numerous appeals at the CAS, which will have the difficult task of putting emotion aside to consider the legality of actions taken under the relevant constitutions and rules of participation.

## The Future Awaits...

The events of the last few years have seen and will continue to see significant additions to the Lex Sportiva. It appears that 2024 will see sport continue to grow at rapid speeds, with fans keener than ever to experience the passion, atmosphere and excitement that sport has to offer. As lawyers supporting this industry, we hope this guide assists in navigating the challenges ahead.

# AUSTRALIA



## Law and Practice

### Contributed by:

Sven Burchartz, Brigid Virtue, Jessica Bell  
and Hannah Burley

**Kalus Kenny Intelex**

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**Kalus Kenny Intelex** is a progressive, commercially oriented firm, specialising in sport, property, commercial and dispute resolution. The firm shares its clients' successes by becoming a true strategic partner in their pursuits, and always seeks to deliver more value by offering business outcomes in addition to legal advice. Kalus Kenny Intelex's personal and proactive approach, combined with a straightforward nature, makes it a different kind of law firm. The sports law team understands that, like sport it-

self, the business of sport is dynamic, emotionally charged and highly competitive. With local and global experience in the sports and leisure sector, its sports law team supports professional and amateur sporting organisations, clubs/teams, athletes, sponsors and other key stakeholders in their pursuit of sporting and commercial success. Kalus Kenny Intelex is the sole Australian member of the International Lawyers Network, a global alliance of 5,000 lawyers in 66 countries.

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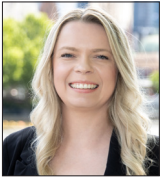
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**Hannah Burley** has deep experience within the sports law environment gained from working within the niche area of motorsports law. Hannah's solid administrative and commercial

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## 1. Regulatory

### 1.1 Anti-doping

#### Criminal Offences Relating to Doping in Australia

Australia, unlike many other countries, does not have any legislation that specifically criminalises doping in sport. Instead, the Australian Commonwealth and each of the states and territories have enacted legislation that criminalises certain conduct constituting a violation of the World Anti-Doping Agency's (WADA's) anti-doping rules. By way of example:

- Australia's Commonwealth Criminal Code Act 1995 criminalises the trafficking of certain substances that also appear on the WADA's list of substances and methods as being prohibited both in and out of competition, and in particular sports (World Anti-Doping Code Prohibited List); and
- Australia's Customs Act 1901 and Customs (Prohibited Imports) Regulations 1956 criminalises the importation of certain substances that also appear on the World Anti-Doping Code Prohibited List – this type of offence is punishable by up to five years' imprisonment and/or up to 1,000 penalty units.

Commonwealth and state and territory legislation in Australia also prohibits the use or administration of a substance on the World Anti-Doping Code Prohibited List without an appropriate medical or therapeutic justification.

#### Implementation of the World Anti-Doping Code in Australia

Australia is a signatory to the UNESCO International Convention against Doping in Sport, and is therefore required to implement an anti-doping scheme that is in accordance with the principles of the World Anti-Doping Code.

Sport Integrity Australia – an executive agency of the Australian government that brings together the Australian Sports Anti-Doping Authority (ASADA), the National Integrity of Sport Unit (NISU) and the national integrity programmes of the Australian Sports Commission as one entity – implements the World Anti-Doping Code by way of a legislative framework that includes the Sport Integrity Australia Act 2020 and the Sport Integrity Australia Regulations 2020 (in particular, Schedule 2 – the National Anti-Doping Scheme).

Sport Integrity Australia collaborates with the World Anti-Doping Agency (WADA), international anti-doping organisations and other stakeholders on an ongoing basis, to ensure (by way of regular amendments) that Australia's National Anti-Doping legislation remains consistent with the World Anti-Doping Code. The Sports Integrity Australia Act 2020 was most recently amended in December 2020 to implement revisions to the World Anti-Doping Code.

#### Recent Anti-doping Case Example

A recent case example in Australian Sport is that of middle-distance runner, Peter Bol, who was provisionally suspended by Athletics Australia after he failed an out-of-competition doping test in January 2023. The suspension was lifted the following month after his "B sample" was found to have an atypical finding for erythropoietin (EPO), meaning that the amount found was not unusual and any EPO present was produced naturally by Peter Bol's kidneys. Despite this, Sport Integrity Australia opted to continue its investigation until August 2023, when Peter Bol was finally cleared by the governing body.

Notably, the false positive in Peter Bol's "A sample" has led WADA to undertake a review of current EPO testing processes. At the time of writing, the results of the review are yet to be released.

## 1.2 Integrity

### Match-Fixing – Legislative Measures

In 2011, the Australian Commonwealth and state and territory governments agreed to a National Policy on Match-Fixing in Sport (the National Policy), in an effort to “pursue (...) a consistent approach to criminal offences, including legislation by relevant jurisdictions, in relation to match-fixing that provides an effective deterrent and sufficient penalties to reflect the seriousness of offences, as provided for in Part 4.3 of the National Policy.” A number of Australia’s states and territories have since enacted legislative arrangements covering certain match-fixing behaviours, with penalties including a maximum of seven to ten years’ imprisonment.

By way of example, Part 4ACA of the Crimes Act 1900 (NSW) criminalises conduct that is likely to affect the outcome of any type of betting on any event (that is lawful to bet on in any state, territory or the Commonwealth), and which does not meet the standard of integrity that a reasonable person would expect of those in the positions that affect this outcome (ie, “corrupt conduct”).

### Role of Governing Bodies

Athlete misconduct, including match-fixing and/or cheating in sport, is also dealt with and regulated by the relevant sporting code’s governing body, in accordance with their particular rules and the guidelines of participation in that particular sport.

Often, regardless of the code or league, player misconduct can trigger suspension, or in more serious cases, a player or players may have their player contracts terminated as a result of their misconduct.

The actions of former Australian Test Cricket captain, Tim Paine, in 2017 (which came to light in 2020) serve as a stark reminder of the conse-

quences of misconduct in Australian sport. Tim Paine was accused of sending sexually explicit and unsolicited text messages to a former Cricket Tasmania employee. As a result, he lost the support of the Cricket Australia board and was reportedly forced to stand down from his captaincy. He has not played in the Australian side since, retiring from first-class cricket in March 2023.

## 1.3 Betting

### No National Authority Regulating Sports Betting in Australia

Sports betting is not illegal in Australia, and there is no single overarching statute or authority regulating gambling activities, including betting, in the country.

Sports betting is, however, separately regulated by way of a series of federal statutes and by separate legislative frameworks in each of Australia’s eight mainland states and territories. By way of example, the Victorian Gambling and Casino Control Commission Act 2011 provides for the creation of the Victorian Gambling and Casino Control Commission (VGCCC, formerly known as the Victorian Commission for Gambling and Liquor Regulation), which is empowered to regulate the gambling and liquor industries in Victoria.

### Regulation of the Betting Activities of Professional Athletes

The betting activities of professional athletes are often regulated to a greater extent than non-athletes by the regulating body of their particular sport. The Australian Football League (AFL), for example, prohibits players from betting on AFL matches, and in 2022 fined a player AUD5,000 and banned him from playing for two matches after he placed bets on 10 games during the 2021 AFL season.



The AFL also saw a betting scandal involving match umpires in 2022 where votes for the Brownlow Medal (which is awarded to the AFL's best and fairest player in a season) were leaked by an umpire. The umpire in question subsequently lost his job with the AFL and was arrested by Victoria Police. At the time of writing, the umpire and three others who are suspected of being involved have not been charged, with a criminal investigation still ongoing.

In response to the 2022 Brownlow scandal, the AFL brought in new regulations ahead of the 2023 awards evening, including an AUD250 payout limit for round-by-round betting, prohibitions on any AFL staff from placing bets and allowing for on-the-spot audits at any time, in the hope of avoiding a repeat of a similar scandal.

## Protecting the Integrity of Sport – Information Sharing

In some Australian states, approval by regulators (such as the Victorian Gambling and Casino Control Commission) as a Sports Controlling Body (SCB) enables an organisation to enter into agreements with sports betting providers for the provision of particular sports betting services, and to receive a financial benefit in return.

This also allows those SCBs to share information with betting operators – for example, in order to protect and support integrity in their sport. The intention of such a framework is to promote confidence in Australian sports and any associated betting activities.

### 1.4 Disciplinary Proceedings

Each of the major sporting codes in Australia has developed and implemented its own integrity unit, tribunal or similar body, to manage disciplinary proceedings against athletes.

The steps taken by each of those bodies in respect of investigating and penalising doping, integrity, betting and other offences differ among the codes.

By way of example, Rugby Australia has implemented a mandatory reporting scheme whereby “participants” in rugby (including players, coaches, managers and agents) are required to immediately report any breaches of their Anti-Corruption and Betting Policy to an appointed Integrity Officer. That Integrity Officer is then empowered to investigate the breach, issue the relevant participant with a written breach notice and, if requested, establish an integrity tribunal to conduct a hearing in relation to the alleged breach.

## 2. Commercial Rights

### 2.1 Available Sports-Related Rights Ticketing Rights

One of the most notable sports-related commercial rights to be exploited in Australia are those relating to ticketing. The market for tickets in Australia is significant and comprises both primary and secondary ticketing markets.

The term “primary ticket sales” refers to a situation where tickets are first sold by an official ticket seller, whereas the term “secondary market” refers to a situation where those primary tickets are resold.

#### The Secondary Ticketing Market

The secondary market for tickets in Australia comprises two main components, as follows:

- authorised on-selling, whereby sporting bodies, such as Tennis Australia or the AFL, authorise other entities, such as travel com-

- panies, to purchase tickets to a sporting event and on-sell them to their customers; and
- ticket scalping, whereby ticket scalpers resell tickets at an elevated price.

## Scalping

There is no federal legislation making scalping illegal in Australia. In 2017, the Australian Senate passed an amended motion for the Australian federal government to introduce new legislation to combat the issue. However, to date no specific federal legislation has been enacted. Instead, ticket resale to sporting and entertainment events is regulated through various consumer protections under the Australian Consumer Law and state/territory-specific legislation which sets out the manner and terms on which tickets can be resold, and provides for restrictions, or even prohibitions on scalping in that jurisdiction.

By way of example, in Victoria in 2022, amendments to the Major Events Act 2009 made it an offence to advertise or sell a ticket package to a declared event without the written authorisation of the seller. The amendments also require that resellers of all tickets to declared major events now state the face value, the asking price and the seat details of tickets in sale advertisements.

## 2.2 Sponsorship

In Australia, many sports sponsors use their sponsorship rights as a marketing tool. Sponsors generally leverage the platform that a sports rights-holder can offer in order to increase public awareness of their brand and, in turn, the value of their business. The affiliation with a sports rights-holder can, in certain circumstances, improve the corporate image of the sponsor as they leverage the strong reputation and brand of a sporting team or player.

## Attracting Sponsors to Sport

Sports rights-holders use sponsors to generate revenue for their business, by way of payment of sponsorship fees.

Sports rights-holders attract sponsor investment by offering a range of sponsor rights, which traditionally can include the right to use the sports rights-holder's brand and player imagery, and to have the sponsor's brand displayed on player kits and at certain matches. Sponsorship agreements may offer customised content, featuring players and team members, the right to feature on the sports rights-holder's social media channels and, in some circumstances, allow the use of the sports rights-holder's fan database for the sponsor's marketing purposes.

## Key Provisions of Sponsorship Agreements in Australia

The key provisions in any sponsorship agreement include clauses relating to:

- exclusivity, which may relate solely to a particular market or market segment;
- payment terms;
- sponsor benefits, including provisions dealing with the suspension of any sponsor benefits;
- intellectual property rights, including where and how a sports rights-holder's brand can be used, and any required approvals;
- termination conditions; and
- the duration of the agreement.

## 2.3 Broadcasting

### Exploiting Broadcasting Rights

Traditionally, broadcasters in Australia exploit available broadcasting rights by selling advertising space on their channels (especially in the case of free-to-air channels) and otherwise by offering paid subscription services to the public.

Broadcasting rights are one of the most valuable rights available for sports rights-holders in Australia to sell in order to generate revenue. Broadcasters will often seek exclusivity in the broadcasting rights to certain sports events because they can exploit those rights to encourage businesses to purchase advertising space on their channels during times of high viewership.

By way of example, the AFL and Cricket Australia currently have broadcasting rights agreements in place with both Channel 7, which is a commercial free-to-air television channel in Australia, and Foxtel and Kayo as a subsidiary of Foxtel, which are both subscription-style pay-TV services. These television companies exploit the popularity of the AFL and cricket amongst viewers in order to generate profits through advertising revenue (in the case of Channel 7) and in the case of Foxtel and Kayo, through revenue derived from viewer subscription fees.

### Exclusivity of Broadcasting Rights

Broadcasting rights in Australia are often obtained on an exclusive basis, meaning that the sale of particular broadcasting rights to a certain television channel or provider often precludes the sale of those same rights to another television company.

There are a number of “anti-siphoning” laws in Australia that require certain events (such as the AFL premiership competition) to be made available free of charge to the general public. This means that subscription-based television providers are not able to acquire the exclusive rights to broadcast these sporting events, without a free-to-air television channel also holding those broadcasting rights. Interestingly in the case of the AFL Grand Final, the match is only broadcast on a free-to-air television channel, available on pay-TV at a later time.

## 3. Sports Events

### 3.1 Relationships

The High Court of Australia in the matter of Victoria Park Racing & Recreation Grounds Co Ltd v Taylor [1937] HCA 45 found that, while event organisers may make a profit by charging entrance to a private area in which a spectacle (ie, a sporting event) is being held, no proprietary rights exist in the spectacle itself.

Organisers of sporting events must then find different ways to control rights at a particular sporting event. As sporting events are generally held on private property, event organisers have the right to issue admission requirements for attendees. Further, each state and territory in Australia has varying statutory regimes that prohibit unauthorised broadcasting of sporting events. For example, Sections 43 and 44 of the Major Events Act 2009 (Vic) make it a crime to broadcast, telecast, videotape or record a sporting event without prior authorisation from the organisers.

### Management of Sporting Events

Each state and territory in Australia has legislated independently on the issue of event organisation, management and supervision. In recent years, a number of legislative repeals have been enacted to better protect the interests of event organisers, including in the area of ticket sales and resales, particularly in relation to ticket scalping, as outlined in **2.1 Available Sports-Related Rights**.

### 3.2 Liability Duty of Care

In Australia, a legal person may be held liable for their failure to take reasonable care to avoid causing injury or loss to another person (negligence). One of the key requirements in proving

that a person has been negligent is to show that the “negligent” person owed a duty of care to the person who was ultimately harmed, or who suffered a loss.

Although the tort of negligence and the principle of a duty of care traditionally developed in Australia by way of the common law, each of the states and territories has now legislated (to varying degrees) in relation to the general concept. For example, in Victoria negligence is governed by the Wrongs Act 1958 (Vic).

Generally, sports event organisers owe a duty of care to participants in the event, people working at the event and spectators who buy a ticket to and attend the event.

### Limiting Liability

Liability in negligence can be limited or excluded by way of agreement between the relevant parties. However, the agreement should explicitly identify the limitation or exclusion of certain liability, as general wording such as “all liability is excluded” will not ordinarily be construed by Australian courts to apply liability limitations or exclusions to liability for negligence.

## 4. Corporate

### 4.1 Legal Sporting Structures

There is no blanket legal requirement in Australia for a sporting club (whether that club is professional, amateur, commercial or non-profit) to become incorporated. However, in order to limit the liability of its members and officers, many sporting clubs do choose to incorporate, either as:

- incorporated associations under the applicable state or territory legislation (the Associations Incorporations Acts); or

- corporations under the Corporations Act 2001 (Cth) (the Corporations Act).

There are some circumstances where governing bodies have imposed a requirement that small local clubs be incorporated. For example, the AFL NSW/ACT, the state body responsible for the growth of the AFL in New South Wales and the Australian Capital Territory, requires local football clubs to be incorporated to ensure that the legal rights and obligations of the clubs are not borne by their members.

### 4.2 Corporate Governance Sports Governance Principles

In March 2020, the Australian Sports Commission released a revised version of its Sport Governance Principles (Principles), which it has developed for the purpose of guiding Australian sporting organisations to deliver good governance. The Principles apply to all organisations throughout the Australian sporting sector, whether they are small local clubs or large national organisations.

#### Directors’ Duties

The Principles (outlined above) are not mandatory, but directors of sporting organisations are required to comply with the same behavioural requirements as any other company director in Australia, as outlined in the Corporations Act. This includes complying with a number of directors’ duties such as the duty of care, skill and diligence, the requirement to avoid conflicts of interest and the duty to act in good faith.

#### Insolvent Trading

The Corporations Act also prohibits insolvent trading by directors of all corporations, which includes the directors of sporting organisations. Pursuant to Section 95A of the Corporations Act, “a person is solvent if, and only if, the person is

able to pay all the person's debts as and when they become due and payable.”

### 4.3 Funding of Sport

The Australian Sports Commission (ASC) is the Australian government agency responsible for supporting and investing in sport in Australia and is funded by the Australian government.

The ASC distributes the funds it receives from the Australian government amongst sport at all levels, and is accountable to the Australian Federal Minister for Sport. Some sporting organisations in Australia are also funded by way of private investment.

In the wake of the COVID-19 pandemic, government financial support was introduced for small businesses (including eligible community sporting organisations). Although the amount of funding grants has decreased in the last year, a small number of grants remain available for community sporting organisations, including the Emergency Sporting Equipment Grant Program and Significant Sporting Events Program (both in Victoria).

### 4.4 Recent Deals/Trends

Private equity continues to be a trend in the Australian sporting sector. Private equity investment refers to a situation where a private equity investor raises a pool of capital to form a fund which, once the particular funding goal has been met, will be invested into a company that the investor believes will offer a return.

Rugby Australia (rugby union's national governing body) explored multiple capital-raising options throughout 2023. In November 2023, the governing body announced an agreement with a private equity firm, Pacific Equity Partners, to provide a flexible AUD80 million credit facility to

help accelerate growth initiatives, particularly in women's rugby, community and pathways.

Outside of rugby, private equity funding has recently been considered in both netball, football (soccer) and cricket in Australia. No such deals have proceeded, with an AUD6.5 million deal to privatise Super Netball falling through in August 2022 following Netball Australia's rejection of the proposal. More recently in 2023, Football Australia considered the sale of its rights to the Matildas, Socceroos and the A-League for a 99-year period. While the proposal advanced significantly, the high commercial and privacy risk ultimately led Football Australia to shelve the privatisation plans.

## 5. Intellectual Property, Data and Data Protection

### 5.1 Trade Marks

#### Registering a Trade Mark

In Australia, any individual, company, or incorporated association may apply to register a trade mark in respect of certain goods or services by filing an application with IP Australia.

Subject to certain requirements, a letter, word, name, signature, numeral, device, brand, heading, label, ticket, aspect of packaging, shape, colour, sound or scent (provided it is capable of graphical representation) may be registered.

#### What Cannot Be Registered?

Certain marks cannot be registered in Australia, including:

- marks that are purely descriptive;
- some geographical names and surnames;
- certain words related to banking and financial services; and

- certain prohibited signs and marks which are scandalous by nature or contrary to law.

## The Benefits of Registration

The benefits of having a registered trade mark include that:

- the registered owner will have the exclusive right to use the mark in respect of the goods and services covered by the registration; and
- the registered owner will have the right to bring an action against anyone using a mark that is substantially identical or deceptively similar mark to the registered owner's registered mark, in respect of the same or similar goods or services and where customers are likely to be deceived or confused.

## 5.2 Copyright/Database Rights

### Australian Copyright Law

In Australia, copyright law is contained in the Copyright Act 1968 (Copyright Act). There is no system of copyright registration in Australia. Instead, subject to certain requirements, particular forms of expression (including text, images and music), are automatically protected by copyright under the Copyright Act.

For example, Section 101 of the Copyright Act provides that the copyright in a literary, dramatic, musical or artistic work "is infringed by a person who, not being the owner of the copyright, and without the licence of the owner of the copyright, does in Australia, or authorises the doing in Australia of, any act comprised in the copyright." This includes using or reproducing the copyright works and offering articles for sale which contain infringing copyright material.

### Defences for Copyright Infringement

Common exceptions and defences to copyright infringement include:

- fair dealings with the copyright works (which includes use in reporting, for research, review or criticism);
- certain private or incidental dealings with copyright works and other subject matter; and
- educational copying and archiving of works.

### No Specific Database Right

As there is no specific law in Australia providing for database rights, databases may only be protected in Australia if they fall within the scope of protection offered by the Copyright Act. The Copyright Act will likely only cover a database in respect of the compilation of the data, and provided that the creators used intellectual effort in creating the database, and that the database itself is sufficiently original.

### Copyright and Australian Sport

In 2019, the Australian Football League (AFL) issued a cease-and-desist notice for copyright infringement to a company called League Tees. The AFL alleged that a line of t-shirts and badges marketed and sold by League Tees, and which featured an iconic photograph of an AFL Women's League player that was taken by AFL Media's chief photographer, infringed the copyright of the AFL. Whilst League Tees maintained a position that their designs were substantially different from the photograph, they ultimately withdrew the products from the market.

## 5.3 Image Rights and Other IP

### No Image Rights in Australia

In Australia, there is no legally recognised image right. This means that the protection of an athlete's image is not a specific cause of action. Instead, a number of other more traditional causes of action need to be relied upon in order to protect a celebrity's image. These causes of action include:

- the tort of passing off;
- breach of Australian Consumer Law;
- defamation; or
- trade mark and copyright infringement.

## The Australian Consumer Law and the Tort of Passing Off

Passing off is a common law tort in Australia, and refers to a situation where one party misrepresents that their goods or services are associated with the goods or services of another.

Similarly, the Australian Consumer Law prohibits a party from engaging in conduct that could mislead or deceive consumers. In relation to the image of an athlete, this means that any use of an athlete's image is prohibited if that use could lead consumers to believe that there is a relationship in place between the business and the relevant athlete.

## 5.4 Licensing

Sports bodies and athletes can exploit their intellectual property (IP) rights in order to leverage the value of their brand and to generate revenue by licensing those IP rights to third parties. These licensing rights might include the right to apply a registered or unregistered trade mark to goods, services or other advertising materials.

### Restrictions on Assignment

In Australia, there are very few restrictions on assignment of intellectual property. For an assignment of copyright to be valid and enforceable, that assignment must be in writing by way of a deed or agreement. However, where a trade mark is not registered, the ownership and intellectual property rights in the unregistered mark can only be assigned with the goodwill of a business.

Further, where a trade mark is a collective mark, it cannot be assigned or transmitted under Australian law.

## 5.5 Sports Data

In Australia, sports data, including both athlete and spectator data, is predominantly used by stakeholders to track player performance, increase fan engagement and encourage and expand partnerships.

### Player Performance

Australia's elite sports teams collect and analyse athlete data to identify strengths and weaknesses in any given player or a team's performance. Analytics can help players and teams understand the key factors that contributed to their winning or losing a game or season.

In the AFL, for example, football clubs have developed their own data management systems and have recruited their own teams of data analysts to enable them to determine where they can improve and even how they can win.

### Fan Engagement

Data and analytics are also used in Australian sport to improve the fan experience and to increase fan engagement with a particular sport or team.

Clubs and sports event organisers use data to create a better experience for fans within the stadium by collecting data in relation to ticket sales, spectator movement around the stadium and the purchases made at the stadium, including purchases of merchandise and food and beverage. Not only does this help clubs and sporting event organisers to increase sales of products and merchandise, it also assists in the delivery of a better spectator experience.

## Partnerships

Historically, sports rights-holders did not have a substantial amount of information or data. However, a growing trend in sport is the increasing value of data that can be used by sports rights-holders and offered to potential partners. This data includes information in respect of sponsorships, broadcasting rights and advertising.

Sports rights-holders can now leverage data and analytics to not just encourage partners to get on board but also to increase the value of their offering.

## 5.6 Data Protection

In Australia, the primary piece of legislation regulating the collection and use of personal information is the Privacy Act 1988 (Cth) (Privacy Act). The Privacy Act only applies to certain organisations and government agencies.

“Personal information” is defined by the Privacy Act as “information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not.”

Sports data that is personal information will be subject to the requirements of the Privacy Act, which restricts the way in which that data can be collected, used and disclosed, transferred to and used by other entities.

The Australian government conducted a review of the Privacy Act in 2023. On the back of this review, the Australian Government introduced harsher penalties for privacy breaches. We expect that additional, significant changes to Australia’s privacy legislation will be introduced throughout 2024, including strengthened privacy protections to better align the laws in our juris-

dition with the EU’s General Data Protection Regulation. We also expect that the powers of the Office of the Australian Information Commissioner to investigate and resolve privacy breaches will be enhanced.

## 6. Dispute Resolution

### 6.1 National Court System

Sporting associations in Australia ordinarily set their own dispute resolution procedures, which are provided for in their governing documents and in their agreements with partners. These procedures are often set out in a dispute resolution clause which provides that the association’s internal tribunals (or another form of alternative dispute resolution) must be utilised before parties may take a dispute to court.

Generally, Australian courts will only get involved in sporting disputes if there has been an allegation that natural justice has been denied, or if there is a contractual dispute to be determined – for example, if a player alleges that a club has breached its own rules, as set out in the club’s governing documents.

### 6.2 ADR (Including Arbitration)

Australia’s Civil Dispute Resolution Act (2011) (Civil Dispute Resolution Act), aims to ensure that, as far as possible, people take genuine steps to resolve disputes before certain civil proceedings are instituted. The Civil Dispute Resolution Act provides that an applicant who institutes civil proceedings in an eligible Australian court must file a “genuine steps statement” (a statement outlining the steps taken by the applicant to resolve the dispute prior to litigation or the reasons why no such steps were taken) at the time of filing the application.



For the purposes of the Civil Dispute Resolution Act, “genuine steps” include considering whether the dispute could be resolved by a process facilitated by another person, including an alternative dispute resolution process such as mediation.

Alternative dispute resolution processes, including mediation and arbitration, are often utilised in the sports industry in Australia. For example, early in 2020, one of Australia’s largest free-to-air television channels, Channel 7, was in dispute with Cricket Australia in relation to its cricket broadcasting rights. In an effort to resolve the dispute, Channel 7 made an application to the leading Australian arbitration body, the Australian Chamber for International and Commercial Arbitration (ACICA) seeking a ruling on the dispute.

### 6.3 Challenging Sports Governing Bodies

Sports governing bodies are able to provide for sporting and financial sanctions (including suspensions and monetary penalties) in their own rules, and regularly impose financial and other sanctions on players or clubs who fail to comply with the rules and associated codes of conduct.

Parties may challenge decisions made by a sports governing body in certain circumstances, including where the parties did not act unreasonably or acted in such a way that would offend natural justice. Australian courts may intervene in a dispute of this kind where a party contends that the governing body has breached or failed to follow one of its own rules.

## 7. Employment

### 7.1 Sports-Related Contracts of Employment

The particular arrangements in place between an athlete and a sporting club or team will determine whether that athlete is, in fact, an employee and therefore covered by Australia’s strict framework of employment law.

Given that the express terms of player contracts often include promises to play the sport whenever and wherever directed by the club, wear the club uniform, attend training, and follow the instructions of the coach and team managers – an employer-employee relationship exists in most circumstances.

### Salary Caps

Many of the major sporting codes in Australia have implemented salary caps. This means that the major clubs are subject to a limit in respect of the amount they are allowed to spend on player contracts.

### 7.2 Employer/Employee Rights

Most jurisdictions in Australia have implemented a single set of work health and safety laws that are known as the model Work Health and Safety (WHS) laws. The main object of the WHS laws is to provide a framework to secure the health and safety of workers and workplaces which is consistent across the states and territories of Australia.

Within those states and territories which have implemented the model WHS laws (currently all jurisdictions in Australia other than Victoria and Western Australia), any “person conducting a business or undertaking” must, so far as is reasonably practicable, ensure the health and safety of:

- workers engaged, or caused to be engaged, by the person; and
- workers whose activities in carrying out work are influenced or directed by the person, while the workers are at work in the business or undertaking.

The duty to ensure the health and safety of workers captures both the relationship between sporting clubs and the athletes that they employ, as well as between the governing bodies and the athletes that play in the competitions that they manage and oversee.

## 7.3 Free Movement of Athletes

### Relevant Visas

The Department of Home Affairs in Australia offers a Temporary Activity Visa, which allows foreign persons to play, coach, instruct or adjudicate for an Australian sports team, or to undertake high-level sports training within a sporting organisation in Australia, for a period of up to two years.

In order to be eligible for a Temporary Activity Visa, applicants must:

- have a sponsor or supporter;
- have a contract and letter of support from a peak sporting body; and
- not work outside of the specified sporting activities.

## 8. Esports

### 8.1 Esports Overview

The esports market in Australia remains relatively small compared to the global market. The popularity of esports within Australia has grown significantly over the last few years, accelerated further by the COVID-19 pandemic, as specta-

tors sought to satisfy their love of sport during periods of suspension of traditional sporting matches.

Whilst the Australian esports market continues to take shape, Australian players appear to have been utilising the international market. Notably, Anathan “ana” Pham won the International Dota 2 Championships in both 2018 and 2019. Within a mere five years of competition, he won over USD6 million in prize money before his retirement in 2021.

## 9. Women’s Sport

### 9.1 Women’s Sport Overview

Australia has made significant progress and investment in developing and growing its women’s sporting industry in recent years, which is expected to continue in the years to come.

Notable examples include an AUD5 million investment in 2022 into Basketball Australia to support the delivery of the FIBA Women’s Basketball World Cup and associated legacy programmes. In 2023, on the back of the FIFA Women’s World Cup, the Australian government committed AUD200 million to the women’s sports infrastructure in Australia to fund gear and facilities for female athletes.

While the FIBA Women’s Basketball World Cup and, in particular, the FIFA Women’s World Cup, have significantly boosted the visibility and popularity of women’s sport in Australia, it is fair to say that there remains a considerable gap to bridge in achieving parity with men’s sport.

### Notable Statistics

In 2023 the “Value of You Can Be What You Can See” report, commissioned by the Office for

Women in Sport and Recreation, reported that women's elite and grassroots sport in Victoria has seen significant growth in recent years, with corporate supporters of women's sport benefiting from more than AUD650 million annually in customer value. The report found that the sponsorship of women outperformed men across brand awareness, brand consideration and customer conversion. However, despite these impressive figures, industry benchmarks show that the value of women's elite sport properties is, as at July 2023, at only 12% of the level of men's elite sport properties.

In March 2023, it was reported that only 10% of broadcast coverage was allocated to women's sport, a slight increase from 7.6% in May 2020. However, a recent study by Foxtel Media has also revealed that viewing engagement of women's sport on the pay-TV platform has increased, with 36% of Australians consuming an hour or more of women's sport per week (up from 32% in 2022). The study also found that the positive impact of sponsorship of women's sport increased in 2023, with 68% of viewers feeling more positive towards brands that sponsor women's sport in comparison to 53% surveyed in 2022.

## Competition Growth

The Australian Football League (AFL) is one of the most (if not the most) popular spectator sports in Australia, and now the Women's AFL (AFLW) is one of the fastest-growing competitions in women's sport in Australia. The first time that women were represented in AFL was in 2013, with the official AFLW professional competition beginning in 2017. At that time, the AFLW had only eight teams in participation. The number of teams grew quickly, with all 18 AFL clubs having AFLW teams by 2023.

## Developing Women's Sport Further in Australia

There are a number of organisations in Australia whose purpose is to develop women's sport, including one notable organisation called Women Sport Australia. Since its incorporation in 2005, Women Sport Australia has worked with industry stakeholders to provide women and girls with greater opportunities in sport and physical activity. Women Sport Australia has conducted numerous initiatives in recent years, including a "Women in Leadership" workshop to provide further access to women seeking coaching and other leadership roles in the sporting industry, and a "Women in Sport Mentoring Program".

Soccer is one example of a female sport that is continuing to grow in Australia. According to Football Australia's National Participation Report for 2021, there were 174,380 women and girls participating in outdoor soccer, social and registered futsal that year. This represents a growth of over 21% or 30,507 players since 2020. Following the success of Australia's national football team (known as the Matildas) at the 2023 FIFA World Cup, female participation in soccer and other sports is expected to skyrocket over the coming year.

Women's cricket has also seen significant growth. The Women's Big Bash League (Australia's women's domestic Twenty20 cricket competition) was recognised as the fourth most-watched domestic sports competition in Australia in 2021, amongst both men's and women's sport. In 2023, Cricket Australia also reported significant growth in female participation, with registered participation among women and girls in cricket clubs reaching over 50,000. Cricket Australia's official census numbers for the 2022-23 season boasted a 26% increase in women's participation from the previous year. Notably, the

cricket body attributed some of this growth to the success of the FIFA Women's World Cup.

Moving from the field to the race track, motorsport has seen significant investment over recent years to boost female participation. Through the FIA Girls on Track initiative, Motorsport Australia (Australia's motor racing governing body) together with other motorsport organisations and local car clubs, have been providing girls aged 8-22 with more tools and support to get more involved in motorsport, whether as drivers, engineers, mechanics, volunteers or in one of the many other roles in the motorsport industry.

## 10. Non-fungible Tokens (NFTs)

### 10.1 Non-fungible Tokens (NFTs) Notable Usage of NFTs in Australia's Sport Industry

In 2022, following the success of the US National Basketball Association in the NFT market, selling basketball's greatest "moments" as NFTs called "NBA Top Shots", Cricket Australia in conjunction with the Australian Cricketers Association signed a multi-year official licensing deal with Rario and BlockTrust regarding the creation of an online platform for the trading and sales of NFTs, in particular "digital memorabilia."

2022 also saw the launch of the "AO Artball" NFT collection by Tennis Australia, which remained popular amongst Australian tennis fans during this year's Australian Open. There was also the launch of the AFL Mint, which sells exclusive AFL NFTs showcasing iconic "moments, highlights and champion players" in AFL history.

### Risks in NFTs in the Sports Industry in Australia

The NFT market in the Australian sports industry has cooled off slightly. During arguably the

peak years of NFT popularity, in 2021 and 2022, sports fans often scrambled to secure an NFT of their favourite sports team's memorabilia in the hope that the NFT would increase in value. However, in the last year the sports industry has gone relatively quiet on the NFT front, perhaps given the uncertainty around the value of NFTs, which is not as strong as other digital assets or currencies. The uncertainty and potential risks associated with investment in NFTs are certainly not unique to the sports industry.

## 11. Regional Issues

### 11.1 Regional Issues Overview

The rise in athlete activism continues to be a prominent feature in perhaps not just Australian sport, but internationally. Notably, late 2022 saw tensions rise between the competing interests of athletes' ideals and brand identity, with that of corporate partnerships in Australian netball where Netball Australia lost its AUD15 million sponsorship from Hancock Prospecting.

More recently, the International Cricket Council prohibited Australian cricketer Usman Khawaja from wearing slogans or symbols that the council considered to be political ahead of the team's first game against Pakistan at the start of the 2023/2024 Test series.

## 12. Artificial Intelligence (AI)

### 12.1 AI Overview

The regulatory framework for artificial intelligence (AI) in Australian sports is still in its developmental stage, with some state governments currently conducting inquiries into the use of AI (for example, in New South Wales). However, sporting organisations are utilising this technology to optimise performance. For example, many

AFL clubs are utilising AI technology to provide statistical analysis for their team's performance. They are also using it to provide summaries of opposition teams' vulnerabilities, strengths and weaknesses in order to prepare for games.

AI is also revolutionising the approach to managing Anterior Cruciate Ligament (ACL) injuries. ACL injuries have become increasingly prominent and impact athletes across all sports and levels and AI mechanisms have been a key technological innovation component of orthopaedic surgery. AI-based technologies are being used in a wide variety of applications, including image interpretation, automated chart review, assistance in the physical examination via optical tracking using infrared cameras or electromagnetic sensors, generation of predictive models, and optimisation of postoperative care and rehabilitation.

As AI progresses, its integration into various facets of the sports industry is anticipated to expand, potentially influencing job roles in areas where AI proves to be more efficient. This trend of AI impacting employment is not confined solely to the sports sector.

## 13. The Metaverse

### 13.1 Metaverse Overview

The Metaverse is revolutionising the sport experience for fans, taking them beyond watching sport on a screen or in a stadium, to immersing them as active participants in their own games.

The concept of the Metaverse is still very new to the Australian sport landscape. In 2023, the Australian Open introduced the Metaverse concept to tennis fans, expanding that offering this year to feature the ability for Roblox users to compete in virtual tennis-themed games to win prizes.

As the use of AI and technology grows within the Australian sports industry, there is no doubt that more sporting organisations will follow in the Australian Open's footsteps by offering more opportunities for engagement with fans through the Metaverse.

Sport entering into the Metaverse will not be without its challenges. The lack of a regulatory framework in this space will pose a significant risk to users and organisations who engage with the Metaverse. It is thought that the risk of cyberattacks, the impacts on mental health, the risk to child safety online and of fraudulent activity will increase if appropriate protections are not put in place.

## Trends and Developments

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**Kalus Kenny Intalex**

**Kalus Kenny Intalex** is a progressive, commercially oriented firm, specialising in sport, property, commercial and dispute resolution. The firm shares its clients' successes by becoming a true strategic partner in their pursuits, and always seeks to deliver more value by offering business outcomes in addition to legal advice. Kalus Kenny Intalex's personal and proactive approach, combined with a straightforward nature, makes it a different kind of law firm. The sports law team understands that, like sport it-

self, the business of sport is dynamic, emotionally charged and highly competitive. With local and global experience in the sports and leisure sector, its sports law team supports professional and amateur sporting organisations, clubs/teams, athletes, sponsors and other key stakeholders in their pursuit of sporting and commercial success. Kalus Kenny Intalex is the sole Australian member of the International Lawyers Network, a global alliance of 5,000 lawyers in 66 countries.

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He advises sporting organisations, governing/sanctioning bodies, peak bodies/associations, professional/amateur athletes, sponsors, venue owners, promoters, event managers, suppliers and agents. Sven advised Sportsbet.io, a cryptocurrency-based sports betting platform, on the sponsorship of four English Premier League football teams – Arsenal, Watford, Southampton and Newcastle. He is a specialist motorsport adviser to several key motor racing teams, drivers and international manufacturers in the automotive, motorsport and related industry supply sector. Sven is a member of the Australian New Zealand Sports Law Association (ANZSLA).



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Brigid advises on commercial contracts, statutory and regulatory compliance, intellectual property licensing agreements, and privacy and the protection of personal information. In 2023, Brigid advised on the sponsorship of Newcastle United F.C. Brigid is a member of the Australian New Zealand Sports Law Association (ANZSLA).

# AUSTRALIA TRENDS AND DEVELOPMENTS

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**Jessica Bell** is a lawyer at Kalus Kenny Intelex. She brings unique practical knowledge and experience in the commercial, sports and motorsport space.

She advises on commercial agreements, transactional, intellectual property and technology matters, working with many clients in the motorsport industry. This is combined with extensive experience in advising on all aspects of trade promotions and marketing. Jessica has a long-held passion for motorsport, evidenced by her deep involvement in the industry from racing and leadership roles in car clubs and motorsport teams to being an accredited Motorsport Australia Photographer.



**Hannah Burley** has deep experience within the sports law environment gained from working within the niche area of motorsports law. Hannah's solid administrative and commercial perspective makes her an integral part of the Kalus Kenny Intelex sports law team.

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## Introduction

We have seen a number of significant trends and developments emerge in the sports industry in Australia in the past year.

The FIFA Women's World Cup was co-hosted by Australia in 2023 and sparked a love affair between the Australian public and women's football, leading to an increase in women's and girls' participation in Australian sports. It appears that women's sport is set to become more and more mainstream in our jurisdiction.

Transgender inclusion in Australian sport is also being considered, with the Australian Sports Commission releasing its guidelines for the inclusion of transgender and gender-diverse athletes in high-performance sport, indicating that the Australian government is continuing to advocate for an inclusion-first approach, with case-by-case exemptions.

There has also been an increased focus on protecting athletes from the long-term effects of concussions, protecting the public from the dangers associated with gambling advertisements during sports events, and the use of artificial intelligence in relation to sport.

We anticipate that a number of these trends will continue to develop in the years to come.

## The Impact of the 2023 FIFA Women's World Cup on Female Participation in Sport

Arguably one of the biggest trends/developments within the Australian sports economy over the last 12 months has been the increased focus on women's sport, and the increased participation of women and girls in Australian sport, particularly since our jurisdiction hosted the World Cup.

Australia is no different from most other countries in that women are under-represented in sport as participants, coaches, officials, administrators and board members when compared to their male counterparts. However, the impact of hosting the FIFA Women's World Cup alongside New Zealand has been far-reaching within Australian sport, extending its influence beyond football to other sporting codes, including cricket.

The FIFA Women's World Cup took place across Australia and New Zealand between July and August 2023. The event saw record attendance across its 64 matches, with approximately 846,000 more attendees than the previous Women's World Cup held in France in 2019. Impressively, the Australia v England semi-final was watched on Seven (one of Australia's free-to-air TV channels) by an average of 7.13 million viewers, making it the most-watched television programme in Australia since audience recording began in 2001. People were not just watching at home; hundreds of thousands gathered in an array of locations including empty stadiums, pubs, and outdoor screening areas to witness the matches.

Following the World Cup, the Victorian government made substantial infrastructure and policy investment to support the growth of football in Victoria, providing funding for the facilities that women and girls need to train and compete at both grassroots and elite levels. In addition, the Federal government announced a Play Our Way grants programme with AUD200 million funding over three years from 2024 to 2027 to promote equal access, build more suitable facilities and support grassroots initiatives to get more women and girls to participate and continue participating in sport throughout their lives.



The huge success that was the 2023 FIFA Women's World Cup appears to have also had a positive and substantial impact on other Australian sporting codes. For example, in late August 2023 Cricket Australia reported that it had felt the ripple effect of the success of the World Cup on Australian sport. Cricket Australia's official census data for the 2022-23 season highlighted a 26% increase in registered participation among women and girls within junior and senior cricket clubs, reaching over 50,000 in total across the country.

The FIFA Women's World Cup has shone the spotlight on the importance of women's sport collectively and on exploring solutions to remove barriers for women to compete. The ripple effect of the World Cup is anticipated to continue over the next 12 months, with barriers to participation falling, and more women and girls getting involved in their chosen sport.

## Concussion in Sport

Sustaining concussion in contact sport is no new concept. It affects athletes at all levels of sport, from young children playing football on the weekends, to full-time professional athletes. Concussion has been widely reported on in recent years, with scrutiny and attention increasing significantly over the last year in relation to the frequency of sport-related concussion and the potential ongoing health ramifications for athletes. Of particular concern and focus has been the potential for repeated head injuries sustained by Australian athletes to lead to long-term health issues. Research reportedly suggests a causal link between multiple and repeated head injuries/concussions and long-term cognitive deficits. Some athletes have been diagnosed with a brain disorder called chronic traumatic encephalopathy (CTE) in an autopsy after their death. CTE can only be definitively

diagnosed upon autopsy after an individual has died. However, researchers continue to investigate the link between repeated head injuries and CTE, exploring the ramifications for athletes whose careers expose them to recurrent head traumas.

Awareness of the impacts of concussion on Australian athletes has accelerated over the last 12 months after more than 60 former Australian Football League (AFL) players joined a class action to sue the AFL for up to AUD1 billion in compensation for the damage concussion has caused them. The class action alleges that the lead plaintiff, Jarad Maxwell Rooke, sustained permanent and life-altering injuries due to concussion-related injuries he sustained during his time as an AFL player because of the AFL's negligence. The plaintiffs also seek compensation for the pain, suffering, economic loss and medical expenses they incurred as a result of concussion, citing the AFL's alleged failure to make and enforce rules, policies, procedures and protocols in line with medical knowledge to reduce the incidence of concussion. The plaintiffs' argument is said to centre around a medical report by the AFL medical officer from 1993 which reportedly focused on three key findings/recommendations:

- that players should only return to training after concussion symptoms have resolved;
- that training post-concussion should be no contact with a gradual return to full training only once symptoms have resolved; and
- that players should be closely monitored for subtle changes before playing matches.

The class action alleges that the AFL has known about the effects of concussion in its game for many years, but has done little to prevent the way in which players are supported.

The AFL is not the only Australian sports organisation to face allegations of negligence relating to the impact of athlete concussion. In 2017, James McManus, a former New South Wales (NSW) State of Origin (Rugby) player took legal action against his team, the Newcastle Knights, over its handling of his concussions. Mr McManus played 166 National Rugby League (NRL) games before retiring due to medical reasons at the end of the 2015 State of Origin season. He alleged that the Knights had breached its duty of care to him and that he had missed out on AUD700,000 in wages that he could have received if his career had not ended early. He also sued for some of his medical expenses. Mr McManus argued that he was not, but should have been, warned of the risks of playing when concussed or recovering from concussion. In defence, the team argued that the risks to Mr McManus were obvious, an argument that the NSW Supreme Court agreed with.

Fast forward to February this year, the Australian Sports Commission (ASC) released Australian Concussion Guidelines for Youth and Community Sport (Guidelines) in response to the “elevated public awareness of concussion and the increased focus on the importance of diagnosing and managing the condition promptly, safely, and appropriately.” The Guidelines follow a significant collective approach, with the ASC consulting with recommendations from both the United Kingdom via the Department for Culture, Media and Sport, and New Zealand’s Accident Compensation Corporation.

The key focus of the Guidelines is to:

- expand the existing advice for persons aged 19 and under or persons participating in community sport to be symptom-free from concussion for a minimum of 14 days prior to returning to contact training; and

- extend the minimum mandatory stand-down period following an incident of sport-related concussion to 21 days from the date that the individual sustained concussion until returning to a competitive contact sport.

Further, the Guidelines provide a recommendation that there be a minimum of ten symptom-free days before a high-performance and/or professional athlete over the age of 19 with daily access to health care professionals, returns to participating in sport.

With the ongoing AFL concussion class action and increasing awareness of the effects of concussion in sport, all contact sport leagues and teams, not just the AFL and NRL, are likely to face heightened scrutiny regarding their present and future handling of concussion-related issues.

## Gambling Advertisements and Australian Sport

The issue of gambling advertising during sporting events has also taken the spotlight in the past year. In 2022, the House of Representatives Standing Committee on Social Policy and Legal Affairs (Committee) was formed to conduct an inquiry into the harm caused by online gambling advertising. The report, which was released in June 2023, considered the adequacy of current gambling laws, regulations, consumer protections and education and support programmes.

Following the Committee’s extensive review, the final 197-page report made 31 recommendations to be implemented in four phases. Importantly in relation to sport, phase two of the recommendations included the banning of all online gambling advertising and commentary on odds during, and one hour either side, of a sports broadcast, on uniforms and in stadiums. This change would have a significant impact on the current require-

ments that gambling advertisements cannot be aired within five minutes of a sporting event starting or finishing, except for where there are breaks for long-form events such as cricket and tennis matches after 8.30pm.

Further, phase four of the recommendations included the prohibition on all gambling advertising and sponsorship within three years, excluding the likes of dedicated racing channels. This change would have a profound impact on gambling companies that invest significant amounts in advertising space around sporting events.

While discussions within the Australian government continue as to how to tackle the issue and whether to act on the Committee's recommendations, the Australian Communications and Media Authority (ACMA) has drawn the country's attention to its own report that revealed that in the 12 months prior to October 2023, more than one million gambling ads aired on free-to-air television and radio. ACMA estimated that approximately AUD238 million was spent on gambling advertising campaigns. Notably, the actual number of advertisements and the figure spent on them is estimated to be far higher when taking into account the large number of pay-TV channels that also broadcast gambling advertising. Undoubtedly, this is one issue relevant to the Australian sports industry that will develop further over the coming year.

Interestingly, the International Cricket Council (ICC) recently amended the regulations governing sponsorship on national team shirts, a rule that was originally introduced in the early 2000s to "protect the integrity of cricket from the negative influences of gambling". The rule change means that the Australian cricket team could sign a gambling brand sponsor in bilateral series (excluding major tournaments organised by the ICC). The recent shift in position by the ICC is

particularly interesting given the current discussions taking place at an Australian government level and whether the result of those discussions will in turn impact the ability of teams to display gambling advertising on team shirts.

## Transgender Inclusion in Sport

Another recent development in the last 12 months is the Australian Sports Commission's release of the Transgender & Gender-Diverse Inclusion Guidelines for HP (High-Performance) Sport (the "HP Guidelines"). The HP Guidelines were introduced in support of the previously released (in 2019) Australian Human Rights Commission Guidelines, designed to offer practical advice for promoting inclusion in sport.

The HP Guidelines acknowledge that the inclusion of transgender and gender-diverse athletes in high-performance programmes requires different and additional considerations specific to elite competitive sport. Importantly, the HP Guidelines highlight the importance of national sporting organisations (for those with and without disability) being as clear and as comprehensive as possible in stipulating when and where a policy relating to a specific competition applies.

The HP Guidelines set out three general principles:

- when adopting transgender eligibility rules, those rules should be reasonable and justifiable;
- when developing policy, the organisation should ensure it is informed, transparent and follows an athlete-centred process that incorporates thorough consultation with all stakeholder groups; and
- seek legal advice when developing any policy or rules, noting that the issues around trans inclusion are developing and highly complex.

Further, the HP Guidelines recommend that, where a sport decides to implement a policy regarding transgender athletes, the sporting body should place importance on the objective measures that can be taken along with any issues of discrimination, the impacts of hormone suppression and making avenues available for athletes to raise concerns in a safe and fair manner.

The HP Guidelines also suggest that further consideration ought to be put towards anti-doping, privacy and confidentiality, education and science and medicine measures. By following these guidelines, sporting organisations can foster growth in transgender inclusion in sport to make participation more accepting of all individuals.

## An Emerging Trend: AI in Sport

Whilst the use of technology in sport is not new – many forms of sport have employed the use of Decision Review Systems (DRS) including cricket, tennis, the AFL, football (soccer) – the use of artificial intelligence (AI) in sport is starting to gain traction. By using AI in sport, technology is being used for more than verifying the decision of umpires and referees; it is now being expanded to fan experiences, content management and the generation of higher revenue for sporting codes and teams.

Some sporting codes in Australia are already taking steps to incorporate AI into the way in which a team operates. For example, AI is used for monitoring and tracking players in the AFL. In late 2023 it was reported by Deakin University that its researchers were putting the final touches on their Coach Decision Assistant (CoDA), an AI tool that will assist AFL coaches in making strategic decisions on game days. The CoDA takes data from previous match outcomes and compares them with live in-game team metrics

and performance characteristics of each team. It then provides feedback on how the team can improve their chances of winning. For example, CoDA could identify contested possessions in a match as an area that the team is underperforming in and that requires improvement. It would then suggest changes to the current play to help address this underperformance.

Reportedly, the intention of CoDA is not to replace coaches, but to assist them in making better decisions to generate better playing outcomes during a game. It is expected that AI-assisted decision-making by coaches and teams will continue to grow and is likely to appear across all sports at the elite and professional level.

## Conclusion

2023 was an extremely exciting year in Australian sport as our country played co-host (along with our close neighbour, New Zealand) to the 2023 FIFA Women's World Cup. The event, and in particular the success of Australia's national team (the Matildas') in the tournament, ignited a newfound passion for women's football in the hearts of the Australian public. Although the Matildas did not win the World Cup, they were part of the longest penalty shootout in football history (men's or women's) and made it to the semi-final against England. Arguably more importantly, their success sparked an important conversation amongst stakeholders (including the general public) about inclusion and the support and growth of women's and girls' participation in Australian sport.

The discussions surrounding inclusion in Australian sports did not begin and end with women and girls though. There has also been significant commentary and reporting on transgender inclusion in sport, with the Australian Sports Commis-

# AUSTRALIA TRENDS AND DEVELOPMENTS

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sion's release of the HP Guidelines. We expect this issue to remain relevant to the Australian sports industry and related laws for some time.

We have also seen a trend towards protecting the health of athletes, as concerns regarding the link between repeated head injuries and severe cognitive deficits in professional athletes are increasing. This is not just an issue for Australian athletes, but the issue has gained traction in Australia this year, as a group of former Australian Rules Football players has brought a class action against their former league for negligence causing concussion-related injuries.

Finally, we have seen and expect further developments in the use of AI in the sports industry, and in relation to Australia's legal framework restricting the advertisement of gambling during sporting events.

# CANADA



## Trends and Developments

### Contributed by:

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**Soublière Sport Law (SSL)** is a one-woman firm focusing solely on providing legal consultation to international and national clients on all matters related to sport law be it in integrity, anti-doping, safeguarding, anti-corruption, eligibility, human rights, governance and regulations. Over the years, SSL has provided services or advised various international clients like MGSS, ISSF, IFAF, IPF, SDRCC, and Sport Resolutions etc. SSL has provided dispute resolution servic-

es for over 15 years and its principal continues to serve a variety of different arbitration panels including the Court of Arbitration for Sport, the Tennis Integrity Agency's Anti-Corruption Panel, Zwift Esports, Ultimate Fighting Championships, and the Sport Dispute Resolution Centre of Canada. SSL also provides investigative services in relation to all types of sport-related misconduct allegations.

## Author



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### Introduction

Canada is a fairly new player in sports law and few Canadian lawyers' practices will predominantly be related to sports law. This does not mean however that Canadian lawyers are neophytes when it comes to sports law. Both long-standing, well-established areas and emerging trends in the sport law sector are providing diverse opportunities for legal practitioners of varying expertise and specialties.

### Amateur Sport

Under the Canadian Constitution, the responsibility for amateur sport is shared between the federal government and each province's government.

With regards to amateur sport, at the core of sports law in Canada are the various sports' national sporting organisations, which run their sport in accordance with the rules of the relevant international federation. Inevitably, regulations need to be drafted, including team selection and athlete funding criteria, competition rules, eligibility rules, anti-doping rules, safeguarding rules, disciplinary rules, anti-corruption and prevention of match manipulation rules, etc. Legal experts are required to undertake such regulatory drafting, as well as argue any disputes that can arise out of the same.

The Canadian Olympic Committee governs all sports in the Olympic Program and similarly will require a wide range of regulations to be drafted, implemented and overseen. This will also include sponsorship and marketing, privacy and IP rights, among others.

Sport organisations in Canada are generally defined as any organisation that is:

- the governing body for a specific sport or discipline at the national level or for its association of members in any provincial, territorial or regional jurisdiction, as recognised from time to time by Sport Canada or the Sport Dispute Resolution Center of Canada (SDRCC);
- a multisport service organisation at the national level or in any provincial, territorial or regional jurisdiction in Canada, as recognised from time to time by Sport Canada or the SDRCC; or
- a Canadian Sport Institute or Centre receiving funding from Sport Canada.

### Arbitration and Dispute Resolution

Disputes necessarily arise in the course of the administration of national level sport in Canada. While some sporting disputes inevitably still get resolved through civil courts, and sometimes criminal proceedings, the SDRCC established

pursuant to subsection 9(1) of the Federal Physical Activity and Sport Act (Bill C-12 and assented to on March 19, 2003), is responsible for providing to the Canadian sport community a national alternative dispute resolution service for sport disputes. To this end, the SDRCC establishes and maintains a list of arbitrators who possess recognised competence with regard to sport and alternative dispute resolution procedures and have the requisite experience in conducting such matters.

The SDRCC operates four different Tribunals.

- Ordinary, which mostly deals with selection and carding cases – meaning athletes who dispute their non-selection to a specific team and athletes who dispute their non-funding from the Athlete Assistance Program of the Government of Canada.
- Doping, which deals with disputes between the Canadian Center for Ethics in Sport (CCES) and athletes or other persons bound by the Canadian Anti-Doping Program (CADP).
- Safeguarding, which for the most part deals with alleged violations of the Universal Code of Conduct to Prevent and Address Maltreatment in Sport (UCCMS).
- Appeals, restricted to appeals brought under the CADP and UCCMS.

The most common disputes referred to the SDRCC involve selection cases, carding cases, discipline, anti-doping and more recently safe sport cases. Each of these cases has its unique features, and each dispute will ultimately have to be decided on a case-by-case assessment, taking account of all pertinent factual, regulatory and legal circumstances. A significant body of case law has evolved over the years in all these types of cases. The annotated SDRCC Code

provides an overview of these, and all SDRCC decisions are posted on its website. SDRCC decisions may not be posted on the website or publicly reported if they involve minors, if parties have agreed to keeping the award confidential or if the adjudicator's discretion finds that it warrants non-publication.

A unique feature of the SDRCC arbitration process is the requirement for parties before the Ordinary Tribunal to communicate and attempt to progress towards a negotiated agreement with the assistance of a neutral third party: the “resolution facilitator”. Additionally, prior to taking any significant steps into an arbitration process, parties are given the opportunity to proceed to resolution facilitation or mediation, non-binding and informal processes in which each party undertakes in good faith to negotiate with all other parties, with the assistance of a resolution facilitator or mediator, with a view to settling their sports-related dispute. This preliminary step has proven quite successful in reducing sports hearings in Canada. As a result, this model is currently being considered in other jurisdictions around the world.

## Professional Sport

Notably, Canada runs its own American Football League – called the Canadian Football League (CLF). It is similar to the National Football League, with different rules.

Canada also has:

- seven teams competing in the National Hockey League (NHL);
- one team competing in the National Basketball Association (NBA);
- three men's teams competing in Major League Soccer (MLS);
- three teams in the Women's MLS;



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- three teams competing in the newly created Professional Women's Hockey League (PWHL); and
- eight teams competing the relatively new Men's Canadian Premier Soccer League.

There are of course countless legal considerations linked to professional sport related to the administration and operations of each of these professional leagues, their athletes' careers, their coaching staff, their funding, their owners, the rules of the governing league, etc. There is therefore much work being done by various lawyers throughout Canada with regards to contract negotiations, sponsorship and broadcasting rights, IP, image rights and privacy issues, marketing, risk management, regulation, discipline, training compensation and revenue redistribution, only to name the most obvious areas in relation to each of these professional sports.

Other trends of great interest in Canadian/North American amateur sports are the relaxation of the rules for collegiate athletes and the rethinking of draft rules and bargaining power for minor aged athletes, which, in conjunction with the increased impact of social media, have emboldened amateur athletes to look to increase their earning potential prior to hopefully competing in professional leagues where they were previously prohibited from doing so. Specifically, in relation to hockey, the NHL and Canada's Major junior hockey leagues were hit in February 2024 with a class-action lawsuit alleging that "they operate a cartel that violates US antitrust law, suppresses competition and keeps players locked in what they refer as an exploitative system that pays them poverty wages in exchange for the dream of playing in professional leagues". The law on this is unsettled, be it labour, antitrust or anti-competition. But the facts for the most part are not. The system clearly does not favour

athletes. It will be interesting to see how the lawsuit evolves and how it will impact hockey and potentially other amateur and professional sports.

Whilst Canada does boast its own sport lawyers who advise teams, owners, leagues, regulators, sponsors and athletes, numerous Canadian athletes are represented by US firms and attorneys. This is a tendency that will hopefully change as more qualified lawyers enter the sports law sphere and are given the opportunity to represent many of the varying entities that are engaged in one way or another.

## Recent Trends

Out of the various trends emerging in sports law in Canada, three currently stand out.

- The growth of women's professional team sports.
- Safeguarding in sport.
- Competition manipulation and sport gambling.

### *The growth of women's professional team sports*

Women's professional team sports are a relatively new phenomenon, having largely emerged within the latter part of the 20th century. Unlike amateur women athletes, professional women athletes competing in team sports are able to acquire an income which allows them to earn a living without requiring another source of income. Up until very recently, most top female athletes who competed in team sports were not paid – and if they were, they were only touching a fraction of what their male counterparts were paid (in terms of contractual fees, sponsorship, or other remuneration). Professional organisations for women in sport are most common in developed countries like Canada, France, Spain,

the UK and the US, where there are investors available to buy teams and businesses which can afford to sponsor them in exchange for publicity and the opportunity to promote a variety of their products or services. Women's team sports have of course also been given the opportunity to flourish of late because of shared revenues, stadiums and training facilities enjoyed by their male counterparts – the most impressive example of this being FC Barcelona women's soccer club.

Very few governments support private leagues, male or female, and Canada is no different. Perhaps the greatest boost to women's professional sport in Canada was the success of the Canadian women's soccer (football) team and their fearless leader Christine Sinclair and the profound and lasting impact of various members of the Canadian women's national soccer squad in FIFA women's play. Women's soccer continues to grow exponentially at the international level and Canada should be proud to have been instrumental in this growth, notably by contributing outstanding players to the Premier League, UEFA competition, etc. The same applies to the newly created PWHL which is rapidly growing in fanbase due largely to the contribution of many Canadian players. The growth of women's professional team sports in Canada has created new revenue streams and has escalated the need for regulation, marketing, sponsorship rights, broadcasting rights, image rights, agency rules, and the like. Whilst not currently being dealt with predominantly by Canadian lawyers, the emergence of this market will surely create opportunities for sports law lawyers in Canada. Stay tuned.

### *Safeguarding in sport*

Maltreatment in sport has been exposed across many jurisdictions around the world over the last few years, and Canada has not been immune to

it. After numerous reports, complaints and allegations of mistreatment and abuse at all levels of Canadian sport became known, in December 2023, the federal government announced that it would launch a three-person commission to investigate systemic abuse and human rights violations in Canadian sport. This announcement was made by the government after being pressured for months to call a public inquiry into abuse in sport. Elite athletes, advocates and a parliamentary committee have all demanded an inquiry to address what they call a pattern of normalising abuse, covering up misconduct and failing to hold perpetrators accountable.

The 18-month commission process is set to start sometime in 2024. The goal is for a preliminary and final report to be issued with recommendations on governance, funding and policy aimed at changing the culture in sport.

Also noteworthy are the significant growing pains faced by the Office of the Sport Integrity Commissioner (OSIC) of Canada. The OSIC is responsible for administering the UCCMS by using trauma-informed processes that are compassionate, efficient and provide fairness, respect and equity to all parties involved. The OSIC contributes to the advancement of the UCCMS by:

- overseeing a complaint intake process;
- conducting preliminary assessments and commissioning independent investigations, when warranted;
- maintaining a database of imposed sanctions; and
- monitoring compliance by sporting organisations, and issuing reports into its findings, as required.

The OSIC was created as an independent division of the SDRCC which had been in operation

and serving the Canadian sport system since 2002. However, after roughly a year-and-a-half, reviews of the operations of the OSIC were not favourable. Although the OSIC's stated purpose is to be an independent handler of reports and complaints of abuse throughout Canada, its jurisdiction is limited mostly to the federally funded sports organisations required by the Sport Minister to become signatories. As most provincial, territorial and community sport bodies are not yet signatories and thus not under OSIC's jurisdiction, this means that many athletes/victims were/are falling through the proverbial cracks. This was identified as the most important shortcoming of the OSIC. As it is funded purely by the Canadian government to provide services to its national sports organisations, other sport organisations (provisional, territorial or even regional) can use it but would have to pay for it, and that is simply not accessible to provincial or smaller organisations given the significant cost of becoming a signatory. Thus, it is not that these smaller organisations do not want an independent mechanism, it simply was not built for them and is not realistically accessible to them. Therefore, athletes keep falling through the cracks.

Another issue is that the OSIC's independence has been questioned, resulting in Canada's Sport Minister announcement at the end of 2023 that OSIC would be moving outside the umbrella of the SDRCC. No details have been released on when this would occur, how, and which body would be taking over the OSIC operational and administrative oversight. This is a topic to watch closely in 2024 and beyond.

### *Competition manipulation and sports gambling*

Competition manipulation is a deliberate effort to influence elements of a sporting contest or its outcome, usually for financial gain. Competi-

tion manipulation is recognised as a major threat to the integrity of sport on a global scale. As a result, sport federations have increasingly created international integrity units to tackle the issue to expose the scale of the problem. In Canada, the CCES is engaged in several activities that aim to protect the integrity of sport and bolster the country's role and reputation in this area on the international stage.

Competition manipulation is often associated with gambling and linked to organised crime, and it is also a growing issue of concern for Canada. Although regulated gambling markets can also be subject to betting-related fraud, when compared to unregulated betting markets in which bookmakers operate with limited oversight, regulated markets are typically managed by government and provide better opportunities to monitor and address issues related to match manipulation. Canada has recognised that without measures in place to manage sport betting and corruption, it will continue to grow. This is particularly so in an environment where athletes for the most part, are not professional, and therefore unable to earn a living strictly from their sporting endeavours. This leads to amateur and lower-level athletes being particularly vulnerable to match manipulation approaches. To this end, most Canadian provinces, who under Canada's division of constitutional powers are responsible to regulate and manage sports betting, have legalised sports gambling in an effort to better regulate the same. Bill C-218 – An Act to amend the Criminal Code (sports betting) which became law in August 2021, provides a regulatory framework to manage single-event sport betting in Canada, consumer protections, and increased economic opportunities. Whilst this has proven quite profitable for the betting regulators and is widely supported as providing a concrete mean of reducing match manipulation and illegal gam-

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bling, it has not come without struggles. There has been considerable backlash and general moral distaste from the public about oversaturation of gambling adverts, as well as ethical complaints regarding the risks and ramifications of this legalisation and the barrage of adverts that followed, including that both pander to addictions, manipulate the impressionable youth and normalise betting.

This is an area to follow closely, not only in Canada, but globally.

There are of course various other legal trends in Canadian sport law that are being argued, investigated, arbitrated and regulated by some great Canadian legal practitioners, be it lawyers, arbitrators or advocates, including human rights, anti-doping, discipline, eligibility, governance, regulatory, commercial rights, hosting major or minor sporting events, risk management, esports etc. It is a small niche community that will surely continue to grow and emerge exponentially like the trends identified above.

# CHILE



## Law and Practice

### Contributed by:

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Contributed by: Pablo Mettroz Holley, Parmars

**Parmars** is a boutique sports law and business practice based in the UK and Spain. Consisting of a close-knit team spanning three continents and with multiple consultants beyond, Parmars possesses extensive knowledge of the sports industry and local jurisdictions of Spain, Chile, the UK and India, to name a few. Parmars offers expertise in areas of dispute resolution, athlete/coach management, and sports business development. The firm has been involved in several high-profile arbitrations in recent years and

is regularly sought out by football federations and other sporting institutions from around the world. In addition, Parmars provides legal and business consultancy for football clubs, and sporting federations worldwide, structuring sporting leagues, with some simple examples being the facilitation of the first club partnership in England for a top ten South American football club, establishing an academy relationship in India for a League One club and advising Premier League footballers on transfers and contracts.

## Author



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# PARMARS

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## 1. Regulatory

### 1.1 Anti-doping

Currently, doping per se is not a criminal offence under Chilean law. However, there is currently a debate in the National Congress on the need to transform it into a criminal offence. The *Comisión Nacional de Control de Dopaje* (National Doping Control Commission – CNCD) is the national anti-doping organisation in Chile, created and regulated, by virtue of Law 19.712 on Sport and its Regulations, by the Ministry of Sport. Its purpose shall be the implementation, evaluation and modification of measures to implement the World Anti-Doping Code and international standards governing doping control in sport, and the application of all other national and international anti-doping regulations in force in the country in respect of all persons and sports organisations.

The same sports legislation creates another entity called the Expert Panel, which is a collegiate body, whose purpose is to hear and decide cases involving anti-doping rule violations and therapeutic use exemptions in accordance with the World Anti-Doping Code and international standards. In view of the approaching 2023 Pan American Games, the Sports legislation was amended to bring it in line with the rules of the World Anti-Doping Code, in particular, among other elements, that national anti-doping organisations must be independent in their activities and operational decisions from governments and sports entities.

### Most Relevant Cases

Potentially the most striking case in the recent past has been that of tennis player Nicolás Jarry, currently Top 20 in the ATP ranking, who, despite proving his innocence, served an 11-month ban since December 2022 as ligandrol and stanozolol metabolites were found in some contaminated vitamin tablets.

Similarly, in 2019 the Olympic shot putter Natalia Ducó was suspended for three years by the CNCD for having consumed GRPH. Fortunately, both athletes have successfully reinvigorated their respective professional careers and have returned to top-level competition.

### 1.2 Integrity

Currently in Chile, there is no law to sanction and punish activities that affect the integrity of sports competitions. However, since the end of 2023, the Sports Commission of the National Congress has been working on a draft law that would criminally sanction cases of sports fraud. In the case of professional football, the ANFP Code of Ethics prohibits the manipulation of football matches. It also makes a complaints channel available to industry players, for the ANFP to initiate an investigation process and determine whether the reported event is a breach of the Code of Ethics. In mid-2023, Cobreloa striker David Escalante denounced in an interview on Directv that many of his teammates gambled permanently, even on matches in which Cobreloa played.

This is in addition to the fact that, at the end of 2022, Cobreloa lost a home game 5–0 to Copiapó in the final match for promotion to the First Division, and the team's other striker, Axl Ríos, was sent off after 20 minutes of the first half. Weeks later, Ríos signed a contract for Copiapó. The ANFP decided to sanction Escalante with two matches for his comments, following a complaint filed by Copiapó. It should be recalled that the ANFP Code of Ethics obliges industry players to denounce information in the event that they become aware of facts that could constitute match-fixing.

### 1.3 Betting

Betting and gambling are, as a rule, an activity prohibited by the legal system, which is evident both in the area of criminal law and civil law.



On one hand, Article 277 of the Criminal Code punishes the owner of a gambling house with imprisonment and a pecuniary fine, while the following article (Article 278 of the Criminal Code) punishes persons who attend gambling with the same penalty. In civil law, in turn, the article states that debts incurred by bets from games of chance are not enforceable.

The exception to the aforementioned rules lies in the existence of special laws that expressly and exclusively authorise certain actors to develop the activity of casinos and betting on games of chance, subject to the supervision of the Superintendence of Gaming Casinos. In professional football, the ANFP Code of Ethics prohibits players from participating in sports betting and from having any kind of relationship with sports bookmakers.

The main case of recent times lies in the determination of the Ministry of Justice, which oversees the ANFP due to its legal nature, to force it to terminate the contract it entered into with the sports betting company Betsson within a period of one month from the notification of the determination. The case was serious since a contract was in full execution, especially if the naming rights of the first division and Primera B championships (first and second divisions of Chilean professional football) were granted to this company with no domicile in Chile, and the effect in case of non-compliance would have been the cancellation of the legal personality of the ANFP by the Ministry of Justice. Furthermore, weeks after the communication from the Ministry of Justice, the Chilean Supreme Court decreed the illegality of the operations of the sports bookmakers, which are not domiciled in Chile, and forced the blocking of their websites in Chilean territory.

## 1.4 Disciplinary Proceedings

The CNCD is the entity, under the Chilean Sports Law, that receives notification from the relevant laboratory of the existence of a non-negative sample from the athlete and proceeds to bring the charge against the athlete before the Doping Control Board, regardless of the sport, test or federation of which the athlete is a member. It must also support its arguments at the hearing held for this purpose. One of the effects of the notification of the existence of a non-negative sample is the provisional suspension, by means of an administrative act, of the payment of the *Beca para Deportistas de Alto Rendimiento* or “Scholarship for High Performance Athletes” (Beca PRODDAR), for the duration of the process. There is no system for investigating and sanctioning cases of betting or integrity, although it should be noted that many National Sports Federations have an Ethics Committee that is supposed to hear and resolve complaints made against an official for any breach of sporting ethics as outlined within the rules or the statutes of that specific discipline.

## 2. Commercial Rights

### 2.1 Available Sports-Related Rights

The 2023 Pan American and Parapan American Games were the largest sporting events in the history of sport in Chile, surpassing other major sporting events such as the 1962 World Cup, the 1987 and 2008 FIFA World Youth Championships and the 2015 *Copa América*. The success of the Games included merchandising sales, and particularly the marketing of products from the mascot of the sporting event. All the competition and event venues had a physical shop, while the official Games website, made it possible to purchase official products remotely. In relation to amenities for VIP guests, the VIP boxes at

*Universidad Católica's* new stadium, *San Carlos de Apoquindo*, which will be inaugurated at the end of 2024, stand out. The stadium will have multiple amenities for its spectators, not only when *Católica* plays its home games but also for concerts and other associated events.

On the other hand, historically, the resale of tickets for sporting events of great public interest was a common practice, as it is today for cultural and musical events. It should be noted that the resale of tickets is not formally prohibited in Chile and would not even have a tax impact if it were a non-regular activity. In the case of sporting events, and particularly professional football matches, the limit to this action is given by security reasons, not by economic or tax reasons. The individualisation of the ticket to a given person, for example, by indicating the full name and identification number, and the implementation of technology associated with the absence of physical tickets, and replacing them with virtual tickets, have been the main methods of combating the secondary ticketing market.

## 2.2 Sponsorship

The adoption of technology and the implementation of new marketing strategies in sport has resulted in brands discovering new ways to reach potential and existing customers. Sports retail brands, sports clubs, and associations, among others, have developed new strategies to approach their target audience. In practice, sending promotional emails using the database of a commercial partner, generating activations in places other than sports activity centres, or sponsoring major sporting events, are some of the ways in which brands have gained visibility.

On the other hand, sports organisations already see their supporters' contact details as a marketable asset that they can offer to sponsoring

brands. It is now common to receive emails from brands related to the club you are a fan of, or offers related to marketing campaigns. There are some successful cases of naming rights sales in cultural and sports venues, such as the *Movistar Arena Santiago*, which has already become a powerful and easily recognisable brand. In the coming months, we will come to know which company has been awarded the naming rights for the *San Carlos de Apoquindo Stadium*, which is currently under renovation. Nevertheless, there is room for growth in this area, which will surely be reflected in the coming years with new examples.

## 2.3 Broadcasting

Just over 20 years ago, one person's vision led to a boom in television rights for professional football in Chile, which resulted in a significant increase in television revenues for member clubs. The *Canal del Fútbol* or "Football Channel" (CDF) was created in 2003 and was characterised by the fact that it was owned by the professional football clubs themselves, who each had a 1/32 shareholding. The development of the CDF's pay-per-view system, coupled with the explosive increase in the number of subscribers every year, as the rights included not only professional football but also the broadcasting of national team matches, meant that the clubs saw their revenues increase, and could afford to pay better salaries to players.

On the other hand, the lack of incentive to invest in strengthening the structure of the clubs has meant that for a very significant number of professional football clubs, this item constitutes over 90% of their monthly income. The ANFP has made available to the public in recent years a yearbook analysing the financial state of professional clubs and therein, this concerning trend can be discerned. Warner's acquisition of

CDF, later spun off into TNT for approximately USD2.2 billion, meant that each club received around USD3.2 million in cash, a fortune for the smaller clubs. TNT Sports has continued the pay-per-view model and subscription system with basic, premium and HD signals, simulcasting matches from the two highest divisions of the Chilean football pyramid.

In recent years, some free-to-air TV channels have acquired the rights to broadcast Primera División matches, for one match a week, making it possible to watch the local league without having to be a TNT Sports subscriber. TNT Sports, on the other hand, broadcasts all Primera División and Primera B matches both on TV, in normal and HD signal, as well as via streaming.

## 3. Sports Events

### 3.1 Relationships

As a rule, the organiser of the sporting event is, at the same time, also the owner of the rights to the event. Events such as professional football, the Pan American Games and ATP tournaments are owned by their organisers. From this property right, the organisers have the potential to market it in various forms, such as television broadcasting and static advertising. In **2.3 Broadcasting**, the author has already explained how broadcasting rights are marketed. On the other hand, the press, by virtue of Law 19.733 on Freedom of Opinion and Information and the Practice of Journalism, authorises the media to access images of sporting events that are of general interest, with the aim of informing the population.

Law 19.496 on the Protection of Consumers' Rights is also applicable. In 2023, the National Consumer Service (SERNAC) sent an official

notice to professional football clubs and the ANFP, inviting them to comply with the law, especially with regard to respecting the conditions offered to consumers, ensuring adequate security conditions at the entrance and exit of the venue, or trying not to resell tickets, among other actions. The case of professional football has distinctive elements, since, by statute, the owner of the rights is the ANFP, but it entrusts the organisation of each of the matches to the home clubs, as well as making it responsible for any infringement contained in the Tournament Rules and Regulations.

### 3.2 Liability

In recent years, large-scale sporting events, particularly professional football, have been affected by notorious acts of violence by a small group of people that affect the safety and experience of the rest of the spectators. Since 2011, the authority has been implementing a method called the Safe Stadium Plan, which regulates from a security point of view all acts prior to and during a professional football sporting event. The Plan takes advantage of the application of Law 19.327 on Rights and Duties at Professional Football Events, commonly referred to as the original 1994 Stadium Violence Act.

Each professional football match requires the authorisation of the Intendant, the highest regional authority, following a report from *Carabineros de Chile* (the Police), in order to take place. The Law indicates the deadlines, the permits required, the categories of matches (in view of the risk of violence) and the preventive control measures in order to avoid acts of violence. It also establishes special offences in connection with professional football sporting events. The Intendant has a series of measures he can impose to allow the match to take place, for example:

- limiting the capacity of the stadium;
- prohibiting sales to supporters of the visiting team; and
- prohibiting the attendance of the public.

In order to attend a professional football match, every person must register themselves in a register maintained by the authority, for which the full name and identity number are recorded. Persons who have previously infringed the law may be subject to sanctions that may temporarily or permanently prevent them from attending further professional football matches. The application of this law is not only applicable to spectators but also to players, coaches, officials and, in general, to all persons inside the sports venue. The Intendant may order the imposition of fines on host clubs in the event of infringements of the law, the amount of which varies according to the category of the game and may be increased depending on whether there is a repeat offence.

The ANFP also has the authority, through the Disciplinary Tribunal, to impose administrative sanctions on clubs whose fans or supporters are involved in acts of violence. In the Supercopa 2024, played a few weeks ago at the Estadio Nacional between Colo-Colo and Huachipato, serious incidents took place in the gallery of Colo-Colo fans resulting in damage and destruction of the stadium. The Disciplinary Tribunal, based on the match referee's report, decided to sanction the 12,820 people registered in the gallery sector with a ban from the next five matches played by Colo-Colo.

## 4. Corporate

### 4.1 Legal Sporting Structures

Traditionally, clubs and other sports bodies have been legally structured as foundations or corporations. Their main characteristic is that they are

non-profit entities and as such, the profits generated are reinvested in their corporate purpose. The applicable law regarding the same is Book XXXIII of Title One of the Civil Code (Article 545 et seq). Law 19.712, the Sports Law of 2001, went on to create and define a series of entities, generically called Sports Organisations, whose constitution, operation, modification of statutes and dissolution must comply with this law.

Sports Organisations, according to Article 32 of the Sports Law, are the following:

- sports clubs;
- sports leagues;
- local sports associations;
- local sports councils;
- regional sports associations;
- sports federations;
- national sports federations;
- sports confederations; and
- the Chilean olympic committee.

It also recognises the quality of sports organisations to foundations and corporations that have been constituted by virtue of its special law, without prejudice to the fact that for them to enjoy the benefits offered by the Sports Law, mainly the right to obtain donations and other resources of public and private origin, they must adapt their statutes to it.

The big change in professional sport came with the entry into force of Law 20.019 Regulating Professional Sports Corporations of 2005, mainly motivated by the financial precariousness of professional football clubs generated by the administrative irresponsibility of many of their managers.

The Law obliged clubs (foundations or corporations) that carry out professional activities,

strictly speaking professional football clubs, to choose between the following.

- Incorporate as professional sports limited companies.
- Establish a professional sports limited company for the purpose of professional football administration.
- Establish one or more Professional Sports Funds.

In addition, it temporarily opened the option for open joint-stock companies to also be regulated by this law. In practice, only Colo-Colo and Universidad de Chile opted for this model. Professional sports corporations are governed by a board of directors, chaired by their president, while professional sports funds are governed by a sports commission, composed of the president of the corporation or foundation, who chairs it, and four directors. Law 18.046 on Corporations is subsidiarily applicable only to Professional Sports Corporations, except in the case of incompatibilities to be a director, which rule is also applicable to professional sports funds.

Thus, the Law on Professional Sports Corporations forced professional football clubs to redirect their corporate purpose to a profit-making one, except in the case of professional sports funds. In practice, in the professional football universe, there are two open joint-stock companies (Colo-Colo/Blanco y Negro S.A. and Universidad de Chile/Azul Azul S.A.), one professional sports joint-stock company trading on the stock exchange (Universidad Católica/Cruzados S.A.D.P.), 40 professional sports joint-stock companies and three professional sports funds (Cobresal, Curicó Unido and Puerto Montt, although the latter is in the process of transformation into a professional sports joint-stock company).

## 4.2 Corporate Governance

In Chile, there is no specific code of governance dedicated to sports organisations. Depending on the legal nature of the organisation in question, the rules contained in its special laws apply. Sports organisations covered by the Sports Act have governance rules in Title III of the Act, as well as in its Regulations, while open joint stock companies whose object is participation in sports competitions, professional sports joint-stock companies and professional sports funds are governed by the rules contained in the Professional Sports Joint Stock Companies Act, and in the Joint Stock Companies Act on a supplementary basis, in the manner previously indicated in 4.1 Legal Sporting Structures.

It should be noted that Article 21 of the Professional Sports Joint Stock Companies Act states that a shareholder of a professional sports joint-stock company that holds a percentage equal to or greater than 5% of the voting shares of a professional sports joint-stock company may not hold a percentage greater than 5% of the voting shares of other professional sports joint-stock companies involved in the same activity and sporting category. This rule is also recognised in Article 9 of the Statutes of the National Professional Football Association (ANFP). There is no prior examination for owners and owners in the sports industry in Chile.

Finally, Article 40 S of the Sports Act provides for the possibility for the National Sports Arbitration Committee to apply sanctions for infringements committed in a competition organised by the sports entities listed in the Act, including the sanction of deduction of points in the competition where the infringement occurred. In professional football, the ANFP's legal system also provides for the sanction of loss of points in the event that participating clubs incur any

of the offences indicated in the Code of Procedure and Penalties. Likewise, the ANFP Statutes provide for the sanction of loss of three points in the tournament where the infringement was committed, in respect of clubs that have been sanctioned by the Court of Patrimonial Matters or the Disciplinary Court and have not complied with such sanction within 15 days after the decision has become enforceable. This time limit does not apply if the decision of the Tribunal is to amend the statutes of the offending Club, in which case the Tribunal shall grant a reasonable period of time. The rules of the various professional football tournaments 2024, both men's and women's, also provide for sanctions of deduction of points in case of infringement of a series of conduct contained therein.

### 4.3 Funding of Sport

The Sports Law has created a mixed system of financing sport in which, on the one hand, the state participates through the designation of resources under the Budget Law and those that the National Sports Institute (IND) allocates from its assets, and the private sector, through donations that enjoy a tax rebate benefit. This system expressly excludes organisations created under the Law on Professional Sports Corporations (*Ley de Sociedades Anónimas Deportivas Profesionales*).

Title IV of the Law (Article 41 and following) contemplates the different mechanisms by means of which the Treasury and the private sector (both legal and natural persons, who comply with the requirements established in Article 62 of the Law) can contribute to the financing of sport, covering all areas of the activity. There are five types of contributions, generically called "Sports Promotion".

- National Fund for the Promotion of Sport – these are public resources provided by the

Treasury under the Budget Law and by the IND. It contemplates a wide variety of activities that may be subject to this kind of promotion, such as recreational, competitive and high-performance activities, amongst others. These are administered by the IND.

- Sports Infrastructure – the purpose of this type of promotion is to provide public resources for the construction of sports facilities, in accordance with the regulatory and urban planning schemes, which must include areas for the practice of sport and recreation.
- Sports subsidy – this type of subsidy provides for the direct contribution of public funds for the acquisition and construction of sports facilities, as well as the acquisition of real estate for sports purposes. The state provides public funds that complement the necessary prior savings that the beneficiary must have.
- Concessions – the National Institute of Sport grants a concession of its real estate and sports venues to the concessionaire for use and enjoyment for sports purposes for a maximum period of 40 years.
- Donations for sporting purposes – natural and legal persons that meet the requirements indicated in Article 62 of the Law may donate money to the IND to be used for sporting purposes, both nationally and regionally. The main incentive to donate for sporting purposes is to obtain a tax credit of up to 63.5% of the amount donated for legal entities or up to 70% for individuals, or to accept the amount donated as a tax expense. Donors must have previously submitted a project to the IND, which accepts it.

Article 63 states that only sports organisations, high performance corporations and municipal sports corporations can be recipients of resources, both public and private, under the Act. Exceptionally, there is a case in which lim-

ited companies whose corporate purpose is the development of professional football are eligible for public funds. The second transitory article of Law 21.426 on the Recruitment of Professional Female Football Players by Professional Sports Joint Stock Companies states that sport organisations that meet the requirements set out in the Law may apply for and obtain the benefits of the National Fund for the Promotion of Sport and Donations for Sports Purposes, contained in the Sports Law, for a period of five years from the entry into force of Law 21.426. The resources obtained may only be used for the development of women's professional teams.

#### 4.4 Recent Deals/Trends

Since the end of the pandemic to date, one sport has grown exponentially. The padel industry has increased its numbers exponentially with regard to the number of courts available throughout the country, the amount of money spent on equipment, and the use of booking apps to access the courts, among other things. The interest in the sport has reached such a point that in 2023 Santiago hosted for the first time, with resounding success, a date of the World Padel Tour. It was also revealed that the A1 Circuit will have a date in Santiago in April 2024. Within the Chilean Padel Federation (FEPACHI), the number of clubs has increased by 300% and the number of players exceeds 100,000. After the boom effect following the pandemic, the number of clubs offering padel courts increased by 160%.

## 5. Intellectual Property, Data and Data Protection

### 5.1 Trade Marks

All trade marks, in order to be recognised and protected in the territory of the Republic of Chile, must be registered with the *Instituto Nacional de Propiedad Industrial* or “National Institute

of Industrial Property” (INAPI). The process of applying for and obtaining the right to have a trade mark registered is regulated by Law 19.039 on Industrial Property, as amended by Law 21.355, as well as its Regulations. Similarly, the National Institute of Industrial Property is regulated by Law 20.254, which establishes the National Institute of Industrial Property, as amended by the aforementioned Law 21.355.

Article 20 of the Industrial Property Law indicates which elements cannot be registered as trade marks. Some examples that can be found in the law are the coats of arms or emblems of states, scientific names, the names of natural persons who are alive, or those that mislead as to the origin or quality of the goods or services, and so on. The process of applying for and obtaining the right to registration is both written and digital, ie, it is done entirely through INAPI's website, including the right to file an appeal to the Industrial Property Court.

The advantage of a registered trade mark is that it enjoys protection with respect to the commercial exploitation of the trade mark for a period of ten years from the date of registration. The owner of the trade mark has the right to apply for renewal, for equal periods, in the period from six months before and up to six months after the expiry of the right to trade mark registration. The owner of the registered trade mark also has the right to oppose the application for registration of another trade mark that is similar to his own in the categories of goods or services for which his trade mark has been registered.

At the beginning of 2022, Chilean fifth division club Santiago City received a communication from Manchester City to desist from using its name. Beyond the similarity of the name of the two sporting institutions, the main concern of the City Group was the obvious resemblance

between the two emblems, with the Chilean club taking advantage of the fame of its English counterpart. Santiago City undertook to modify the crest so that it would not be misleading, which to date has not happened.

## 5.2 Copyright/Database Rights

Law 17336 of 1970 on Intellectual Property, as amended by Law 20.435, regulates copyright matters, as well as Regulation 1.122 of 1971 and Decree 277 of 2013. The applicable legislation does not cover rights related to sports but to literary, artistic and scientific works and related rights. The author's right includes the use, authorship and integrity of the work for his or her benefit. Protection lasts for the life of the author and for 70 years after the author's death. The most relevant rights associated with copyright are the right to permit or prohibit the dissemination of his or her productions, and to be remunerated for the public use of his or her productions. The Department of Intellectual Rights, under the National Service of Cultural Heritage, which in turn is part of the Ministry of Cultures, Arts and Heritage, oversees the Intellectual Property Registry in Chile.

As an exception to copyright, insofar as it is vested in a specific person or group of persons, there is a concept called common cultural heritage, which refers to works whose protection is extinct, whose author is unknown, among other cases provided for by law. The law also allows the inclusion in a work of short fragments of a protected work, without the need for the approval or remuneration of the author of the work.

Artistic gymnastics athlete Tomás González, a participant at the London 2012 and Rio 2016 Olympic Games, has a vault named after him, "González", by the International Gymnastics Federation (FIG). The vault, a back somersault

with three and a half twists, was performed by González at the 2003 Anaheim World Championships, and since 2018 has been named after her in the scoring code. However, in accordance with the points stated in the first paragraphs, it is not recognised as a copyright under Chilean law.

## 5.3 Image Rights and Other IP

It is appropriate to begin this chapter by stating that the Right of Image is a fundamental right enshrined in Articles 1 and 19 N°24 of the Political Constitution of the Republic. Within the Chilean Labour Code, the Statute of the Professional Sportsman provides for the express recognition of the Right of Image of sportsmen and workers who exercise an activity related to the activity of professional sport.

Thus, Article 152 bis letter f of the Code recognises that the use and commercial exploitation by the employer of the employee's image for a purpose other than the main purpose of the employment contract concluded, requires an express manifestation of will on the part of the employee. It also indicates that the pecuniary benefits received by the worker must be in accordance with what is agreed in the employment contract or in the collective bargaining agreement, if any. This is reflected in the standard federative contracts that the ANFP provides to the clubs to conclude with the athletes.

Therefore, it can be understood that the legal system, on the one hand, recognises the right of sportsmen and sportswomen and professionals exercising related activities to commercially exploit their image rights and, a contrario sensu, recognises the right of the employer to commercially exploit their image, to the extent that such exploitation is related to the main purpose of the sports employment contract.



Finally, it should be noted that although it is not directly related to a commercial purpose, Law 19.733 on Freedom of Opinion and Information and the Practice of Journalism would present a limit to the right of image of sportsmen, as the third paragraph of article one indicates the “right of persons to be informed about facts of general interest”. Ordinary Opinion 4884/34 of the *Dirección del Trabajo* or “Directorate of Labour”, dated September 2021, gives as an example of facts of general interest related to sports activities, press conferences or interviews at the edge of the pitch.

## 5.4 Licensing Athletes

The aforementioned Ordinary Opinion 4884/34 defines the right of image as “the power vested in the human person to dispose of, authorise or prevent the capture, reproduction or dissemination of the graphic representation of his physical figure or of the elements that make up his personality...” It also recognises its quality as a fundamental right and, therefore, it is “unrenounceable, inalienable and imprescriptible, as it is a representation of the external being of the human person”. Thus, the law does not prevent the commercial exploitation of the athletes’ image, as long as the athlete’s life is not limited, for example, by not being able to freely use his or her own name.

## Sports Bodies

Sports legal entities do have the right to commercially exploit their brand, logo, name, nicknames, and colours. Nowadays, there are many sports bodies, professional or not, that licence their trade mark, with the aim of obtaining greater sources of income. In industrial property matters, the limit to the registration of trade marks, and therefore their protection that allows the protected right to be commercialised, is found in

three grounds of prohibition indicated in Article 20 letter k) of the Industrial Property Law 19.039:

- public order;
- morality; and
- good customs.

This prohibition does not prevent the rights from being used in the private sphere, nor is it protected by trade mark legislation.

## 5.5 Sports Data

It is increasingly common to see clubs in various sports using statistical information on sporting performance, both to improve the various indices in their own training (and to regulate workloads and thus avoid injuries), and to study future opponents and be better prepared for the next competition or match. In addition, the relatively new sports secretariats make use of the information that is available to monitor athletes who might be attractive for future recruitment.

Thinking about the followers of the different sports, in Chile there has not been a deepening of the supply of quality statistical information. In general, there has been no innovation in the quality or quantity of information related to the competition or the match, with more focus going into the spectator’s experience using augmented reality to make the broadcast more attractive.

In terms of professional football clubs, there are few that make use of the information that their own supporters offer them, such as the behaviour in the merchandising purchase process, in the loyalty through email communication, or in the resulting interaction with the club and the brands present on match day. There is a lot of progress to be made in this area, with a general lack of understanding on how to maximise and create activations with the use of such data.

## 5.6 Data Protection

The right to privacy and the protection of personal data is a fundamental right guaranteed by the Constitution in Article 19 number 4. Currently, Chile has a special law on the protection and processing of personal data, Law 19628 on the Protection of Privacy. However, the National Congress is currently discussing a new law to replace it, given that it dates from 1999 and does not respond to current needs, given the advance of technology. The bill includes the creation of a Personal Data Protection Agency, which will aim to ensure the protection of people's personal data.

In commercial matters, the main challenge for the authority will be to control and supervise the traffic of information and personal data circulating between companies, with the aim of contacting the public and offering their goods or services. This is, unfortunately, a bad practice that is currently occurring. In the field of sport, although some clubs and brands have developed a strategic plan to bring their customers closer to them, in general it is not a very developed field in its own right, with the protections afforded to this area being those outlined in the national law as stated.

## 6. Dispute Resolution

### 6.1 National Court System

Article 1 of the Constitution recognises and protects "intermediate groups" as the basis of the organisation and structure of society and guarantees them "adequate autonomy to fulfil their own specific purposes". Autonomy, among other things, includes the power of self-determination or to establish mechanisms for resolving disputes that arise within these entities. Likewise, the Chilean Fundamental Charter enshrines in

Article 19 number 3 the equal protection of the law in the exercise of the rights of individuals, as well as the right to legal defence.

The Chilean legal system recognises matters of exclusive competence of the courts of justice, and other optional matters, which can be submitted to arbitration or alternative dispute resolution mechanisms.

In labour matters, the Chilean legal system mandates that all disputes of this nature, in which the parties are employer and employee, be heard and resolved by the corresponding labour court.

In civil matters, the civil courts are competent to hear any dispute of a patrimonial nature. However, considering the specificity of conflicts in the field of sport, added to the slowness in the development and culmination of the processes known by the ordinary courts of justice, which do not respond to the need for speed in this area, the different sport stakeholders tend to avoid filing claims using the regular judicial system.

Finally, without prejudice to what the author will analyse in the following section, every person in Chile has the right to file an appeal for protection before the corresponding Court of Appeals, given that one or more of the fundamental guarantees enshrined in Article 19 of the Constitution are being affected or threatened. The Sports Law provides for the existence of two Commissions that hear and resolve sports-related disputes:

- the National Sports Arbitration Committee; and
- the Panel of Experts on Doping.

Despite their source in the Sports Law and the fact that their resources come from public sources, they are administrative in nature and cannot

be considered as part of the ordinary Chilean judicial system.

## 6.2 ADR (Including Arbitration)

In general terms, disputes of a civil nature, including those involving one or more sports entities, can be heard and resolved through arbitration.

On the other hand, in purely sporting matters, the Sports Law obliges sports organisations to have disciplinary and ethics bodies to hear and resolve disputes or conflicts of this nature that arise within them.

With regard to the decisions of these bodies, in the matters indicated in Article 40 letter P of the Law on Sport, it is possible to lodge an appeal for review before the *Comité Nacional de Arbitraje Deportivo* or National Sports Arbitration Committee (CNAD), which is a body also created by this Law, and attached to the Chilean Olympic Committee. The CNAD exercises disciplinary authority over the National Sports Federations, except for the Football Federation, and over all sports organisations in matters of harassment, sexual abuse, discrimination and ill-treatment. Despite being conflicts of a sporting nature, its decisions are not subject to appeal to CAS.

On the other hand, the Chilean Olympic Committee (COCh) indicates in its statutes the existence of a Court of Honour and hears matters submitted to it by the Assembly of Delegates or the Board of Directors, taking special care not to intervene directly or indirectly in those matters that are or may be subject to the jurisdiction of the Federations affiliated to the COCh, or of the National Sports Arbitration Committee, unless these or the parties involved, statutorily and/or voluntarily, submit to its decision. The decisions of the COCh Court of Honour may be appealed to CAS.

As for professional football, it has several internal administrative tribunals, depending on the subject.

- The *Tribunal de Asuntos Patrimoniales* or “Property Affairs Tribunal” (TAP) hears and decides on property disputes arising between the various parties involved in the activity if they are not of a labour nature. As a rule, clubs submit disputes over unpaid obligations between themselves arising from player transfers to the TAP. Since 2023, it has included disputes involving agents.
- The *Tribunal de Disciplina* or “Disciplinary Tribunal” (TD) hears and decides on complaints made against acts in breach of the Code of Procedure and Penalties, Statutes, and other internal rules of the ANFP.
- The *Tribunal de Honor* or “Honour Tribunal” (TH) hears and resolves complaints lodged against ANFP officials or clubs for breaches of sporting ethics.

## 6.3 Challenging Sports Governing Bodies

From the Chilean legal system perspective, and as pointed out in **6.1 National Court System**, every person has the right to file an appeal for protection in the event that one or more fundamental rights enshrined in the Constitution, including the decisions of sports governing bodies, are violated.

Professional football has a body that is not seen in other national federations, which aims to ensure the responsible administration of clubs: the *Unidad de Control Financiero* or “Financial Control Unit” (UCF), which is a body that monitors and advises clubs on economic and financial matters. The UCF has the power to file a complaint before the Disciplinary Tribunal against clubs that have infringed the economic

and financial obligations contained in the statutes and regulations of the ANFP.

Both the Court of Patrimonial Matters and the Disciplinary Court of the ANFP have the power to sanction with points deductions and fines according to the nature and seriousness of the infringement. A recent reform of the ANFP statutes now allows recourse to CAS, once the instances within the Association have been exhausted, or there is an express mention of CAS in the statutes or internal regulations.

## 7. Employment

### 7.1 Sports-Related Contracts of Employment

In practice, in Chilean labour law, only football players are considered professional sportsmen and sportswomen. There is an entire chapter in the Chilean Labour Code called “On the contract of professional sportsmen and sportswomen and workers performing related activities”, also commonly known as the “Statute of the Professional Sportsman”, which, despite its general name, states in Article 152 bis A that it applies only to professional footballers and those performing related activities.

Professional football clubs are the employers of sportsmen and sportswomen in the employment relationship with them. The general labour law allows minors aged 16 years and older to validly conclude an employment contract.

However, beyond professional football activity, there are many high performance athletes in the country who live exclusively on training and competition professionally, by virtue of the model of the state’s contribution to sport. The state contributes to athletes through a system called *Sistema de Becas para Deportistas de*

*Alto Rendimiento* (PRODDAR) (Scholarship System for High Performance Athletes). It is a system that places athletes (categorised according to whether they participate in individual or collective sports), coaches and trainers in categories, so that the higher the ranking, the greater the monthly contribution they receive. Athletes, coaches and trainers move up or down in categories according to their performance in the competitions they participate in.

Returning to professional football, while there is no salary cap per se, there is an institution called *Unidad de Control Financiero* or “Financial Control Unit” (UCF) which ensures that clubs do not spend more than 70% of their income on salaries for first team men’s players, so indirectly the UCF prevents that clubs spend more resources than they produce.

### 7.2 Employer/Employee Rights

Chilean labour law is a legal system that has traditionally sought to even up the historical imbalance that has existed between employer and employee. From Article 5 of the Labour Code, labour law is classified as a public policy rule, ie, the parties (especially the employee) cannot waive the rights set forth therein.

Furthermore, the applicable law in the employment relationship between an employer and an employee in Chile is Chilean labour law. Likewise, disputes arising between the parties will only be resolved by the labour courts, not allowing the resolution of the conflict through arbitration. Exceptionally, the legal system allows the intervention of an arbitrator in cases of disputes between the employer and a trade union organisation.

Women’s football has developed significantly in recent years. However, cases of violation of

women's footballers' rights have constantly come to light.

A striking case was the lawsuit filed by four female players against the club *Everton de Viña del Mar*. The sportswomen asked for recognition of their employment relationship with Everton and the violation of rights to which they were subjected, despite the fact that they did not have a written contract. The Labour Court of Valparaíso concluded that the players had indeed provided their services as footballers and the club had indeed violated their rights as workers since Everton prevented them from working at another club, withholding their registration. In addition, the club was ordered to pay the players' remuneration for a period of two years back-dated, counted from the filing of the lawsuit.

### 7.3 Free Movement of Athletes

In relation to the freedom of movement of professional footballers, Chilean professional football, following FIFA guidelines, has transfer windows within which athletes can be registered in the ANFP Register. If the transfer windows may well be considered as a limit to the players' freedom of work, the specificity of the sport has led to the estimation that this is positive for the industry in general terms. Furthermore, ANFP rules allow only three new players to be signed in the mid-season transfer window, except for players returning to their home club after a loan spell.

Additionally, prior to the start of the 2024 Tournament, the ANFP Presidents' Council (which brings together the presidents of all the clubs in the first two divisions of professional football) agreed to increase the number of foreign player quotas in professional football squads. This decision led to the threat and subsequent implementation of a strike by the *Sindicato de Futbolistas Profesionales* or "Professional Footballers' Union" (SIFUP).

After several days of uncertainty, the Presidents' Council resolved to maintain the six quotas for registered foreign players but limited to a maximum of five foreign players on the pitch at any one time. Currently, there are many professional sportsmen and women working in Chile. Although it can take six months or more to obtain a visa, Chilean migration law allows foreign sportsmen and women to work validly in Chile with a work permit with a pending visa, in accordance with Law 21.325 on Migration and Foreigners.

## 8. Esports

### 8.1 Esports Overview

Esports activity in Chile is steadily increasing, although there are still significant challenges to overcome. As of this date, esports are still not recognised as a sport by the Chilean Ministry of Sport and, therefore, their organisations cannot be constituted in accordance with the Sports Law, nor enjoy its benefits.

All in all, the Santiago 2023 Pan American Games attracted 120 gamers from 25 countries in Dota 2 and eFootball 2023, in both men's and women's categories. This participation marked the debut of esports at the Pan American Games.

## 9. Women's Sport

### 9.1 Women's Sport Overview

The development of women's football in Chile has grown exponentially in the past 15 years, mainly since the organisation of the U-20 Women's World Cup in 2008, with a strong investment in infrastructure by the state of Chile, which materialised with the construction of new stadiums as part of the Bicentennial Stadium Network plan.

Currently, there are two women's football divisions in the adult category, in addition to two other categories of youth football (under 16 and juvenile). Only clubs affiliated to the ANFP can participate in women's football tournaments in Chile.

In 2022, Law 21.436, which requires the conclusion of a contract, under the terms indicated, between professional sports corporations and the athletes who are part of the national women's football championship, generated an important change in the ecosystem of women's football, as it set a deadline for professional clubs to gradually build their squads with players who have employment contracts so that by the third year they have 100% of their players under an employment contract. In addition, the law allows clubs, the vast majority of which are for-profit legal entities and therefore not subject to apply to the National Fund for the Promotion of Sport and Donations for Sporting Purposes under Law 19.712, to do so for the sole purpose of resourcing their adult women's teams.

While there is significant room for growth in the industry, particularly given the reluctance of the clubs themselves to invest in it, there are matches that have been played in front of more than 20,000 people in the stands. The Chilean national team, in turn, has also played in front of more than 17,000 in the stands and has generated a boom among the younger generation of girls who already have powerful and easily recognisable role models. The Chilean market is not yet one in which players are transferred for a price, so the global market itself has not yet recognised the value of Chilean football.

Within the women's football ecosystem, there are a number of stakeholders that have acquired great notoriety for their contribution to the development of the industry. Entities and indi-

viduals such as ANJUFF, the women's footballers' organisation that has developed under the umbrella of SIFUP, media specialising in women's football such as *Contragolpe*, or the leadership of national team leaders, such as world-class goalkeeper, Christiane Endler, or former players who have successfully moved into club administration, have contributed to the transition of the activity from a totally amateur level to one with greater structure, more competitiveness and more resources.

## 10. Non-fungible Tokens (NFTs)

### 10.1 Non-fungible Tokens (NFTs)

Up to March 2024 Chile lacks direct regulations regarding NFTs, and Law 21.521 colloquially known as the "Fintech Law" is the only legislation that, in some sense, speaks on this concept. This law recognises cryptocurrency as a method of payment for products and services facilitating, consequently, the development of products related with crypto, like NFTs. Nonetheless, it is important to remark that the law does not recognise crypto as an official currency.

Different football figures have sold NFTs. A good example is Universidad Católica, which was the first Chilean club to join Sorare, a fantasy game that uses NFTs integrated in an Ethereum blockchain. Several Chilean football players partnered with institutions in order to create and sell NFTs. This was the case with Arturo Vidal and Tiane Elder, who sold their NFTs through StartFi and Shirtum respectively.

An interesting case is the one involving the Chilean Chess Great Master Pablo Salinas, who got involved in a NFT project in order to receive an additional income to finance his career. The use of NFTs was popular in Chile during the years 2021 and 2022. Since then, its utilisation has

diminished. It is unknown how “traditional” sports in Chile are planning to integrate this technology again in order to maximise their profits.

## 11. Regional Issues

### 11.1 Regional Issues Overview

Chile is a relatively small market, although it has a great interest in sport and, in general, in the development of the activity at various levels. However, the development of sports law in the country has been scarce, and its practice has been the privilege of very few. On the other hand, sports organisations are not yet mature enough to be aware of the need for specialised legal advice. The number of law firms that have a sports law department is tiny compared to the number of law firms that offer more traditional legal services.

This leads to a lack of intellectual and theoretical debate at a national level, which in turn leads to a lack of new sports lawyers. Universities are timidly opening up to have courses and academic programmes on the subject, some from a sports management approach, some from a more administrative approach, and others from a commercial one.

The reflection that the author would like to share is that currently, the development of Sports Law is not in line with the economic reality of the country in general. Despite this, there is a lot of interest from law students and young lawyers to pursue and practise this area of law. For this reason there should be optimism that the sports law industry will develop in the short term, hand in hand with the adoption of greater resources, and greater professionalisation in other areas of the sports industry.

## 12. Artificial Intelligence (AI)

### 12.1 AI Overview

Up to March 2024, Chile lacks regulations concerning artificial intelligence (AI). Nonetheless, since 2021, there exists a National Policy called “Decree 20” published by the Ministry of Science, Technology, Knowledge and Innovation, regulating this phenomenon and currently the country is in the process of regulating several bills. Among others, Bill 15.935 intends to criminally persecute the wrong use of artificial intelligence, Bill 16.021 wants to incorporate the use of artificial intelligence as an aggravating circumstance whilst committing a crime and finally, Bill 15.869 wants to regulate AI, robotic and connected technologies.

As it is a relatively novel technology, the Chilean sports sphere is starting its use in order to improve the sports in the country. An example is Scout Advisor, a tool that intends to improve football scouting, providing more complete data for the professionals involved in the sector. The Pan American Games, which were celebrated between 20 October and 5 November 2023 also used AI in order to improve the transportation mechanisms during its celebration, consequently achieving the reduction of fuel usage by more than 30%.

Finally, the XVI International Congress Oritel included a session wherein the use of AI for the rehabilitation of people was discussed. As the lecturer can imagine, this is a very important topic in sports and would increase the health of the athletes. The use of AI is a new reality that came to stay. It is expected that during the next months or years it will become an essential part of Chilean sports improving several aspects like, for instance, the VAR system, improving match and athletes’ data.

## 13. The Metaverse

### 13.1 Metaverse Overview

Up to March 2024, Chile lacks regulations applicable to metaverse activities. Nonetheless, it does not mean that the country does not recognise the importance of this area. On 16 and 17 March 2023, an international seminar called “Opportunities and Challenges of the Metaverse” in which new metaverse policies for the country were discussed.

Despite the lack of legislation, a significant number of companies have decided to dive into the metaverse. A good example of this is one of the most important football teams in the country, Colo-Colo, which registered several terms related to the team in the Industrial Property Institute of Chile: “Meta-Albo”, “Meta Colo-Colo” and “Meta Cacique”. There were also projects initiated outside the football world, like the one led by the racing driver Nicolás Pino who is aiming to connect the blockchain platform CSport, which he owns, to the metaverse.

As the reader can observe, the metaverse situation in Chile is still commencing. Nonetheless, the country has begun to take its first steps. Some institutions and sports professionals have begun their individual projects whilst awaiting a major doctrinal discussion which will lead to the first set of regulations in Chile that will affect the metaverse.



# CHINA

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## Law and Practice

### Contributed by:

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**DaHui Lawyers**

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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 mem-

bers of DaHui's sports practice have developed a reputation as client-oriented, pre-eminent attorneys across the entire spectrum of sports matters. Whether assisting 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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# dahui

## 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 2023; "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 World Anti-Doping Authority (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 in accordance with the Sports Law, the Anti-doping Regulations and other laws and regulations. On 31 May 2023, the GASC issued the Draft Amendment of the Anti-doping Regulations, seeking public opinions on new amendments to the current Anti-doping Regulations. The draft envisions expanding the scope of the Anti-doping Regulations from six Chapters and 47 Articles to eight Chapters and 71 Articles. In addition, to ensure the lawful and efficient implementation of doping inspections, the GASC promulgated the Regulations on the Management of Doping Inspection Personnel in February 2023, strengthening the regulation of doping inspection personnel teams.

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.

### CADA

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, organise and implement doping inspections and testing, organise and imple-

ment investigations and hearings on doping violations, and construct and manage doping test labs. CADA promulgates an annual report on its anti-doping work and doping violations on its official [website](#). According to CADA's 2021 annual report, it prosecuted 31 doping violations in 2021. One month before the opening of the Asian Games Village in 2023, Chinese athletes underwent three rounds of doping tests, totalling 4,730 tests performed. Throughout the preparation period for the Hangzhou Asian Games, China implemented the largest pre-competition doping screening in the history of the Asian Games, with a total of 15,181 tests performed.

## 1.2 Integrity

According to the Sports Law, athletes, coaches, and referees are prohibited from fraud, match-fixing, and malpractice. According to the Measures for the Administration of Sports Events and Activities, published on 1 January 2023 ("Sports Events and Activities 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 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 Regulations, the Anti-doping Measures and other applicable laws and regulations are consistent with the World Anti-Doping 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 coach of the Chinese Men' Football Team 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, instead, the manufacturer or the retailer will usually 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. Clubs, organisers, and law enforcement authorities are also 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 of 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 in China 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 through 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 sports 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.

## SPC Decision on Broadcasting Rights Disputes

On 21 June 2023, the Supreme People's Court of the People's Republic of China (SPC) issued for the first time certain "Model Cases of Sports-related Disputes", which included a case concerning an interim injunction involving unfair competition disputes over sports broadcasting rights between a media company and a technology company. In this particular case, the media company was authorised to provide online on-demand broadcasting of the Winter Olympics on its self-operated video platform and app. During the Winter Olympics, the technology company conducted special live broadcasts, reviews, on-demand services, and short video play-backs of the Winter Olympics events on its self-operated platform, using this as a major promotional point to attract users. The media company filed a lawsuit against the technology company, alleging unfair competition. The court ultimately ruled that the media company had invested substantial amounts to obtain the broadcasting licence and was a legitimate rights-holder, while the technology company did not have legitimate authorisation. Furthermore, the court held that these actions caused actual damage to the media company's interests and disrupted market competition order. Due to the timeliness of sports events, the court issued an interim injunction against the technology company, demanding an immediate cessation of providing Winter Olympics-related content. Later, the two parties reached a settlement through mediation.

## 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 access to the venue.

According to the Sports Law, the Sports Events and Activities Measures, and other relevant laws and regulations, national comprehensive sports events, such as the National Sports Games, shall only be organised by the GASC and its authorised organisations and 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 and Activities 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 safeguarding measures such as risk prevention and emergency response plans. According to the Sports Events and Activities 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. On 22 September 2023, in order to implement the newly revised Sports Law, and to strengthen the management of high-risk sports events and promote the development of the sports industry, the GASC issued a revised version of the Administrative Measures for the Operation License for High-Risk Sport Events, which further specified administrative rules for businesses operating high-risk sport 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 a 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, there were a total of 31 investment and financing events in China's domestic sports-related companies from January 1 to December 20 2023, with a total value of approximately CNY2.4 billion. In the same period during the previous year, there were 54 financing events for Chinese sports start-ups, reflecting a total value of nearly CNY1.4 billion. The number of investment and financing events in 2023 decreased by 42.59% compared to 2022, while the total investment and financing amount increased by 72.10%. The top five areas that investors are most interested in are esports, outdoor sports, sports technology, fitness, and sports venues.

## 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 pro-

tected 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 Relationships**, 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 a 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 suit against CFA Super League Co. and the photography company for abuse of a dominant market position. In July 2022, the SPC 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

China has a comprehensive 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 provides, for the first time in China, 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.

## CCAS

Accompanying the sports arbitration rules delineated in the Sports Law, the GASC has prom-

ulgated the Organisational Rules of the China Commission of Arbitration for Sport, the Sports Arbitration Rules and the Sports Arbitration Handling Guidelines to formulate the by-laws of the China Commission of Arbitration for Sport (CCAS), the first national sports arbitration committee in China, and its arbitration rules, including but not limited to the jurisdiction, seats, hearing procedure and awards. On 11 February 2023, the CCAS was officially established in Beijing. On 28 November 2023, CCAS finished adjudicating its first three sports arbitration cases. The subject matter of these cases involved a sports event qualification dispute, a dispute involving the termination of a youth training contract, and a dispute around a technical issue during a sport match. On 15 December 2023, CCAS activated its online filing channel for sports arbitration cases to speed up its case handling procedure.

## Sports Association Arbitration

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. Further, some associations have adjusted their internal arbitration policies in response to the creation of the CCAS, and will now allow CCAS to review disputes within their association.

## 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 CCAS.

## 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 CCAS. According to the Sports Arbitration Rules promulgated by the GASC, disputes subject to arbitration as stipulated by the Arbitration Law of China and the Labour Disputes Mediation and Arbitration Law of China do not fall within the scope of sports arbitration.

### 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 Esports 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, the value of China's esports market reached CNY167.3 billion in 2021, an increase of 13.5% compared with 2020. The total num-



ber of users reached more than 500 million in 2021. However, due to the impact of multiple lockdowns in 2022, the value of 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 2023, China's esports industry generated a total of CNY26.4 billion in revenue, a decrease of 1.31% from the total revenue of 2022.

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. On 22 December 2023, the National Press and Publication Administration (NPPA) published the Measures for the Administration of Online Games (draft for comments), which imposed strict rules on the operation of online games. Notably, this draft faced a tremendous amount of controversy from the public, and the prospects of its ultimate implementation at this time are uncertain. In fact, as of the date of writing (March 2024), the draft law appears to have been taken down from the NPPA's website.

## 9. Women's Sport

### 9.1 Women's Sport 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 athletes 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. In the Asian Games 2022, 437 out of 886 competing Chinese athletes were female. 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 Non-fungible Tokens (NFTs)

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 SPC 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.

NFTs have become increasingly popular as virtual collectibles, as sport events, brands and teams have developed and launched various NFTs as marketing tools. During the Beijing Winter Olympic Games 2022, NFT digital pins featuring Winter Olympic mascot Bing Dwen Dwen priced at USD99 attracted substantial attention and popularity.

## 11. Regional Issues

### 11.1 Regional Issues Overview

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

## 12. Artificial Intelligence (AI)

### 12.1 AI Overview

In recent years, China has emerged as a global powerhouse in the field of artificial intelligence (AI), marking a significant transformation in its

technological landscape. By the end of 2022, there were 4,227 AI enterprises in China. According to the Ministry of Industry and Information Technology (MIIT), the size of China’s generative AI market is expected to reach CNY14.4 trillion, and has been widely used in the manufacturing, retail, telecommunications and healthcare industries.

The regulatory landscape applicable to AI in China has evolved rapidly with key regulations including:

- the Administrative Provisions on Algorithm Recommendation for Internet Information Services (“Algorithm Recommendation Regulation”) (effective from 1 March 2022), focusing on algorithms in internet information services;
- the Provisions on Management of Deep Synthesis in Internet Information Service (the “Deep Synthesis Regulation”) (effective from 10 January 2023), managing deep synthesis in internet information services and ensuring its responsible use;
- the Provisional Provisions on Management of Generative Artificial Intelligence Services (the “Generative AI Regulation”) (effective from 15 August 2023), which introduced novel restrictions for companies offering generative AI services to consumers; and
- the Trial Measures for Ethical Review of Science and Technology Activities (“Draft Ethical Review Measure”), published on 24 April 2023, aiming to establish ethical guidelines for AI-related science and technology activities.

### AI and Sports

The application of AI in the realm of competitive sports, particularly in esports, has become a key point of interest. As early as 2017, one of the top esports professional players, Dendi, lost to the

DotaAI, a gaming AI developed by Open AI, the team which later developed ChatGPT. In China, AI has also been increasingly involved in esports. China's tech giant Tencent has developed an AI trainer for its mobile games to help players polish their gaming skills. Further, in the traditional Chinese strategy game "Go", the emergence of AlphaGo marked a historic moment as AI challenged and surpassed human Go champions, raising global attention around the potential application of AI in intellectual games. However, certain Go players have also abused the power of AI in actual games. On 15 March 2022, the Chinese Go Association announced a notification regarding Liu Ruizhi's use of AI cheating during a game. Upon investigation, it was confirmed that Liu Ruizhi had breached rules against use of AI during a competition. As a result, Liu Ruizhi was suspended from playing in professional matches for one year. The application of AI in intellectual/strategy games continued apace in 2023.

Further, AI has been used in the context of sports event broadcasting. In 2022, China Mobile partnered with WSC Sports, to generate and broadcast sports event aided by AI technology. Specifically, this partnership will incorporate the use of AI in broadcasting major sports games, including those of the NBA and Premier League, and will generate personalised game stats and sports videos for audiences.

## 13. The Metaverse

### 13.1 Metaverse Overview

As augmented/virtual reality, cloud computing, AI, blockchain and other technologies become increasingly more mature, the metaverse has been used in various contexts in China, including manufacturing, education, tourism and

medicine. In terms of integration with the sports industry, the metaverse reconstructs the traditional meaning of "on the spot" in sports. On 28 December 2022, the Ministry of Industry and Information Technology, GASC and other three departments jointly released the Action Plan for the Integrated Development of Virtual Reality and Industry Application (2022–2026), which clearly proposes the implementation of a "virtual reality + sports health" application to achieve the organic integration of sports and virtual reality.

In the Chinese market, from the release of the Gongti Metaverse (GTVerse) to the opening of the Shanghai Virtual Sports Open (SVS), and then to the vigorous marketing of the metaverse during the 2022 FIFA World Cup in Qatar, the development of the sports metaverse has clearly heated up.

In particular, on 5 August 2022, the Shanghai Virtual Sports Open (SVS) was launched. This was the first comprehensive virtual sports event in China, including virtual rowing, virtual racing, virtual skiing, virtual cycling, and virtual golf. In the future, it will gradually expand to cover running, football, basketball and other activities.

Likewise, during the 2022 FIFA World Cup in Qatar, China Mobile (as the exclusive holder of the tournament's broadcasting rights in China) created a World Cup metaverse, bringing immersive visual environments to viewers through 5G technology. Sports consumption has ushered in various new developments in the Chinese metaverse, and virtual competitive arenas now allow sports fans to watch matches and interact with sports stars in virtual spaces. This immersive experience has greatly promoted Chinese market awareness of the potential applications of the metaverse within sports.

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At present, China has not yet promulgated any laws that are directly focused on regulating the metaverse. However, regulations such as the Cybersecurity Law, the Personal Information Protection Law, the Data Security Law, the Administrative Measures for Internet Information Services (2011 Revision), and the Regulations on Protecting the Safety of Computer Information Systems constitute an external rule system that applies to the metaverse and related business operations.

## Trends and Developments

### Contributed by:

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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 mem-

bers of DaHui's sports practice have developed a reputation as client-oriented, pre-eminent attorneys across the entire spectrum of sports matters. Whether assisting 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.

### New Legislation Further Reinforces China's Sports Law System

In April 2023, the General Administration of Sports of China (GASC), published the 2023 National Sports Policies and Regulations Planning Work Outline (the "Outline"), which provides instructions for strengthening the development of China's sports legal systems. Specifically, the Outline covers several key areas including:

- developing further rules, policies and interpretations in relation to recently enacted amendments to the Sports Law of the People's Republic of China (the "Sports Law");
- preparing for new amendments to the Regulation on National Fitness and the Anti-doping Regulations;
- pushing for overall "delegation of powers, combination of delegation and control, and optimisation of services" reforms in the sports industry;
- clarifying sports arbitration rules and mechanisms;
- establishing comprehensive law enforcement within China's sports industry; and
- formulating rules for approval procedures for high-risk sports events.

On 31 May 2023, the GASC published the draft amendment of the Regulation on National Fitness (the "Amendment") for public comments. This Amendment brought substantial additions to the existing regulations, expanding the number of provisions from 40 to 100, with the aim of further improving China's sports administration regulatory framework. Specifically, the Amendment, in addition to various revisions in other sections, added two brand new sections, "public services for national fitness" and "supervision and management of national fitness". Both sections provide detailed rules and regulations on creating a conducive environment for public fitness, and further facilitate the national fitness programme which was first proposed by China's State Council in the National Fitness Programme Outline as a key sports and fitness programme in China. The Amendment also made substantial additions to the legal obligations and liabilities sections. Specifically, the Amendment imposes mandatory obligations on local governments to provide sports facilities to the public, and imposes penalties on any party who interferes with the public's ordinary use of sports facilities. In addition to this Amendment from the GASC, numerous provincial and municipal governments have also published their respective local, amended provisions under the Regulation of National Fit-

ness, in response to the recent enactment of the amended Sports Law.

## Sports Anti-corruption

In November 2022, the former head coach of the Chinese men's national football team, Li Tie, was placed under investigation for "serious violations of laws" by the Central Commission for Discipline Inspection (CCDI). This event marked the beginning of a new round of anti-corruption campaigns in China's professional football sector. In 2023, numerous high-level officials in the Chinese football administration were detained by the CCDI, including:

- Du Zhaocai, the former deputy chief of GASC and party secretary of the Chinese Football Association (CFA);
- Chen Xuyuan, the former president of the CFA; and
- Dong Zheng, the former general manager of the Chinese Super League (CSL).

Within 2023, more than ten high-level football administration officials, as well as numerous professional football players and club staff, have been investigated or detained by the authorities.

On 2 August 2023, Li Tie was formally prosecuted for "bribery, unit bribery, and acceptance and offer of bribes by non-state employees", including paying a total amount of CNY14 million for match-fixing of a key match in the CSL, and paying large amount of bribes to various officials at the CFA when applying for the job of the head coach of China's men's national football team. After becoming the head coach, he solicited and received bribes of CNY60 million for selecting certain club's players for China's national team.

Shortly after Li Tie was arrested, former CFA president, Chen Xuyuan, was detained by the

CCDI for investigation. As one of the recipients of Li Tie's bribes when he applied for the position of head coach, Chen Xuyuan was formally prosecuted on 26 September 2023 and publicly tried on 29 January 2024 for bribery. According to the prosecutor's charge, Chen Xuyuan wrongfully received assets worth over CNY80 million since first assuming the position of the president and board chair of Shanghai International Port Group (SIPG), the major sponsor of the Shanghai Port Football Club.

The recent Chinese anti-corruption campaign was not restricted to just football. On 25 August 2023, the former head coach of the China women's national basketball team and vice president of the Chinese Basketball Association (CBA), Li Yaguang, was expelled from the Chinese Communist Party for "embezzling substantial public funds, seeking personal gains through exercising his rights in approving basketball league participation rights, and illegally accepting significant amounts of property", despite having already retired from his last position at Chongqing Administration of Sports in 2018. In December 2023, Liu Aijie, the former president of the Chinese Rowing Association and Chinese Canoe Association, was sentenced to 11 years in prison for the crime of bribery, and was fined CNY2 million. On 30 January 2024, former president of Chinese Athletics Association, Yu Hongchen, was tried for accepting more than CNY20 million in bribes as a public official since 2010.

In the first weekend of 2024, the Chinese state broadcaster, China Central Television (CCTV), started to air an annual anti-corruption documentary disclosing the details of numerous high-level officials' corruption cases, including Li Tie, Chen Xuyuan and Du Zhaocai. This documentary triggered wide discussion in the public and revealed the government's strong

determination in continuing its anti-corruption campaign, especially in the sports industry. On 10 January 2024, the CCDI published its Third Plenary Session communiqué, which restated the CCDI's focus on anti-corruption in 2024, and explicitly listed sports as a key area in such anti-corruption efforts.

## Development of Sports Arbitration

On 11 February 2023, the China Commission of Arbitration for Sport (CCAS) was officially established in Beijing, following the enactment of the latest amendment to the Sports Law on 1 January 2023. As the only specialised sports arbitration institution in China, CCAS has recruited committee members and professional arbitrators from a variety of backgrounds. Along with the establishment of the CCAS, a series of official documents related to CCAS and its arbitration proceedings were published, including the CCAS Organisation Rules, Sports Arbitration Rules, CCAS Charter, CCAS Arbitrator Hiring and Management Measures, and Sports Arbitration Handling Guideline.

Despite the above-mentioned guiding documents, there are still uncertainties in relation to the jurisdiction of sports arbitration, especially the jurisdiction for labour disputes in the sports industry, which have been one of the most common sports disputes within China. Considering the many unique aspects of sports labour disputes (which usually involve not only salary issues, but also other property rights between the sports club and the athlete, among other things), numerous experts, professionals and members of the media have been urging PRC legislators, the GASC and the CCAS to develop more detailed instructions and rules regarding the jurisdiction of sports arbitration.

## Post-pandemic Recovery of the Sports Industry

In the post-pandemic era, the sports industry in China has started to steadily recover from the impact caused by control measures imposed during the COVID-19 pandemic in China. Further, as the public has become more health-conscious in the wake of pandemic, China is seeing a further development in the sports industry, and consequently, a larger demand for legal services in this area. In 2023, there were 613 marathons held in China, up massively from 58 marathons in 2022. At the 2024 Wuxi Marathon, more than 260,000 runners registered for the event, which only provided 33,000 spots. According to the main host of the event, the situation had far exceeded its expectations, and reflected the general public's attention to health.

In addition to the rapid recovery of domestic sports events for the general public, international games have started returning to China since 2023. In 2023, both the Women's Tennis Association and the Association of Tennis Professionals restarted their seasonal games in China, and will increase the number of games held in China further in 2024. Moreover, Formula 1 Grand Prix, one of the most popular sports events in the world, will return to Shanghai in April 2024, five years after the last Formula 1 Grand Prix held in the city in 2019. Furthermore, Shanghai will host the ABB FIA Formula E World Championship for the first time in May 2024, ten years after the inaugural championship race was held in Beijing in 2014.

Since July 2022, amateur basketball tournaments in rural villages (known as "CunBA") have become a phenomenon in China, drawing big crowds and the attention of national media. On 25 March 2023, the first Guizhou rural basketball league final game was held in Taipan Vil-



lage, a small village with a total population of around 1,000. The seasonal final game attracted more than 20,000 people, and was broadcast across multiple media outlets. On 7 June 2023, the GASC and Ministry of Agriculture and Rural Affairs made the announcement that CunBA was to be upgraded to a national game, in which teams from different villages across the country compete for the final championship.

Following the restart of various sports events, sports brands have achieved substantial improvement in their financial performance since the pandemic. According to ANTA Group's half year report released on 24 August 2023, it achieved a revenue of CNY29.65 billion in the first half of 2023, representing year-on-year growth of 14.2%. Its financial performance surpassed Nike China's half-year revenue of CNY27.49 billion, and helped ANTA Group maintain its leading position in the Chinese sports market. Li-Ning's revenue in the first half of 2023 reached CNY14.02 billion, up 13% from the revenue in the first half of 2022. Xtep achieved a revenue of CNY6.52 billion and a net profit of CNY2.8 billion in the first half of 2023, both showing growth of over 10% compared to the same period in 2022.

## Growing Popularity of Outdoor Sports

Outdoor sports, as a relatively new concept in China, have gained wide popularity in recent years, especially since the pandemic. Sports including skiing, bouldering, camping and hiking have attracted large number of participants. As of the end of 2021, the number of participants in outdoor sports in China has exceeded 400 million, and a full-scale supply chain of outdoor sports products has been established. According to the Report on the Development of China's

Outdoor Sports Industry (2022–2023), which was released at the 2023 China Outdoor Sports Industry Conference, during the first half of 2023, the number of orders related to outdoor sports increased by 79% compared to the same period in 2022, and by 221% compared to the same period in 2019. In 2023, 67,000 new outdoor sports-related business were added to China's market, up nearly 93% year-on-year.

Furthermore, strong policy support has laid the foundations for robust development of outdoor sports. In October 2022, eight governmental departments, including the GASC and the National Development and Reform Commission (NDRC), published the Outdoor Sports Industry Development Plan (2022–2025) (Development Plan), which laid preliminary foundations for the development of outdoor sports in China. Specifically, the Development Plan addressed six majors areas, including encouraging outdoor sports-related consumption, optimising the outdoor sports industry's structure, and enriching the supply of outdoor sports products. In October 2023, the National Development and Reform Commission, the GASC, the Ministry of Natural Resources, the Ministry of Water Resources and the National Forestry and Grassland Administration jointly issued the Action Plan for Promoting the Construction and Service Improvement of Outdoor Sports Facilities (2023–2025) (Action Plan), aiming to improve the infrastructure of outdoor sports, diversify outdoor sports events and activities, improve the quality of outdoor sports services and strengthen policy support and enforcement for the outdoor sports industry. The Action Plan further proposed to promote the total scale of the outdoor sports industry to reach CNY3 trillion in value.

# ECUADOR



## Law and Practice

### Contributed by:

Santiago José Zambrano Solano

**Conlegal Sports & Entertainment**

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**Conlegal Sports & Entertainment** is a law firm located in Guayaquil, Ecuador, that was created in December 2018 after Mr Santiago Zambrano finished his master's degree in International Sports Law in Madrid at the prestigious ISDE. Conlegal Sports & Entertainment was born as a specialised segment of the law firm Conlegal Attorneys at Law, but after the huge success of the sports department, Conlegal Sports & Entertainment absorbed Conlegal Attorneys at

Law and became a specialised firm on sports law, at national and international levels. In 2019, José David Jiménez followed Mr Zambrano and decided to do his master's in Markets, Industry, Sports and Entertainment Law at ISDE. By 2020, Mr Jiménez came back to Guayaquil to be an active member of Conlegal Sports & Entertainment making it the only sports law firm in Ecuador with two specialised sports lawyers.

## Author



### **Santiago José Zambrano**

**Solano** is an Ecuadorian lawyer with an LLM in International Sports Law from ISDE. He did his internships at the prestigious law firm Schlarmann von Geysso

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## 1. Regulatory

### 1.1 Anti-doping

Doping is not yet considered as a criminal offence by Ecuadorian criminal law (*Código Orgánico Integral Penal*). The only substances on the WADA prohibited substances list that are considered as criminal offences are all of the “social” drugs, for example:

- “dope” – illicit drugs such as cocaine and heroin; and
- fentanyl.

The national anti-doping agency in Ecuador is UNADE (*Unidad Nacional Antidopaje del Ecuador*) with jurisdiction to impose sanctions in case of doping in sports. UNADE is recognised by WADA, and they are completely autonomous to act in all the cases related to WADA. Besides the jurisdiction of UNADE in Ecuador, every Ecuadorian sports federation is obliged to include in their by-laws the recognition of WADA for international purposes and UNADE for national purposes. Ecuadorian sports law (*Ley del Deporte, Educación Físico y Recreación de Ecuador*) also includes the recognition and jurisdiction of WADA as an international institution that regulates the entirety of doping.

### 1.2 Integrity

In Ecuador, only the football professional league and the Ecuadorian Football Federation have drafted rules regarding the possibility of match-fixing in football because not even Ecuadorian sports law mentions anything about match-fixing in sports. In every Ecuadorian sports federation, a sanction is obliged to be included for “misconduct and offence to sports integrity” and in those cases, the athlete, club, or anyone related to sports could receive a disciplinary sanction

according to the Disciplinary Code of the particular federation.

In the case of professional football, the firm had an important case in 2023 related to match-fixing and betting on sports against a person’s own club. In that situation, Club Libertad FC received a sanction by the Disciplinary Committee of LigaPro and they will start the 2024 tournament with four points deducted and a fine of USD30,000.

### 1.3 Betting

In Ecuador there is a new provision that prohibited the promotion of betting on sports but such betting is not illegal so there is no particular legislation that prohibits betting on sports and in line with the particular case of “misconduct and offence to sports integrity” there have been many disciplinary sanctions for betting on sports that have been treated as offences to sports integrity. The Ecuadorian Football Professional League is the first institution in Ecuadorian sports to lead the way and they have prohibited betting on sports because of the landmark case of Libertad FC in 2023. LigaPro have created a new department (Integrity Department) that will deal with all the situations related to betting on sports and, by December 2023, LigaPro accepted the petition to prohibit all betting on sports by players and board members. As mentioned, in the last case of betting on sports, Club Libertad FC received a sanction by the Disciplinary Committee of LigaPro and they will start the 2024 tournament with a deduction of four points and an economic fine of USD30,000. In addition, the player Milton Bolaños, from Libertad FC, received a two-year suspension from playing football.

## 1.4 Disciplinary Proceedings

In Ecuador, disciplinary proceedings are in place in every national sports federation and each set has the competence to impose a sanction on any of the affiliated members. The National Sports Federation should use their own Disciplinary Committee or Ethics Committee, such as in LigaPro or in the Ecuadorian Football Federation, but most sports in Ecuador do not rely on such divisions.

With that on mind, the author can proceed to detail a disciplinary proceeding for doping, integrity or betting offences. First, the Disciplinary Committee of the National Sports Federation should receive a notification of any misconduct by the affiliated members to start a disciplinary proceeding. After that, the Disciplinary Committee would notify the affiliated members with the start of a disciplinary proceeding so the person can defend and send all the documents to protect his/her interests. When the affiliated members send his or her legal defence, the Disciplinary Committee will summon a hearing where the parties can mention their allegations to take a final decision. The decision can be appealed by any of the parties. On a case the author manages, he presented a claim against the Ethics Committee of the Ecuadorian Football Federation against investigating the possibility of match-fixing on a match for the third division of Ecuador, and the firm is still waiting for the decision.

## 2. Commercial Rights

### 2.1 Available Sports-Related Rights

Key sports-related rights are the naming right of the stadiums, ticketing and the presentation night of the team. This happens every year and, for at least the last five years, a lot of attention

has been gained by the sponsors and supporters. It has grown to be internationally attractive to present international singers, and former football stars such as Carlos Tévez, Diego Forlan, Javier Mascherano, Alessandro Del Piero, and Andrea Pirlo. Ticket sales are also highlighted in Ecuador because there is still an important culture of going to the stadium during the weekend, but it has a couple of problems that need to be solved, such as violence in the stadiums, illegal ticket sales and other criminality.

There are people that use the context of “supporters” to commit all kinds of violence in a stadium and to make profit out of illegal ticket sales that, in a lot of cases, is negotiated with criminal gangs that buy the entire ticketing to proceed with the sales outside the stadium and with a huge increase of the amount. This year, the Ecuador Professional Football League (LigaPro) is including a new system for identification of the supporters to lose the previous anonymousness. Online sales have put a stop to the common illegal practices.

### 2.2 Sponsorship

Sponsors are very important for sports in Ecuador, especially for football. Each Olympic year is also of great importance for the sponsors, as they try to anticipate and negotiate with possible Olympic medallists. The most important aspect for a sponsor in Ecuador is to be related to a national brand and in football you have many options. Sponsors try to connect with the principals of sports.

In Ecuador, there is a very interesting key point to attract investors by deducting taxes at the end of the tax year. The deduction is 150% of the amount spent on the sponsor, so, for example, if an investor spends USD100,000 on a sports qualified project, the following year the investor

will deduct USD250,000 from the payment of taxes.

Key terms of a standard contract between sponsors and sports rights-holders are:

- parties;
- duration;
- objective;
- goals;
- limits;
- prohibitions;
- obligations by the sport's right-holder and the sponsors;
- compliance of sports marketing;
- ambush marketing;
- economic obligations; and
- alternative dispute resolution.

## 2.3 Broadcasting

Broadcasters in Ecuador have contracts with the National Sports Federation, but, for the Professional Football League, the negotiation was between the broadcaster and LigaPro. In other sports broadcasting is not possible because it does not generate income as in professional football. So, for broadcasting, the author can only mention the Professional Football League and the negotiation would be conducted by LigaPro, the league of all professional clubs in Ecuador ("Serie A" and "Serie B" – the two Series of Primera Categoría in Ecuadorian football, Serie A being the top level).

For the Ecuador Professional Football League, the broadcaster signs a contract for around USD30 million to be divided amongst all the clubs in Ecuador (Serie A and Serie B). LigaPro have included all the legal protection by the marketing department to protect the broadcaster rights and the income generated by the sale of TV rights.

## 3. Sports Events

### 3.1 Relationships

Sports events are organised in Ecuador by the stake holders determined by Ecuadorian sports law such as national leagues or associations, regional leagues or associations, regional sports federations and the National Sports Federation. In the case that a third person organises a sports event, they will need the authorisation of the City and of the National Sports Federation. The control over the sports event is taken by the National Sports Federation but they will mainly work with a civil contract to protect interests. Sports events in Ecuador are typically organised and managed by the organisers and controlled by them with the enforceability given by the National Sports Federation and the City where the event takes place. Participation by athletes and fans will depend on the event, if it is a national event with a lot of interest by the sport and if the event counts for the national or international ranking.

### 3.2 Liability

There are no specific legal documents that establish the liability for sports events so it will be determined by the contract signed between the organisers, the owner of the event and the City host. In that case, liability will be limited by the Ecuadorian Civil Code and the contract signed by the parties, but there have been many cases of tournaments where no liability has been established in case of injury while competing, so unfortunately liability is not correctly drafted in the Ecuadorian sports law.

The liability of the athletes to the spectators is determined by the Disciplinary Code of the National Sports Federation and the sanction is established through a disciplinary process but not by an individual code of sports liabilities and,

in the same way, violence and disorder are controlled by the National Sports Federation with the support of the hosting City, according to Articles 156 and 157 of the Ecuadorian Sports Law, and complete protection must be given by the National Police Department. In the case that the National Sports Federation does not include a Disciplinary Code, then the hosting city will be in charge of protecting the spectators from violence and disorder.

## 4. Corporate

### 4.1 Legal Sporting Structures

In the Ecuadorian legal system, the only legal structure allowed for sporting bodies is a civil non-profit association. Sporting bodies in Ecuador cannot sell shares or go to the stock market, so everything needs to be reinvested in their projects. Hence, the structure of a club is very limited and depends a lot on sponsorship and broadcasting rights because the Ecuadorian legal system does not allow investors in Ecuadorian sports clubs even though, in the last few years, that has changed by control of clubs being assumed by some legal technicalities.

For professional football clubs, the structure, according to the Ecuadorian Sports Law, is of a professional club that includes LigaPro and the Ecuadorian Football Federation, but there are other kinds of structures such as:

- amateur sports clubs;
- high-performance sports clubs;
- professional sports clubs; and
- adapted or Paralympic sports clubs.

All clubs in Ecuador start as amateur sports clubs (for every sport excluding professional football) and high-performance sports clubs are

for clubs with Olympic or semi-professional athletes.

### 4.2 Corporate Governance

There are no specific sport-related corporate governance codes but according to the Ecuadorian Sports Law, sporting clubs need to comply with the election process and the members of the board should comply with a programme given by the Ecuadorian Sports Minister, yet in reality that has never happened. The Ecuadorian Sports Minister is in charge of applying the rules of the registration of the club's board and if the process is incorrect, the club will not be able to register the board, thereby having consequences with the National Sports Federation that could ultimately result in losing affiliation.

In the case that the National Sports Federation or sporting club receives public funds, the board must respond appropriately with respect to the resources received by the government. The request for any person who is willing to become part of a board for a certain club or the National Sports Federation is very basic:

- being Ecuadorian;
- being at least 18 years old; and
- being a member of the relevant sports institution.

However, it is not necessary to be a professional or even have practised the particular sport. In case of insolvency of a sports organisation, sanctions will depend on the by-laws of the National Sports Federation and, once again, professional football is the only Ecuadorian sport with such disposition whereby you will be sanctioned with points deductions or losing your affiliation in case of insolvency or not complying with a judicial decision.



## 4.3 Funding of Sport

Sports are funded by the Ecuadorian Sports Minister and Minister of Finance according to Article 130 of the Ecuadorian Sports Law. In order to receive resources of the central government, the National Sports Federation needs to go through a process to determine the good use of national resources, including sports benefits, the social impact of the sport on society and future development. The National Sports Federation that develops amateur sports or professional sports will have to fulfil all those requirements. Additionally, the National Sports Federation can obtain its own resources by commercially exploiting the business of sports by organising sports events, ticket sales, broadcasting, and summer camps.

## 4.4 Recent Deals/Trends

In the last three years there has been a new legal disposition for investing in sports because the last two Ecuadorian governments had no budget to construct infrastructure or to prepare athletes for their competitions. This new legal disposition is called Double Deduction for investments in sports and it has been developed to help athletes, clubs and sport in general with private investors that can receive a Double Deduction of the amount spent at the time of tax payment. So it is necessary for athletes and clubs to develop a project with the inclusion of the amount to be spent and companies can use that qualified project to obtain a tax benefit after the investment.

## 5. Intellectual Property, Data and Data Protection

### 5.1 Trade Marks

Trade marks are registered in Ecuador through SENADI (*Servicio Nacional de Derechos Intelectuales*) which is the institution in charge of all intellectual aspects in the country. First you have

to start with a database search to know if there might be a similar or identical brand already registered. If there is no problem encountered to register the mark, you have to proceed to fill in the correct form in order to select the specific product or service you want to protect with your mark (name and logo). The process takes around six to eight months until a final decision is reached conceding or rejecting the filing. If the mark is conceded, the title will be given in the next six months.

In Ecuador it is forbidden to register any mark similar or identical to a mark already registered or any mark that is considered immoral or that attempts to defile good practices. The advantage of the registration of a mark is the economic income that can be produced through commercial negotiations between sporting clubs with companies interested in exploiting economic agreements. For example, Barcelona Sporting Club have their own ice cream with a leading ice cream company of Ecuador made thanks to the commercial agreement between the two institutions.

### 5.2 Copyright/Database Rights

In the same way as trade marks, copyright and database rights are protected by the Ecuadorian Law of Social Economy of Knowledge, Creativity and Innovation through SENADI. The protection is conceded once you request the filing and register at SENADI. The most common way to demand and protect your copyright is by sending cease and desist letters to the offenders. Sadly, in Ecuador there are no considerable cases relating to copyright and database rights linking to football.

### 5.3 Image Rights and Other IP

In Ecuador the legal recognition for image rights is entrusted with the Ecuadorian Law of Social

Economy of Knowledge, Creativity and Innovation and it is very usual to see Ecuadorian clubs including image rights clauses with national and international athletes, mainly in professional football. The situation is that, besides including image rights clauses, clubs do not register or protect the image rights of each athlete at SENADI so those image rights are unprotected and open to be commercially exploited by any third-party company. Ideally, each professional club would protect the image rights of each player in order to have them registered with SENADI and, therefore, be able to use such rights themselves.

## 5.4 Licensing

Sport bodies and athletes need to draft IP licensing contracts between clubs or athletes with any potential trade mark that may be interested in forming an agreement. In order to exploit any intellectual property, you have to comply with the Ecuadorian Law of Social Economy of Knowledge, Creativity and Innovation and protect your IP at SENADI. The only restrictions for assigning IP rights to third parties is to draft a contract with specific clauses for the use of IP rights, register it at SENADI and obtain the licence agreement from SENADI authorising the use of the IP rights.

## 5.5 Sports Data

Sports data in Ecuador is still not completely developed for the use of sports bodies or stakeholders so the only cases where sports data can be found to be in use are with certain companies that use electronic mail or financial information to promote certain products or services. The sports data of the athlete is basically used within professional football and only to know the data of the football player to evaluate his/her performance. In 2024, more will be seen regarding sports data related to spectator data because the Ecuadorian Professional Football League will introduce the “FAN ID” which will have an impact

on the data of the spectator and can be potentially used for commercial purposes.

## 5.6 Data Protection

Data protection law in Ecuador is very recent and it has never been involved in sports so there are no cases related to sports considering athletes, clubs, sporting bodies, spectators or fans.

## 6. Dispute Resolution

### 6.1 National Court System

The National Court System in Ecuador has a relegated role for disputes concerning sports bodies because of the delayed processes, the lack of specific sports law knowledge, corruption and many other concerns about the national judicial system. Instead, each National Sports Federation has the competence to create an independent dispute resolution chamber to decide on topics related to sports law, such as labour contracts, contractual relationships with clubs, training compensation, and other topics. It is not necessary to exhaust the national judicial system to arouse a claim to a dispute resolution chamber of the National Sports Federation. In the end, every sporting body prefers to go to each dispute resolution chamber of the sport in order to obtain justice rather than through the national judicial system.

### 6.2 ADR (Including Arbitration)

Arbitration has gained a lot of attention lately because of the agility, the lack of trust of the regular judicial system and the possibility to obtain quick results in certain legal areas. In Ecuador, the two most recognised arbitration centres are in Guayaquil and Quito but there is at least one in each of the most important cities of Ecuador. According to the Ecuadorian Sports Law, arbitration is recognised by the sports system,

but the problem is that an arbitration chamber for sports is not included. The only sport that has implemented arbitration is football and only because of the request by FIFA. All other sports in Ecuador could possibly include it via the Ecuadorian Sports Law but is not generally included so far.

### 6.3 Challenging Sports Governing Bodies

The power of the sports governing bodies in Ecuador to enforce sporting or financial sanctions is established in the statutes approved by the affiliated members and by the Ecuadorian Sports Law. The power to enforce sanctions by the sports governing bodies is included in the statutes and detailed in every sport's Disciplinary Code. The autonomy given to each sport's governing body is provided by the International Sports Federation and accepted by the Ecuadorian Sports Minister. In the event that a party is willing to appeal a decision, they can appeal before the Appeal Tribunal of the same sports federation or present an appeal process against the International Sports Federation or TAS (Court of Arbitration for Sport), with both accepted by the Ecuadorian Sports Law.

## 7. Employment

### 7.1 Sports-Related Contracts of Employment

Relationships between sports organisations and players are usually handled in a very informal way as many clubs' owners do not like to argue with agencies or they prefer to work with a particular agent and, with that, a lot of the relationships suffer with bad communication. This manner of handling relationships with players, where most of the club owners prefer to skip any communication with agencies to save some money on the contract, is not in everyone's best interests.

Again, in Ecuador the only professional sport is football so its legal obligation is to employ football players, and, therefore, football players are the only kind of athlete that must be employed by any club. Most of the contracts for players include labour law clauses and just a few sports law clauses because in Ecuador, very often, a single template of contract, used for multiple purposes, is all that is ever seen. Salary caps are not enforced in Ecuador; there is only a minimum income for a professional player. It is not possible to make a list of particular considerations of player contracts because there are a lot of mistakes in the contracts, but to be as precise as possible, the author would say that buy-out clauses are the clauses with the most usual mistakes during drafting, making it very complicated to negotiate for an international transfer.

### 7.2 Employer/Employee Rights

Rules for employers and employees in Ecuador only apply to football, in terms of sports. The rest of the sports are not obliged to sign a labour contract with the athlete so there is no relationship of employer and employee. The most well-known cases are the ones where professional football clubs do not register the labour contracts as they should according to the rules governing employer and employee, and then problems arise regarding the competence to decide within labour disputes. Another problem that arises with the rules of employer and employee is in relation to the documents of payment justification for payment roles. Payment roles are necessary to justify the payment of the player's salary and if those documents are not signed by the player, professional football clubs can be sanctioned with points deductions.

### 7.3 Free Movement of Athletes

There is no such thing as a special visa for foreign athletes. The only visa a foreign athlete needs is a labour permission visa given by the

Foreign Minister and that is an obligation only for professional football because any other athlete that comes to Ecuador would not be able to practise professionally.

For football, the capping number of foreign athletes is limited by the Competition Rules of LigaPro in which it is limited to eight players. In the tournaments organised by the Ecuadorian Football Federation, the capping number of foreign players is also limited in the Competition Rules, but it will depend on the kind of tournament. Finally, there is no relevant visa restriction for foreign athletes but there are multiple benefits in terms of migration for athletes that are born in the Andean Community (Perú, Colombia, Bolivia and Chile).

## 8. Esports

### 8.1 Esports Overview

Esports in Ecuador has grown considerably, lately, especially with teenagers. This kind of growth has received the attention of important companies which have investments as sponsors of major events.

Sadly, the development of esports has not been followed by the development of a legal system to protect this industry and the parties involved. Without a legal system, it is not possible to comment on any relevant specifics for esports and, as a matter of fact, esports are not even considered as actual sports by the Ecuadorian Sports Law. For the Ecuadorian Olympic Committee, esports are part of the sporting system because of a request by the International Olympic Committee as well as every National Sports Federation.

## 9. Women's Sport

### 9.1 Women's Sport Overview

The women's sport landscape in Ecuador is limited to football. All other sports are not considered professional, so there is no obligation to sign a labour contract between clubs and female athletes. The problem is that even in football, there is no obligation to sign labour contracts with most of the players and, besides, the professional tournament of Female Football only lasts three months so the contracts at most will last for three months and the rest of the year the club will not have the obligation to pay.

At the beginning of the year, the Law of Equality for Salaries was approved and it is supposed to be implemented for football as well. It is hoped that with this, a line for new legal requirements to protect women's salaries can begin to be drawn. One of the most recognised cases of women's sports law happened last year and was about a very well-known club that was involved with several female football players who received the authorisation to finish their contracts with the former club by just cause according to 12bis and 14bis of FIFA's RSTP (Regulations on the Status and Transfer of Players). The situation was that the dispute resolution chamber of the Ecuadorian Football Federation accepted the just cause even when there was no intimation with respect to unpaid salaries and even the former club proved that they had paid all of the supposedly unpaid amounts.

## 10. Non-fungible Tokens (NFTs)

### 10.1 Non-fungible Tokens (NFTs)

In Ecuador, there is no particular NFT regulation, but they could be handled by the Intellectual Property Regulations. The only sporting

body that uses the NFT market is the Ecuadorian Football Federation but it does not have a big impact on Ecuadorian society.

## 11. Regional Issues

### 11.1 Regional Issues Overview

No information has been provided regarding regional issues in the jurisdiction of Ecuador.

## 12. Artificial Intelligence (AI)

### 12.1 AI Overview

In Ecuador, there is no particular AI regulation, but it could possibly be handled by the Intellectual Property Regulations.

## 13. The Metaverse

### 13.1 Metaverse Overview

There is no particular metaverse regulation in Ecuador, but it could be covered by the Intellectual Property Regulations.

# INDIA



## Trends and Developments

### Contributed by:

Aarushi Jain, Pooja Kapadia, Raashi Vaishya and Mayank Barman  
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**Cyril Amarchand Mangaldas** is one of India's leading law firms and has a global reputation of serving as a trusted adviser to its clients. The firm advises a large and diverse set of clients, including domestic and foreign commercial enterprises, financial institutions, private equity and venture capital funds, start-ups, and government and regulatory bodies. The firm's generalists, specialists and senior ex-regulators expertly guide clients across a spectrum of transactions, sectors and regulations. The firm is one of the largest full-service law firms in In-

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# INDIA TRENDS AND DEVELOPMENTS

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## Showtime for Sports in India

While sports has always been considered a key part in overall growth and personality development, not much attention has been paid to it over the years. This is changing rapidly. The Indian sports industry is expected to reach USD100 billion by 2027. Some catalysts for these changing trends are discussed below.

## Spending and Initiatives

There has been an increase in the Central Government's spending on and attention to sports in India. A sizeable amount of funds was allocated to the Ministry of Youth Affairs and Sports (MYAS) in 2023 (approximately USD33.96 billion) and in early 2024 (approximately USD34.42 billion), ahead of the 2024 Olympic Games in Paris. The funds will also be used for national camps, providing better infrastructure and equipment to athletes, and appointing coaches (among other things).

The Khelo India Scheme was introduced for the years 2021 to 2026 in order to (inter alia):

- create sustainable infrastructure for sports in India;
- promote rural and tribal games;
- enable women's participation in sports; and
- promote sports among people with disabilities.

This scheme envisages using government funds, corporate social responsibility (CSR) funds of private entities and public private partnerships (PPPs) to further the objective of the Scheme.

In addition, the draft National Youth Policy 2023–32, which targets nearly 50% of the Indian youth population, aims to (inter alia):

- set up a talent registry for sports, for local talent to grow and flourish at national and international levels in the future;
- encourage greater physical activity in schools;
- place emphasis on health and fitness; and
- support adventure sports organisations in organising adventure expeditions across India.

The University Grants Commission (UGC), one of the key regulators for higher education in India, also notified the UGC (Institutions Deemed to be Universities) Regulations, 2023, which enable the setting-up of greenfield institutions deemed to be universities under the "Distinct Institution" category if they have a focus on sports.

Sports is a state law subject in India, meaning that the states (primarily) have the power to regulate matters relating to sports. States in India also do not shy away from spending on sports and infrastructure. For example, between 2023 and 2024 (to date), the Karnataka government announced a sports city of approximately 100 acres in Bengaluru; Maharashtra launched schemes to prepare sportspersons for the Olympic Games through establishment of sports excellence centres; Odisha encouraged educational institutions to spend on sporting competitions; and Haryana announced formulation of an "aero sports policy" to promote sports tourism.

Recently, in line with the Khelo India Scheme, various state governments have also explored the PPP model for developing sports infrastructure in the country. Indore, Madhya Pradesh, is set to open a large sports complex based on a PPP model. Similarly, the state government is envisaging a sports complex in Lucknow, Uttar Pradesh, where the governmental body would



provide the land and the private player would handle construction.

The private sector has also been independently investing in the growth of sports, by:

- setting up sports institutions;
- offering specialised courses relating to sports; and
- providing grants and sponsorships (including CSR initiatives), which help develop sports at the grassroots level.

All these new developments bring interesting legal issues relating to (among others):

- land title;
- feasibility studies;
- project financing;
- construction-related legal issues and compliance;
- intellectual property (eg, training methodology);
- governance issues involving sporting bodies;
- grants; and
- contractual issues.

Indian and international partners entering this space need to structure deals carefully while keeping in mind the regulatory, legal and contractual nuances.

## Rights

There has been an increasing trend of the glamorisation of sports in India.

The fact that watching sports is no longer limited to stadiums but is telecast live, such that a game can be seen by millions (if not billions) in India on televisions and mobile phones, is adding to the attraction and fan following of sports.

## Exploitation rights

2023 saw a cricket fever spike as the country played host to the ICC Men's Cricket World Cup. While major broadcasters were competing for exclusive broadcast and streaming rights, the following rights also enjoyed prominence (among others):

- sponsorship deals (eg, regarding title sponsors, jersey sponsors, equipment sponsors, etc);
- advertisement slot deals;
- gamification deals;
- ticketing rights;
- player endorsements; and
- merchandise rights deals (eg, regarding sale of official merchandise).

While cricket has always ruled the hearts of Indians, craze for sports and exploitation of such rights is no longer limited to cricket alone; there is definitive uptake regarding viewership of other sports as well.

Almost all well-known sports in India have their own sporting league, such as:

- the Indian Premier League (IPL);
- the Indian Street Premier League;
- the Women's Cricket League;
- the Premier Badminton League;
- the Indian Super League (for football);
- the Prime Volleyball League;
- the Indian National Basketball League; and
- the Pro Kabaddi League.

These leagues generally have tournaments once a year. There is also an auction for teams (franchising) and players, and various other rights (such as broadcast and digital streaming rights) for such tournaments. Several other exploitation

rights (eg, league or team-specific sponsorships, advertising, ticketing, etc) are on also offer.

2023 and 2024 to date has seen some top Indian film actors (eg, Amitabh Bachchan, Hrithik Roshan, Akshay Kumar, Ram Charan, Surya, Kareena Kapoor and Saif Ali Khan) and corporates (eg, Adani Group, Capri Holding, Royal Challengers Sports, JSW Sports, etc) come forward in support of sports and becoming team owners.

Though new, there is also a trend of Indian celebrities (eg, Shah Rukh Khan, who owns the Abu Dhabi Knight Riders) as well as HNI-owned entities such as JSW Sports (which owns Pretoria Capitals), Adani SportsLine (which owns Gulf Giants) and Reliance Industries (which owns MI Emirates) investing in or owning teams in international leagues.

This trend has not only increased the value of media rights but has also introduced legal complexities, such as:

- local and cross-border structuring, including for rights (eg, which entity should hold the rights);
- tax and exchange control law implications;
- intellectual property law-related considerations (eg, for brand name trade marks, logo copyright, composite logo, brand guidelines compliance, etc); and
- documentation concerning exploitation of a plethora of rights connected with a league.

There are also legal nuances connected with overseas funding, donations and acquisitions, which need to be considered. While these issues may sound commonplace in more established markets, India is just embarking on the journey

towards understanding and unlocking the value of media rights.

Given the value of rights, it is natural to take every step possible to prevent their infringement. 2023 saw major broadcasters/platforms such as Viacom18 (which obtained the TV and digital rights for all IPL matches from 2023 to 2027 for approximately USD2.5 billion) and Star (which had the global TV and digital rights to all ICC events for the years 2015 to 2023) knocking on the door of Indian courts, seeking injunctions/dynamic injunctions against rogue websites and platforms to protect their exclusive rights.

### *Personality rights*

As people get hooked on watching a sport on television and via digital means, they start appreciating the sport and recognising the players. Promotions, advertising and sponsorships, etc, augment their personal brand. Therefore, it is common for players to exploit their personality rights by way of endorsement deals, and to grant persona or likeness rights for caricatures, games and non-fungible tokens (NFTs), etc.

In recent years, some famous Indian cricketers have partnered with digital collectibles platforms to launch their own cricket NFTs. The issuance and trading of NFTs relating to iconic moments and other digital collectibles of players has raised legal questions concerning ownership and licensing of intellectual property (IP), data protection and contractual obligations, among other things.

2023 saw the interesting case of Digital Collectibles Pte Ltd and Others v Galactus Funware Technology Pvt Ltd and Another, wherein the Delhi High Court declined to issue a temporary injunction against a gaming platform that was using the name and likeness of certain cricket-

ers to create NFTs. In this case, the platform was using digital player cards with original artistic renditions (not real images), names and statistics of cricketers. The court stated, inter alia, that:

- in order to make a case of violation of the right to publicity, it is necessary to prove whether the identity of the celebrity was used to promote the sale of a product/service or to show its endorsement by/association with the celebrity without their consent;
- the right to publicity is not an absolute right in India, and it cannot impinge the right to freedom of speech and expression enshrined in the Indian Constitution; and
- publicly available information cannot be the subject matter of an exclusive licence by the player in favour of a third party, and usage of players' names, images and statistics for commercial gain would also be protected.

The case is currently under appeal and will pave the way for interesting jurisprudence on how personality rights are protected in India.

## Advertising

Sports betting continues to be illegal in India. The Ministry of Information and Broadcasting, through a string of advisories issued over the past few years and most recently in March 2024, has strongly advised media entities against carrying:

- advertisements of online sports-betting platforms; and
- surrogate advertisements for offshore sports-betting platforms (including in the guise of sports news websites) targeted at Indian audiences.

In fact, the Board of Control for Cricket also recently issued an advisory specifically restrict-

ing its franchisees from partnering with betting and real-money gaming (not including fantasy sports gaming) brands.

## New Technology Enhancing Sporting and Experiences

Ahead of the Men's Hockey World Cup in 2023, Hockey India became the first National Sports Federation to enter the world of metaverse by introducing "Hockeyverse", featuring several unique attractions (such as famous hockey stadiums) that global hockey fans can experience virtually. Shortly after, the International Cricket Council (ICC) introduced its own metaverse to enhance fan interaction during the 2023 Cricket World Cup in India.

In 2023, JioCinema, a popular OTT platform in India and the official streaming partner of IPL, introduced an interactive cricket viewing experience where fans can:

- select camera angles;
- use the best angles for key highlights;
- rewind;
- set commentary language; and
- view live statistics during the match.

Fan interactions and quizzes (among other features) were also offered.

Tech Mahindra, one of the leading tech companies in 2023, announced its building of a cloud-based platform that will provide a series of immersive sports experiences, including augmented and virtual reality experiences, coupled with metaverse gamification. In fact, Tech Mahindra has secured a deal with top sports teams, such as India-based cricket team Punjab Kings and US-based football team Jacksonville Jaguars, for utilising this platform to introduce immersive fan experiences.

Convergence of technology and sports will bring its own legal nuances and challenges. As more sets of rights are created concerning technology, contracts will need to be specific about the nature of rights granted, and about the restrictions, mode and manner of exploitation, etc. Cross-border deals will also involve IP law issues, tax issues and exchange control implications, among others.

## Wrestling

2023 to 2024 saw women wrestlers in India protesting against alleged misbehaviour (including sexual harassment) by coaches and the President of the Wrestling Federation of India (WFI).

This led to a series of events, including police complaints, filing of cases in court and the setting-up of committees to investigate allegations. These events also involved intervention, statements and reactions of bodies such as the Indian Olympic Association, the International Olympic Committee and United World Wrestling (UWW), as well as the suspension of the WFI by the MYAS until further notice. In fact, UWW had also suspended the WFI for the latter's failure to conduct elections in time. As of February 2024, the suspension has been lifted with certain conditions.

On a separate note, in October 2023 India's Supreme Court, dealing with a writ petition seeking implementation of the provisions of the Sexual Harassment at the Workplace (Prevention, Prohibition and Redressal) Act, 2013 at state/UT level, directed (inter alia) sports institutes, stadiums, sports complexes, or competition or games venues to establish internal complaints committees for reporting sexual harassment, and to report their legal compliance therewith. States/UTs were also asked to formulate orientation and training programmes in this regard. The case is still ongoing in court.

## Esports

The push to develop the esports industry in India is apparent. The Indian esports industry is expected to reach USD140 million by 2027, and multiple states are taking initiatives to promote the this industry. For example, between 2023 and 2024 (to date), Madhya Pradesh launched India's first "Esports Academy", which received over 40,000 registrations for 200 available seats; the Electronic Sports Authority of Tamil Nadu (the apex association for esports in the state of Tamil Nadu) is also making efforts to introduce esports to students in rural schools; and Uttar Pradesh plans to give a major boost to esports under its new sports policy, approved by the State Cabinet – accordingly, Uttar Pradesh plans to establish several esports centres in the state, where players will be provided with the required facilities and resources to develop and hone their skills.

There are also several non-profit organisations in India that aim to promote, encourage, organise, educate and train in esports (such as the E-Sports Federation of India and the E-Sports Players Welfare Association).

The forgoing is testament to the fact that esports has marked a significant trend in Indian sports law.

To align with this trend, the Indian government has notified amendments to the Government of India (Allocation of Business) (Three Hundred and Seventieth Amendment) Rules, 2022, officially recognising "esports" (under multisport events) to be regulated by the MYAS, and "online gaming" in India to be regulated by the Ministry of Electronics and Information Technology (MeitY).

The law regarding esports is evolving. The Indian states of Sikkim and Nagaland already have laws

regulating esports. These states have a licensing regime which permits offering such esports within the state.

The state of Rajasthan is contemplating regulation for esports under draft law.

In April 2023, India notified amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (the “Online Gaming Rules”). The definition of “online games” in the Online Gaming Rules is broad, and covers free-to-play and real-money games. The criteria include that the games are offered on the internet.

Generically, esports are organised video game competitions where players compete, individually or in teams, in a virtual environment. Esports would likely fall within the definition of “online games” under the Online Gaming Rules.

Most substantive provisions of the Online Gaming Rules are applicable to permissible online real-money games, and not to other online games. However, the Central Government has the power to make any online games subject to the obligations under the Online Gaming Rules, as applicable to online real-money games, in certain cases. Such obligations include:

- to not offer any online game which is not verified by a self-regulatory body (SRB) (meaning the online game will need to be examined and verified by an SRB); and
- to not put up any information in the nature of an advertisement, surrogate advertisement or promotion of an online game that is not a permissible online game or of an online gaming intermediary offering such an online game.

However, SRBs under the Online Gaming Rules have not yet been formed, and therefore the Online Gaming Rules are not fully operational, as they will come into effect only after the expiry of three months from the date on which at least three SRBs have been designated by the MeitY.

The grounds on which the above provisions can be invoked vis-à-vis online games are those affecting:

- the sovereignty and integrity of India;
- security of the State;
- friendly relations with foreign States;
- public order; or
- prevention of user harm.

User harm has been defined under the Online Gaming Rules to mean any effect which is detrimental to a user or child.

On a separate note, there have been instances where the government of India has banned certain video games (such as BGMI and Free Fire) in India, on the grounds of (inter alia) security concerns. However, both the aforementioned games made a comeback in 2023, with certain restrictions, such as age-gating, gameplay hour limit, daily player spending limit, etc. In fact, BGMI now has a playable avatar of famous film actor Ranveer Singh, and Free Fire has a playable avatar of the cricket legend MS Dhoni.

This interesting intersection of gaming and media is yet another example of sports becoming more mainstream, especially with the monetisation of personality rights (such as likenesses and caricatures of celebrities) and streaming rights, as a fan following clearly exists for watching players compete in esports events.

## Looking Forward

With ongoing focus by the public and private sectors, India will see sports as an industry continue to grow. Opportunities exist for investments, infrastructure development, player training and counselling, sports education and exploitation of various rights (ie, gamification, merchandise, sponsorship, personality, etc). One should expect increased focus on governance in sports (especially concerning sports bodies) and on sustainability measures for promoting sports in an environmentally friendly way. In addition, support from corporates and the social sector should be expected (ie, supporting the growth of sports, financially and otherwise – including mentoring). This is an interesting time for sports in India as the sector blossoms.

# IRELAND



## Law and Practice

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## 1. Regulatory

### 1.1 Anti-doping

Doping is not a criminal offence in Ireland. Sport Ireland is the National Anti-Doping Organisation, and applies the WADA code as such. It also provides testing facilities to other sporting bodies, such as in competitions organised by those bodies where games are in Ireland. Reports detailing the number and nature of tests, and notable cases, are published annually.

The amount of testing is not evenly distributed. Cycling and rugby tend to test the most, with the GAA having a large absolute number of tests but a lower number relative to participation numbers. Underage testing is limited, with some sports carrying out no such testing.

### 1.2 Integrity

There is no specifically sport-related legislation dealing with sporting integrity offences. Match-fixing or fraud would likely be dealt with as offences of dishonesty by the criminal justice system, but where the athlete engaged in such is not making personal gain, it would be usually left to the sport itself to deal with the matters under its own disciplinary systems.

An exception would be where there are integrity offences in a sporting body off-field, such as at the board level. Here, in cases where the sports body is an incorporated body, the companies regulator has dealt with issues of integrity and failings of governance as part of the regulation of corporate bodies. For example, the Football Association of Ireland has had significant issues in recent years arising out of failures to comply with companies legislation.

### 1.3 Betting

Betting is legal, and while regulated, problem gambling on sport is seen as being a societal problem, particularly given the manner in which online gambling has increased the ease of gambling. There is therefore a strong push to increase the extent and intensity of gambling. There is, before the Oireachtas (the Irish parliament), the Gambling Regulation Bill that would set up the Gambling Regulation Authority of Ireland, which would have considerable powers in relation to licensing and regulation of gambling, as well as wide-ranging restrictions on advertising and inducements to gamble, such as free offers or free hospitality. Sponsorship would also be restricted, particularly in relation to events or bodies that appeal to or include children; the effect of this on sports clubs and sports bodies would be immediately clear. However, the Bill is still not enacted, and may not be this side of a general election.

### 1.4 Disciplinary Proceedings

Most sporting bodies have generally similar disciplinary systems in respect of doping, betting and integrity offences. The WADA code can be taken as the de facto basis for doping offences, while betting and integrity offences will be dealt with under the individual sporting system but in broadly similar manners. As a rule, those caught in such will be suspended. However, particularly on the gambling side, it may be treated as much as an addiction issue with help to be provided as a disciplinary matter.

Irish law in the wider context is very strong on the requirements for fair procedure, and the requirements for natural and Constitutional justice – specifically, the right to put one's own case and the right for an unbiased assessor – will be implied into any hearings in relation to integrity issues.

## 2. Commercial Rights

### 2.1 Available Sports-Related Rights

Rights-holders generally restrict the resale of tickets above face value as part of the terms and conditions of entry into sporting events. Reselling tickets at above face value – ticket-touting – was made a criminal offence in 2021. However, there have been no prosecutions to date. Rights-holders have used Norwich Pharmacal orders to prevent the resale of tickets for above face value, and have cancelled tickets sold in this manner outside of the terms and conditions of the tickets. There is a general shift to rights-holders in major sports using ticket sales management providers like Ticketmaster to control the sale and resale of tickets for them, with the advantages in reduced load on the rights-holders.

### 2.2 Sponsorship

What one must note at the outset is that Ireland is a smaller market next door to, and very integrated with, the sponsorship behemoth that is the Premier League. The sports sponsorship market is distorted by the way the weight of this drags attention to itself every bit as much as the subscription sports broadcast market is.

That noted, sponsorship of sports is very prevalent in Ireland, and the range of brands seeking sponsorship opportunities is very wide, with prominent examples including banks, insurance companies, telecommunications firms, super-market chains and agrifood industries.

Given the prominence of the GAA, and the strong links with local counties in the structure of the GAA, prominent local brands and local teams often link up together, with it being a means for local companies both to engage with their locale and to push their brand to a wider audience on the island. At the next level up, more promi-

nent counties, and provincial or representative teams in other sports, often associate with larger brands to push a more top-down or island-wide branding. Stadium naming deals are common and increasingly popular.

There is no hard-and-fast rule about who makes the first approach, the rights-holder or the sponsor, but it would generally be done by the commercial departments of the rights-holders reaching out with proposals to potential sponsors identified by them in advance. The sharing of data as part of the pitch in these contacts would now be taken almost as read; certainly, any sports fan interacting with a team would be well aware of the data processing notices and cookie notices that follow them as a matter of course, stating that the data can be shared with partners.

There is no direct equivalent of the Loi Évin in France, and sponsorship by alcohol manufacturers occurs. However, this sponsorship is also used to market new products more appropriate for an athletic lifestyle, such as low or zero alcohol.

### 2.3 Broadcasting

Sports broadcasting revenue by domestic public-service broadcasters (which includes the Irish language channel) is largely based on advertising sales. There are other players in the market which are subscription channels, with rights-holders often selling rights to these channels instead.

The primary domestic rights would be the GAA's All-Ireland championships in football and hurling. The GAA had entered into mixed rights sales where games are shared between the subscription-only broadcaster Sky and on domestic free-to-air broadcasters, but this was not renewed.

The GAA has instead shifted to a streaming service it had set up as a joint venture with the main public service broadcaster, with a subscription element for premium games. This has, however, attracted the attention of the Competition and Consumer Protection Commission (CCPC), the Irish competition authority, over a potential lessening of competition in the broadcast market; the outcome remains to be seen.

Rugby is, at professional level, largely part of wider broadcast-rights deals, such as with the URC, European rugby or the sales of Six Nations and other test-rugby rights. These would then be resold on the Irish market. The different elements of the season are often broken up and sold to different bidders; for example, the test series usually played in November has recently been sold to TNT, while the rights to live Six Nations games are shared among domestic free-to-air channels. Notably, some of the major professional rugby teams, led by Munster, have started developing their own subscription channel as a means of increasing fan engagement and revenue.

Broadcasting is subject to the same restrictions common in the EU, that is, that certain category-A events must be live on free-to-air channels. There are perennial attempts to expand this list, often under domestic political pressure, and staunchly resisted by the rights-holders.

A noticeable development at sub-elite level is how many clubs in different sports have set up streaming services where their matches can now be watched on YouTube or other platforms. Although still in its infancy, this is an area where rapid expansion and commercialisation would seem to be likely, with the difficulties and opportunities that follow.

## 3. Sports Events

### 3.1 Relationships

The rights in a sports event are treated as rights in property in the normal manner one would expect in the common law world, and left to the rights-holder to organise on the basis of contract with those participating, those attending (as contractual licensees) and those broadcasting the events.

Consumer protection rights, competition law and general contract law apply as one would expect and in the same manner, but with some special qualifications imposed by EU law such as in broadcasting. As always, one must note the complexity of Irish sport often operating cross-border with all that that entails.

### 3.2 Liability

Ireland is a common law country, and the law on the duty of care is largely the same as that in England and Wales.

There is a strong push both from the courts and the legislature to protect sport from the perceived chilling effect of personal injuries litigation. Recent case law has repeatedly stressed the need for consideration of the social utility of sport, which must be considered as a counterweight when the court is considering whether liability should be imposed. As a result, the Civil Liability (Miscellaneous Provisions) Act 2011, increased the threshold required to sue volunteers – that is, those operating for expenses only, including in sport – to that of gross negligence, unless a motor vehicle is concerned or the volunteer knew they were ignoring the directions of the governing body. For organisers, which would include governing bodies, the courts are required to consider social utility as a factor before imposing any liability.

More recently, the Civil Law (Miscellaneous Provisions) Act 2023 has amended the Occupiers Liability Act to make it more difficult for those lawfully on a premises to sue the occupier of those premises in negligence for damage caused by the state of those premises. This would include those on sports pitches or in sports clubs, and was in part driven by difficulties in insuring sports premises.

The idea is that reducing the legal exposure, whether it be of volunteers of occupiers of premises, to risk, will lead to a reduction in insurance premium prices. However, given that no such reduction followed the reduction in risk exposure in the 2011 Act, it must remain very much open to question whether expanding the areas where barriers to litigation are put up will actually work as intended.

Personal injury claims cannot be excluded, as a matter of public policy.

In the wider context, there is not a notable history of hooliganism or violent disorder at sports events, and normal policing generally suffices. There have been cases of violence against players and referees, both by other players and by supporters. It would be increasingly common that these are dealt with as criminal offences and tried as such. This has included prison sentences being given for those convicted of such offences.

## 4. Corporate

### 4.1 Legal Sporting Structures

Sporting bodies in Ireland vary in structure. As a general trend, the higher up the sporting pyramid a body is, the more likely it is to have a separate legal personality, such as a limited liability com-

pany or a company limited by guarantee. At the grassroots level, clubs are often unincorporated bodies with a trustee structure. This can lead to difficulties, with club members of unincorporated clubs unable to sue the club of which they are members. The Law Reform Commission has made proposals that all unincorporated bodies should have to shift to incorporated form, but over a year after these proposals were first made, there is neither change nor progress.

### 4.2 Corporate Governance

Sport Ireland has a Governance Code of Sport under the wider National Sports Policy of the Irish Government, with which all bodies operating under the aegis of Sport Ireland must comply. Sport Ireland operates a compliance register where bodies certify their compliance, subject to review on renewal. Compliance is a necessary condition for funding from Sport Ireland, and is therefore, in practical terms, universal and mandatory; no sporting body can afford to miss out on this support in what is a small market where bodies are often competing on an international scale against far bigger and better-funded entities.

For any limited liability or incorporated body, the general restrictions of companies law apply to directors and officers in the same manner that they would with any other company, and these should be checked with the companies regulator. Within this, other sports operate their own governance requirements. As many of the major players in major Irish sporting codes are closer to representative sub-units feeding into the larger national governing body, those who may find themselves in financial difficulty are more likely to find the head body intervening to stabilise financial failures than imposing points deductions on independent economic actors. The varied nature of the differing bodies means

it would be prudent for anyone advising or dealing with the matter to consult the policies of the individual sport.

### 4.3 Funding of Sport

The Irish State remains one of the largest funders of grassroots sport, albeit at insufficient levels, most of this support goes through governing bodies, as well as support for Olympic athletes.

Funding of the largest sports is heavily dependent on broadcasting deals, although the EU's regulations on free-to-air access for major events applies. Sponsorship is also a major source of funding in these major sports. These higher-profile sports, like rugby and the GAA, dominate the funding and sponsorship markets, to the extent that less-prominent sports often live hand to mouth.

### 4.4 Recent Deals/Trends

The most noteworthy development is the investment of CVC, the private equity fund, in rugby, acquiring stakes in the Six Nations, the URC and the EPCR. The former two, though remaining registered as Irish companies, have now moved much of their effective running out of the jurisdiction. It is unclear whether this is related to Brexit and seeking to move outside of an EU legal system.

Another strong trend is individual benefactors supporting their preferred team. This has had profound effects in the nominally-amateur GAA, with a marked resultant disparity in resources having on-field results.

## 5. Intellectual Property, Data and Data Protection

### 5.1 Trade Marks

No response given for this section.

### 5.2 Copyright/Database Rights

No response given for this section.

### 5.3 Image Rights and Other IP

No response given for this section.

### 5.4 Licensing

No response given for this section.

### 5.5 Sports Data

No response given for this section.

### 5.6 Data Protection

The GDPR applies fully, and all sports must have GDPR policies in place.

## 6. Dispute Resolution

### 6.1 National Court System

The Irish courts are extremely reluctant to intervene in sporting disputes if it can be avoided, with a strong and consistent line of case law emphasising this. There is no specific requirement that internal remedies must be exhausted before approaching the courts, but the courts have made it clear in past argument that where the option of internal remedies is open, then parties will be directed to them by the courts as the preferred option. There are some exceptional cases – for example, where questions of Constitutional or EU law arise, then it is much more likely that the courts would accept it is a matter for them rather than the agreed internal mechanisms, and some commercial arrangements would be viewed in a similar light – but it would be wise always to assume that the courts will urge parties towards internal or specifically sporting dispute resolution as the first port of call.

## 6.2 ADR (Including Arbitration)

ADR, and especially mediation, is a fast-growing area of the law. In sports dispute resolution, it is well established, with the GAA's Dispute Resolution Authority establishing arbitration as its highest level of appeal in terms, and with Sports Dispute Solutions Ireland having been established with Sport Ireland to provide domestic arbitration and mediation to most other Irish sports.

The majority of Olympic sports would participate in the CAS system; the notable exception is rugby where, barring doping, it very much manages its own affairs for itself. The GAA would be even more stark in this regard.

## 6.3 Challenging Sports Governing Bodies

The powers of sports governing bodies derive from contract and the agreement to be bound by the rules of the associations. The courts are generally deferential to this, preferring, as noted, to leave matters to the internal mechanisms and operating a supervisory jurisdiction over those internal mechanisms rather than directly dealing with matters themselves. Once there is compliance with these general restrictions, such as the requirements of natural and Constitutional justice and the rules of the sporting body itself, the courts are reluctant to intervene.

For those bodies whose rules permit access to CAS, this remains an option. However, the recent ISU decision of the CJEU would be of obvious relevance, and the full extent of how this will play out remains to be seen.

It should be noted here that the provisions of the European Convention on Human Rights are not directly applicable in Ireland, which has a strong dualist legal system. The provisions of the ECHR are given some domestic effect by

way of the ECHR Act 2003, but apply only to the conduct of State bodies, rather than the private contractual agreements that characterise sporting structures.

## 7. Employment

### 7.1 Sports-Related Contracts of Employment

There is an increasing trend in the larger sporting bodies for player representative bodies, such as the Gaelic Players Association or the Irish Rugby Players Association, to have a voice. These bodies can often act as stakeholders and athlete voices in negotiations such as in those concerning standard-form player contracts. However, instances where this has become antagonistic have cropped up.

Salary caps are not a feature of Irish sport; indeed, the dominant cultural force in Irish sport, the Gaelic Athletic Association, remains nominally amateur. In terms of professional sports, football contracts are regulated by the Football Association of Ireland very much according to the normal FIFA models. Rugby, an all-island professional sport, has a more complicated structure, with all players nominally being employed by the IRFU through its provincial teams, with some players for the national team being on true central contracts. The overwhelming dominance of the IRFU in this market and the influence of its restrictions on non-Irish qualified players has not been the focus of much attention but, as with the French JIFF, some elements may come under increasing scrutiny after recent European case law.

### 7.2 Employer/Employee Rights

The general elements of Irish employment law (and, as one of the major sources of this, EU

employment law) will apply. Very recent decisions of the Irish Supreme Court as to who is an employee, relating to gig employment of those in the fast-food delivery industry, are still washing through the system, but it would seem a reasonable baseline assumption that the number of those covered by employment law as employees will increase rather than shrink.

In the narrower context, the Irish sports market is perhaps unusual in that it is dominated above all by the Gaelic field sports, hurling and Gaelic football, where players are not permitted to be paid. The professional sports field is therefore largely left to three sports: rugby, dominated in an unusual arrangement by the national governing body discussed below; football, where the professional league is small and with consequently limited earning power for players, meaning that it has historically operated as a feeder system to the English game; and, to some extent outside of the normal loop, horse racing with its unique arrangements dealing with enormous amounts of money.

The result of this is that employer/employee disputes are less frequent than might reasonably be expected. However, analogous disputes, between player associations and governing bodies are not infrequent, especially in the GAA, where increased demands on players as it moves to semi-professional demands means that the allocation of income in terms of supports and resources has become more fraught.

### 7.3 Free Movement of Athletes

UK nationals have full rights of residence. EU nationals (and those covered by Kolpak) would have full Treaty rights. Nationals of other states may require specific work permits on their immigration permissions (often colloquially referred to in Irish immigration law as “Stamp 4”). Irish

immigration law can be complex, and can further be complicated by the fact that, although Ireland is in the EU, it is not in the Schengen System, adding a further layer of complication for those who may need visas to enter and work in the EU if they must then enter Schengen states while working as professional sports persons.

There is free movement on the island of Ireland, and there is a Free Travel Area for UK and Irish citizens moving between Britain and Ireland. However, those athletes travelling may need to check visa restrictions if travelling to Britain rather than Northern Ireland.

As noted above, CJEU case law on the UEFA homegrown players rule, and similar restrictions are relevant to the free movement of athletes, and the full effects of this remain to be seen.

## 8. Esports

### 8.1 Esports Overview

No response given for this section.

## 9. Women's Sport

### 9.1 Women's Sport Overview

Women's sport is undoubtedly the key development market in Irish sport. Women's Gaelic games, especially Gaelic football, has become a hugely-visible feature of the sporting landscape, but other teams, such as the Irish Women's football team, have equally become much more visible, arguably in the latter case doing better than the men's team with the visibility that follows.

However, resources are a key limiting factor. For example, the previously-successful Irish women's rugby team lost out in the sudden surge



towards full professionalism in the international women's game, with controversy developing over lack of proper resources and support equivalent to that given to the men's team, leading to considerable difficulties and loss of players and the resignation of coaching staff. It is fair to say that women's sport generally is not equally funded, and that there is awareness of this as an issue.

There have been developments in this regard. The Women's Six Nations rugby tournament has been decoupled from that of the men to be a standalone, and efforts to market this as outreach to new fans and players seem to be successful. In Gaelic games, the formerly hived-off womens' games are being amalgamated into one shared body where all will have an equal say, although this remains a fraught and slow process. Football, of the three main field sport associations, appears to be having the most high-profile successes with a new management team bringing positivity back to the game. Smaller, often Olympic, sports, such as sailing, hockey and athletics appear to be achieving considerable returns with little fuss, and are noticeably pushing female engagement.

However, despite some very high-profile sponsorships, such as that of Ladies Gaelic Football by one of the major supermarket chains, the commercial exploitation of this as driver of revenue is still underdeveloped. Although streaming and YouTube broadcasts are now as commonplace as in any sport, the major sponsorship and broadcast revenue deals are still much more in the three main male field sports associations. The increased exposure of an Olympic year could, if used properly, be a catalyst to change this and build the critical mass of interest that would make commercialisation viable.

As noted above, the governance changes requiring much more equal representation on the boards of national governing bodies and other sporting bodies are recent and to some extent bedding in, but it is to be expected that cultural shifts as a result of this may accelerate processes further.

## 10. Non-fungible Tokens (NFTs)

### 10.1 Non-fungible Tokens (NFTs)

No response given for this section.

## 11. Regional Issues

### 11.1 Regional Issues Overview

Ireland is the jurisdiction most affected by Brexit in many respects, but particularly in the sporting arena. Many of the largest sports in Ireland operate on an all-island basis, covering Ireland – in the EU – and Northern Ireland – outside the EU as part of the UK. As the full effects of Brexit being to bite, issues such as data protection in sport can be expected to come to the fore when teams are crossing into a non-EU jurisdiction as part of domestic grassroots sport and upwards.

The effect of increased phytosanitary and veterinary checks and regulations in going to and from the UK has already had some unexpected effects. The restrictions on the importation from Britain of turf for resurfacing pitches, for example, has been such that the GAA moved to set up its own turf farm. However, the major sport industry affected is likely to be horse sports. The Irish horse sport industry is huge, both in terms of the breeding and of the training of horses. Events like the Cheltenham National Hunt Festival form a major part of the Irish sporting calendar. The movement of horses through these

increased and increasing regulations post-Brexit will, at best, add to the costs and regulatory friction involved for this industry.

The unique element of the Irish sporting landscape is that it is not one jurisdiction that is affected. Domestic sport – amateur sport – is often cross-border, crossing into Northern Ireland as part of the UK. Rugby in Ulster, one of the constituent provinces of the IRFU, covers three counties in Ireland and six counties in Northern Ireland; the shortest route for teams from one jurisdiction who are playing each other may involve crossing into the other jurisdiction as the quickest route. In terms of horse sport, a huge player, the island is treated as one for purposes of animal health. The result is that those operating in the Irish sports law environment are often cross-qualified and invariably have an awareness and experience of operating in different legal environments from the earliest days of their careers; the same is true of sports administrators in the Irish environment. The result is what might be viewed as a young sports law market, but one that is unusually complicated and sophisticated for the age of the market.

## 12. Artificial Intelligence (AI)

### 12.1 AI Overview

No response given for this section.

## 13. The Metaverse

### 13.1 Metaverse Overview

No response given for this section.

# ITALY



## Law and Practice

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**LAWP Studio legale e tributario**

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**LAWP Studio legale e tributario** is a law and tax firm with over 20 years of providing assistance in corporate and commercial transactions (including M&A, financing and joint venture transactions in the sports industry). LAWP is renowned for its proficiency in civil, commercial and tax law and is highly regarded for its

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STUDIO LEGALE E TRIBUTARIO

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## 1. Regulatory

### 1.1 Anti-doping

Doping is a crime under Article 586-bis of the Italian Criminal Code, punishable with imprisonment of up to three years and a fine of up to EUR51,645. This applies to anyone who:

- procures, administers, takes or promotes the use of forbidden drugs or biologically or pharmacologically active substances; or
- adopts forbidden medical practices.

These sanctions are imposed if the above-mentioned acts are likely to enhance an athlete's performance without medical justification, and are specifically aimed at altering athletes' competitive performances and/or changing the results of doping tests. To commit the offence, it is only necessary to prove the ability of the substance or practice to unlawfully enhance the athlete's performance.

Trading in illegal drugs and pharmacologically or biologically active substances is punishable with imprisonment of up to six years and a fine of up to EUR77,468. Sanctions may be increased under specific circumstances (eg, if the conduct causes harm to health or is perpetrated by an agent or employee of a sports entity), and doctors and sports persons involved in the criminal conduct can also be subject to disciplinary sanctions.

#### Prohibited Substances and Medical Practices

Prohibited substances and medical practices are periodically updated by a Decree issued by the Ministry of Health. Prohibited substances are divided into three macro-categories:

- prohibited substances and methods both in and out of competition (eg, nandrolone, Erythropoietins);
- prohibited substances and methods only in competition (eg, cocaine, ephedrine, tetrahydrocannabinol); and
- prohibited substances and methods only in certain sports.

#### The National Anti-Doping Organisation (NADO Italia)

NADO Italia is acknowledged by the World Anti-Doping Agency as the competent entity on anti-doping in Italian sports, and some of its main duties are:

- issuing the Sports Anti-Doping Regulations;
- planning and managing anti-doping tests and the relative results;
- investigating potential anti-doping violations (through the National Anti-Doping Prosecutor's Office) and imposing sanctions in case of breach of anti-doping norms (through the National Anti-Doping Tribunal (*Tribunale Nazionale Antidoping*, or TNA));
- creating educational programmes and courses to raise awareness of anti-doping matters; and
- managing therapeutic use exemption requests.

The World Anti-doping Code is implemented through the "Sports Anti-Doping Code", which transposes the World Anti-Doping Code within the Italian sports system and applies to sports subjects – members and affiliates – under the authority of the Italian National Olympic Committee (CONI) and to non-members/non-affiliates (eg, doctors, pharmacists) whose conduct has an impact on CONI members/affiliates and competitions.

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A significant case in this context is that of former race walker Alex Schwazer. This is one of the most complex and significant anti-doping cases in Italian sports in recent history, and underscores the distinct separation between the realms of sports justice and criminal justice, which can lead to divergent outcomes in corresponding proceedings. The athlete tested positive twice (in 2012 and 2016), and in relation to the second violation the Italian Criminal Court acknowledged irregularities in the athlete's sample. However, the court dismissed the proceedings, citing the fact that he had not committed any criminal conduct. This decision was handed down despite objections from WADA. Following his acquittal, Schwazer applied to the Court of Arbitration for Sport (CAS) and the Swiss Federal Court requesting:

- the reconsideration of the ban; and
- the provisional suspension of the eight-year ban.

Both suspension requests were rejected by the courts. In 2022, Schwazer asked the European Court of Human Rights to review the CAS and Swiss Federal Court decisions.

## 1.2 Integrity

Article 1 of Law no 401/1989 ("fraud in sport competitions") imposes a prison sentence ranging from two to six years and a monetary fine on individuals:

- who offer, promise, or accept money or other advantages in relation to a participant in an official sports competition; or
- who carry out any other act to manipulate fair and equitable competition.

Notably, the mere intention to "manipulate fair and equitable competition" is sufficient for pros-

ecution under this law, regardless of whether the manipulative act actually occurs.

Sports fraud is also punishable under all the Italian Federations' Sports Justice Regulations. For example, the Italian Football Association (*Federazione Italiana Giuoco Calcio*, or FIGC) Justice Code punishes clubs, athletes and any other relevant subjects of the FIGC for any conduct aimed at:

- manipulating the course or the result of a match; or
- ensuring an unfair advantage in competition.

Sanctions may include points deductions, relegation, exclusion from the tournament and/or revocation of any sports title. Individuals found guilty of sports fraud face a minimum four-year ban and substantial monetary fines. Sanctions can be increased in case of multiple offences, or if the manipulation of a result or a tournament advantage is obtained.

The "Calciopoli case" in 2006 centred around these offences. In this case, presidents and managers of several prestigious Italian football clubs, FIGC officials, executives of the Italian Referee Association and referees were investigated by the criminal Public Prosecutor for criminal association and fraud in sports competitions. Concurrently, the FIGC Prosecutor initiated investigations for violation of the FIGC Justice Code. This investigation resulted in very substantial sanctions being imposed on clubs, public officials and the most eminent people working in the football industry at that time. The repercussions included the revocation of sports titles, relegation, points deduction and bans from public services and managerial roles. The liability of the defendants was also acknowledged as a crime in ordinary criminal courts; however, most



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defendants ultimately benefited from the statute of limitations applicable to their offences.

## 1.3 Betting

### Gambling Under Italian Laws and Betting-Related Offences

Gambling is legal only if operated by entities with the relevant licence issued by the Excises, Customs and Monopolies Agency (*Agenzia delle Dogane e dei Monopoli*, or ADM). Outside this regulated area, gambling is a crime and the Criminal Code sanctions both organisers of and participants in gambling (including sentences and fines imposed under Articles 718 and 720 of the Criminal Code).

Under sports law, specific betting-related offences exist, which are designed to combat illegal betting and match fixing. The FIGC Justice Code specifically forbids betting activities for individuals connected to the FIGC, managers, stakeholders and members of professional and non-professional clubs. In particular, members of professional clubs can never bet on official FIGC, UEFA or FIFA matches. Members of non-professional and youth clubs can bet through authorised betting agencies only in relation to official FIGC, UEFA and FIFA competitions not involving their own club. Sanctions include sports bans, monetary fines, points deductions, relegation, exclusion from competition and/or revocation of titles. Sanctions are also established for failing to report any potential betting-related offence to the FIGC Prosecutor. The same conduct is relevant under criminal law to the extent it constitutes fraud in sports competition (see **1.2 Integrity**).

A 2011 case involving match fixing and gambling in top-flight Italian football clubs is a striking example of the intersections between criminal and sports justice. Charges were pressed by a

football club against its former goalkeeper, who was accused of adding a sedative to his teammates' water to sabotage their performance during a match in 2010. As the investigation into this allegation expanded, it revealed a broader network of criminal association, with the primary objective being betting on fixed matches. This network was found to include numerous players and coaches. Disciplinary sanctions were imposed on several clubs (including points deductions and fines), as well as players and coaches (who, in the most serious cases, were given a five-year ban from any role within the FIGC).

### Co-operation Against Gambling in Sport

In recent years, many sports institutions have undertaken initiatives to prevent sports fraud and raise awareness of gambling and match fixing in sport. In parallel, some leagues have entered into memoranda of understanding with the ADM and international technology providers with the purpose of monitoring sports betting flows and preventing fraud.

Under Decree Law No 87/2018, the government banned gambling and betting advertising in sports events despite criticism from clubs that have suffered economic damages due to the forced termination of numerous sponsorship agreements with international betting agencies.

## 1.4 Disciplinary Proceedings

Under Law Decree No 220/2003, technical and disciplinary controversies fall under the exclusive authority of sports justice. Therefore, clubs, associations, affiliates and members must address these matters through designated sports disciplinary bodies.

Anti-doping/disciplinary proceedings generally start with a preliminary investigation led by the

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PNA/Federation Prosecutor, which may result either in the dismissal of the case or disciplinary action against the suspected party. In the latter case, the matter is referred to the relevant tribunal (the TNA or the competent Federation Tribunal). Notably, individuals with a protected interest in the outcome may also initiate disciplinary proceedings.

Sports proceedings guarantee a fair trial and are conducted within a reasonable timeframe. This ensures the smooth operation of competitions and federation activities. Parties are entitled to have their case heard at two distinct levels. Additionally, they can request provisional measures, such as the suspension of an athlete, pending the final outcome. During hearings, both parties have the right to be present and heard equally. They can introduce various forms of evidence, including documents, witness testimonies, and technical expert opinions. The panel may also request additional evidence on their own initiative. Finally, both parties have the right to submit clear and concise written defences.

First instance decisions may be challenged before the National Anti-Doping Court of Appeal and the Federation Court of Appeal. Disciplinary decisions may be further challenged before the CONI Collegio di Garanzia dello Sport on grounds of legal violations or for insufficient or defective reasoning on a crucial aspect of the dispute (Article 54 of the CONI Justice Code).

The above proceeding does not preclude the involvement of competent public prosecutors and ordinary criminal courts, which may initiate independent investigations. There is a regulated system for sharing information between ordinary courts and sports judicial bodies.

## 2. Commercial Rights

### 2.1 Available Sports-Related Rights Merchandising

Sports entities are increasingly focusing on exclusive merchandise in order to enlarge their fan base worldwide, attract new sponsors, gain visibility and, most importantly, increase their revenue through commercial activities. Many clubs are following this trend, frequently releasing special collections dedicated to specific markets (eg, the Chinese New Year collections), trendy lifestyle merchandise (capsule collection) and digital content to be marketed via NFTs or similar instruments. This triggers the need to protect the relevant intellectual property and gain consent from the creators, developers and interested subjects.

### Ticketing

For the most important sports events, event organisers enter into partnerships with specialised ticketing companies and/or agencies, through which spectators have the opportunity to purchase tickets and, if allowed, change the users' details on tickets or resell them to third parties. To combat ticket scalping, in 2018 a Decree of the Ministry of Economics and Finance established certain preliminary identification requirements for ticket purchasers as well as sanctions (including fines, removal of illegal content and website blackouts) on those using bots to purchase tickets in bulk.

### Hospitality

Hospitality services are increasingly offered by sports event organisers as a reward to sponsors, investors, VIPs and loyal fans with the aim of increasing brand awareness and attracting new sponsors and investors. This pursuit of additional income is driving investments in creating

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more upscale experiences within stadiums and venues.

## 2.2 Sponsorship

Sponsors remain a major source of income for the Italian sports industry. Italian laws do not contemplate statutory provisions governing sponsorship contracts; therefore, parties are granted considerable freedom to define the relevant terms and conditions. Sponsorship agreements often contemplate additional components like licensing, advertising and merchandising. Particular care should be taken when negotiating agreements with sponsors operating in certain industries (eg, alcoholic beverages and betting, where limitations are imposed on sponsorships with visibility in the Italian territory) and when barter is provided (ie, payment in kind), where relevant tax implications must also be assessed.

Sponsors often ask clubs for permission to use images of particular athletes (in addition to images of the overall team) in their promotional campaigns; however, in such instances, while most clubs are entitled to grant rights over collective images, a specific consent should be obtained when a single athlete is involved.

Naming rights (whereby a club, a competition or a stadium/arena are renamed with the sponsor's name) may also be included, subject to certain limitations imposed by the relevant sports federations. For example, Serie A clubs can have sponsor-named stadiums but not sponsor-named clubs, unlike basketball or volleyball teams.

Sports leagues are increasingly assisting clubs in brand development and promotion. A recent example includes Serie A allowing additional sponsors on team jerseys. Also sports events are increasingly linked to sponsors (eg, match

sponsors, award sponsors, etc). This focus on branding is even more crucial since the legal ban on betting sponsors has forced clubs to seek alternative revenue streams.

## 2.3 Broadcasting

Legislative Decree No 9/2008 (the "Melandri Law") marked the transition from a system based on the ownership of sports broadcasting rights by each event organiser (like home teams in leagues), to a system based on co-ownership by competition organisers and participating clubs, with the aim of ensuring a competitive balance among clubs through a fairer distribution of revenues and achieving a transparent and efficient broadcasting rights market.

Competition organisers are in charge of marketing broadcasting rights of such competitions worldwide in the interests of the participating clubs.

Event organisers still maintain full rights to footage and audio of past events (shared with the visiting club), whereas the mass media maintain the right to report and cover sports events, with limitations concerning live matches. Rights to footage and audio of past events may also be exploited commercially by the respective holders, which may still retain the right to use them on their own platforms (eg, social media) for non-commercial and/or reporting purposes.

Specific guidelines govern the procedures for assigning broadcasting rights to the best bidder in a transparent tender procedure, as well as the maximum duration of licensing contracts and specific rules for the formation of so-called broadcasting bundles.

For instance, broadcasting rights of professional sports competitions are assigned over five sea-

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sons through various packages (eg, matches, highlights, unencrypted broadcasting, radio, etc). Importantly, no single entity can acquire exclusive rights for all matches.

The Melandri Law establishes criteria for distributing broadcasting revenue among participating clubs. Notably, Serie A has specific rules requiring a portion of these revenues to be allocated to youth development, minor leagues, and sports infrastructure improvements.

Only the assigned broadcaster can film and broadcast the event. While journalists from various companies can attend the venue, they cannot capture audio, video, or pictures for broadcasting purposes. However, they retain the right to narrate the event for news reporting purposes.

## 3. Sports Events

### 3.1 Relationships

Rights in a sports event (and pertaining obligations) are typically attributed to the organiser; however, said attribution may depend on multiple factors (eg, venue ownership, any delegations to leagues or federations to sell the event broadcasting rights, etc).

In professional matches, the home team has the right to control spectator admission through ticketing and/or dedicated invitation. By purchasing tickets, spectators automatically accept the stadium regulations, the rules issued by the federations, leagues and public security authorities, and any additional measures regarding the event.

Sports event organisers must request all necessary authorisations from the competent authority for public entertainment and obtain from

the territorially competent police force a public entertainment licence to allow the sale of tickets. Failure to comply can result in penalties for the organisers or even the venue being deemed unusable for future matches.

Taking football as an example, FIGC outlines specific minimum requirements in its National Licensing Systems Annex. These requirements vary based on competition importance and cover aspects like:

- minimum number of seats;
- pitch conditions and maintenance;
- lighting system;
- locker rooms;
- disabled facilities; and
- broadcasting areas.

Further, organisers often require liability insurance to cover any damages caused to third parties. They must also comply with the relevant federation rules regarding technical equipment suitability, athlete well-being, and overall safety for everyone involved in the event.

### 3.2 Liability

#### Organisers Duty of Care

Event organisers have a responsibility to ensure a safe environment for everyone involved. This includes verifying the venue's suitability for each event and implementing appropriate safety measures to prevent harm to attendees, athletes, and third parties.

If they fail to uphold these duties, organisers may be held liable for breach of contract towards ticket holders (Article 1228 of the Italian Civil Code) and under tort provisions (Article 2043 of the Italian Civil Code) for damages suffered by the attendees and their belongings during the event, triggering indemnification obligations.

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In addition, organisers may be held liable as custodians of the venue (Article 2051 of the Italian Civil Code) and, on the occasion of major sports events, they share the same liability provided for those who carry out dangerous activities (Article 2050 of the Italian Civil Code).

The burden of proving exemption from liability is particularly steep, as organisers need to:

- prove the occurrence of a force majeure event; or
- have taken all the necessary measures to avoid damages.

Athletes are rarely held liable towards spectators, unless their actions fall outside the reasonably foreseeable risk deriving from sports activities or unless they deliberately intend to cause harm to a spectator.

With reference to organisers' limitation of liability, it is common to find on tickets or regulations accepted by spectators when purchasing tickets limitation of liability clauses establishing that organisers and their agents are not responsible under certain circumstances; however, under consumer protection provisions, said clauses are always void when limiting liability for death and injuries (Consumers' Code, Article 36.2).

## Prevention of Violence and Disorder in Football

Organisers shall also ensure public order and co-operate with law enforcement agents before, during and after the event. Public authorities are also entitled to suspend or cancel an event in case of riots, disturbance or danger to public safety. In addition, organisers are required to hire an adequate number of stewards in charge of ticket control, spectator reception and support to law enforcement officials during a match.

With specific regard to football, the FIGC Justice Code establishes strict liability on football clubs for the unlawful behaviour of their supporters, even during away games. This liability extends to any violations of order and safety rules occurring before, during, and after the event, both inside the stadium and surrounding areas.

## 4. Corporate

### 4.1 Legal Sporting Structures Sports Institutions and Clubs

CONI is a public entity that maintains independence and autonomy from political and governmental bodies.

National federations are non-profit associations with legal personality under private law made up of clubs, sports associations and, in the cases indicated by their by-laws, individuals.

Also, leagues are private law entities, whose associates are the clubs that, year by year, take part in the league tournaments. Their main functions are organising competitions, defending the interests of members with respect to the federation and/or other system entities, and providing counsel and support to the associate clubs in various sectors (eg, marketing, event organisations, governance, broadcasting rights, player transfers).

### Professional Clubs

Professional clubs can only adopt the form of joint stock companies or limited liability companies. Said companies have:

- the ability to distribute profits among members, but 10% of profits must be allocated to youth sports training and education centres; and

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- the obligation to adopt a board of statutory auditors.

## Non-professional Clubs

Non-professional clubs may adopt the form of recognised/unrecognised associations (ASDs) or limited/co-operative companies (SSDs). These entities are primarily non-profit organisations, with a core focus on sports activities. Only SSDs have the possibility of limited profit distribution (less than 50% of annual profits).

In terms of individual liability, unrecognised ASDs do not have patrimonial autonomy, meaning individuals acting on the club's behalf hold personal liability for any debts. Conversely, recognised ASD and SSD have patrimonial autonomy, meaning the liability of members is limited to the capital contributed.

Due to their non-profit, sports-educational activities, both entities can benefit from tax benefits.

Since July 2023, the legislation concerning non-professional clubs was reorganised. Some aspects were modified and/or clarified (eg, both ASDs and SSDs may carry out wider commercial activities, such as sponsorship, ticketing, etc, insofar as they are still instrumental to sports activities). Non-professional clubs still benefit from tax benefits, but only if they are registered in the “National Registry of Amateur Sports Activities” held by CONI, since said registration certifies the amateur/non-professional nature of a club.

## 4.2 Corporate Governance

### Corporate Criminal Liability

Under Legislative Decree No 231/2001, companies and other legal entities are subject to a particular liability for certain offences perpetrated by their management or representatives. To avoid liability, companies are required to:

- adopt and implement an “Organisation, Management and Control Model” (or “231 Model”), which sets principles and procedures to evaluate, monitor, prevent and manage risk of offences committed within the company; and
- appoint a supervisory body, in charge of evaluating and monitoring the observation and implementation of the 231 Model.

The principles have also been applied to sports entities. CONI required national federations to adopt their own 231 Model, which must also be observed by affiliates and members. Further, federations can adopt guidelines to be observed by leagues and clubs that decide to adopt their own 231 Model. Certain leagues have expressly requested that their affiliated clubs adopt their own 231 Model as a mandatory requirement for membership.

Clubs participating in national championships have to adopt 231 Models and appoint a Supervisory Body to prevent acts aimed at violating the principles of loyalty, fairness and probity in all relationships.

Further, under Legislative Decree No 39/2021, sports clubs must adopt organisational and control models for sporting activities and codes of conduct in order to protect minors and prevent harassment, gender-based violence and discrimination.

### Eligibility Criteria

Certain sports federations (eg, FIGC) provide that any entity willing to acquire a membership interest in a professional football club must meet certain financial and integrity requirements and demonstrate and/or declare (as the case may be) that they are not involved in previous criminal proceedings or in any insolvency situations involving other clubs. Failing that, an investor will not be able to actually exercise control over

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the target club until approval from the federation is granted.

## Insolvency in Sports

Professional clubs are subject to the provisions applicable to companies under the Italian “Business Crisis and Insolvency Code” and may be subject to judicial liquidation where certain legal requirements are met. The application of said provisions to non-professional clubs is debatable, especially when they carry out commercial activities.

Insolvency is also sanctioned by sports regulations. By way of example, the latest “Lega Serie A National Licensing System 2024/2025” states that clubs must prove they have fulfilled several obligations, including the payment of:

- fees, training compensations and solidarity contributions owed for international and domestic acquisitions of players;
- debts owed to the FIGC, leagues and other Italian clubs;
- emoluments, taxes, welfare, social security and end-of-career contributions due to players, coaches, members, employees, managers, medical and technical staff, etc; and
- VAT and other taxes and contributions (eg, IRAP, IRES etc)

Failing that, clubs may be excluded from competition and their affiliation may be revoked.

Under the 2023 NOIF amendments, the fulfilment of some of the above obligations (eg, taxes, welfare and social security contributions, VAT, IRAP, IRES, etc.) can be waived or delayed by a professional club in the event it applies for a creditors’ composition procedure under the Insolvency Code or for other receivership/

restructuring proceedings within the jurisdiction of ordinary insolvency courts.

If a club is declared insolvent by the judicial authority during the course of a sports season, to safeguard ongoing competition the insolvent club may be allowed to temporarily continue its business and sports activities until the end of the football season. Should the club cease its activities due to insolvency, its athletes would be automatically released and the sport title (including trade marks, etc) will be subject to asset sale within the framework of a bidding procedure.

## 4.3 Funding of Sport

### Public Funding

Italian governments are increasing sports funding with the aim of upgrading obsolete sports facilities throughout the country and promoting sports among youngsters, women and disabled people. A significant part of these public funds is allocated yearly to sports organisations through Sport e Salute S.p.A., a joint-stock company connected to CONI.

Public funding for sports has drastically increased since the introduction of the 2021 National Recovery Plan. In particular, specific funds have been allocated for the upgrade of public sports infrastructure and for the upgrade and/or construction of venues for the 2026 Winter Olympics in Milan-Cortina.

### The Sports Credit Institute

The Sports Credit Institute (*Istituto per il Credito Sportivo*) is a “social bank for the sustainable development of sports and culture”, granting low-interest loans to public and private entities for the implementation of sports facilities, including funds to purchase real estate lots to be dedicated to the construction of sports infrastructure.

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## Private Investments

Italian clubs are still heavily relying on investments made by private owners, although the amount invested is still limited relative to some other countries. However, there is now a growing trend of international investors showing interest in acquiring Italian football clubs.

## Funding for Federations

Federations are funded by CONI/Sport e Salute S.p.A, among others. The amounts due to each federation are calculated by the following:

- 60% of funding is based on the federation's success in elite sports competition;
- 30% is tied to the overall number of people actively participating in the sport governed by the federation; and
- 10% is based on the amounts invested by the relevant federation in sports activities.

Unsurprisingly, football receives the largest share of funding. This reflects its dominant position within the Italian sports industry, generating 70% of the annual sports tax revenue.

## 4.4 Recent Deals/Trends

According to the 2023 FIGC Report, 90 first division European clubs changed ownership over the 2020-2022 period. Italian football was certainly involved.

A noteworthy trend is the increasing involvement of financial operators (eg, private equity, investment funds, SPACs) in sports investments. This worldwide trend is growing, with such financial operators making significant investments compared to traditional private investors.

## 5. Intellectual Property, Data and Data Protection

### 5.1 Trade Marks

#### Registration of a Trade Mark

Italian trade marks can be registered by submitting an application form containing:

- the trade mark features (type, name, descriptions, colours, etc);
- the product categories for which the request is filed;
- the applicant data; and
- if necessary, a fast-track request and further relevant documents.

The Italian Trademarks Office (UIBM) then evaluates the admissibility and correctness of the application and publishes it in the Trademarks Bulletin for a three-month opposition period. If no valid opposition arises, the trade mark is registered.

It is also possible to obtain EU trade mark protection by filing a registration request at the European Union Intellectual Property Office (EUIPO) or by requesting an EU extension of a registered Italian trade mark within six months from the national registration request. The EUIPO route is often the preferred one, given the possibility for the applicant to obtain registration valid in the entire European Union.

#### Registration Limits and Advantages

The Italian Intellectual Property Code establishes limitations to trade mark registrations, such as:

- well-known signs in art, literature, science, politics, sports, etc, unless the holder of said signs express their consent;
- trade marks identical or similar to another trade mark regarding similar or identical prod-



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ucts, in case it may cause confusion among the public or the later trade mark can take advantage of the reputation of the earlier one;

- signs without distinctive character;
- signs that are unlawful or deceptive; and
- geographical indications and denominations of origin with the potential to mislead the public or involving an undue exploitation of the protected name's reputation.

Despite the above limits, Italian courts nowadays allow sports clubs to register trade marks bearing the name of the town they represent, since they acquire independent distinctive features over the years, especially when combined with a club's colours and logos. This trend aligns with the growing focus of professional clubs on rebranding initiatives to enhance their marketing appeal.

Registering a trade mark grants its creator all the relative IP rights and protection against:

- any unlawful use of said trade mark;
- any potential registration of similar competing trade marks; and
- any attempts at counterfeiting, usurpation or alteration.

Further, clubs can also leverage criminal laws that penalise anyone trading in or introducing counterfeit goods in Italy (Article 474 of the Italian Criminal Code), and obtain prompt support from public enforcement officials. Also, sports leagues collectively negotiate with third-party agencies in the interests of their affiliates to engage private investigation services to discover and prevent counterfeiting.

Existing trademarks owned by others, even if less well-known, can limit a club's ability to expand its trademark protection to new product

categories. In a notable case, AC Milan submitted a request in 2017 for EU registration of its trade mark regarding, among others, office items; however, a German firm that held the word mark MILAN relating to office items, filed an opposition to the EUIPO in order to avoid confusion among German consumers. The EUIPO and the EU Tribunal upheld the objection based on the likelihood of the two trade marks being confused.

## 5.2 Copyright/Database Rights

Copyright is regulated by Law No 633/1941 (the "Copyright Law"), which safeguards works of creativity (including databases) across various mediums, including literature, music, figurative arts, architecture, theatre and cinematography. Through copyright, authors gain the exclusive right to use and publish their work, as well as the "moral rights" to claim authorship and act against misrepresentation or damage to their reputation. Copyright lasts for the author's lifetime and up to seventy years after death, while moral rights are perpetual and transferable through inheritance.

Copyright holders are protected in several ways: generally, the breacher is ordered to stop using the protected work and compensate any harm caused to the copyright holder. The breacher may also be ordered to destroy any infringing materials.

Unlawful conduct under the Copyright Law is also punished through administrative and criminal sanctions (eg, imprisonment and fines).

Copyright Law is pivotal in the sports sector as it can offer protection to the image rights of athletes, including their faces, jersey numbers, likenesses and signature moves. A notable copyright case involved football team Inter Milan,

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whose official “stadium anthem” could no longer be played due to a dispute between the club and the copyright holder of the song.

### 5.3 Image Rights and Other IP

Image Rights are protected by the Italian Civil Code and the Copyright Law (see 5.2 Copyright/ Database Rights).

The Civil Code (Article 10) safeguards the image of an individual in case of unlawful exhibition/ publication or damage to their reputation, and entitles the right-holders to apply for the termination of the abuse. Image rights are untransferable, indefeasible and inalienable.

The Copyright Law (Article 96-97) establishes that an individual’s image can only be used or sold with their consent. The only exceptions occur when said reproduction is:

- justified by the notoriety or holding of public office of the person concerned;
- justified by the necessity of justice, security, scientific, educational or cultural purposes; or
- related to facts, events, ceremonies of public interest or held in public.

During the 1980s, the FIGC, the Italian Footballers’ Union and leagues signed a covenant to regulate advertising activities of professional clubs and athletes, by which players were entitled “to use in any lawful and decent form their image, even for profit, to the extent it is not associated with the names, colours, jerseys, symbols or markings of the club they belong to or other clubs”. Similarly, clubs could allow their sponsors to use their players’ image for commercial purposes only in case of “team pictures” in uniform and to promote the sponsorship agreement with the club.

Currently, the Italian Footballers’ Union By-Laws (Article 26) grant to the Italian Footballers’ Union the use of players’ images and names related to professional activity, even for commercial purposes, and the possibility to grant said rights to third parties (eg, videogame producers).

Sometimes, federations put limits on the commercial exploitation of athletes’ images (connected for instance to images in the context of a national team), especially when federations’ technical sponsors are competitors of athletes’ technical sponsors.

Athletes may take any necessary action to stop any abuse of their image, unless they lawfully express their consent to the commercial exploitation of their image by third parties.

A noteworthy case recently involved SSC Napoli and the release of football jerseys bearing Maradona’s face. The consent to the club was given by the former player’s agent, but not by Maradona’s heirs, who applied to the Court of Naples to stop the agent from using Maradona’s image for commercial purposes.

### 5.4 Licensing

Licensing is a contract by which the licensor grants the exploitation of its IP to the licensee in return for a fixed fee and/or royalties. It represents one of the most common ways for sportspeople to commercially exploit their IP and image (eg, through merchandise bearing the licensor’s logo).

Clubs have the widest powers to leverage their licensing agreements using the image of the team, whereas licensing to a third party the image rights of a single athlete will be subject to the latter’s consent; similarly, whenever a club is willing to use and/or license the image of minor

athletes, the consent of their parents/guardians is also required.

## 5.5 Sports Data

### Athletes' Data

Athletes' biometric data is increasingly used for competitive and commercial purposes, subject to the athlete being informed and providing consent to the processing and usage of health data. In particular, professional teams usually collect athletes' data through specific analytics software in order to implement tailor-made training methodologies for each athlete. Recently, football teams have been entitled to gather and consult live statistics during matches, so coaches now have more tools to make tactical decisions. On a commercial level, athletes' biometric data is usually collected to facilitate scouting activities and to make video games and other digital content.

### Spectators' Data

Spectators' data is generally used for commercial and statistical purposes, since registering consumers' data and their preferences allows business operators to identify their preferences and offer products based on the latest trends (always subject to consent by the data owner). Additionally, spectators' data is used for security reasons to help law enforcement authorities and event organisers to identify perpetrators of any offences.

## 5.6 Data Protection

Italian data protection legislation consists of the "Privacy Code" and – most importantly – of the EU Regulation 2017/679 (GDPR), which introduced a new approach that facilitates the traffic of data and holds data controllers and processors liable for any data breach and/or improper use.

Under the new legislation, it is possible to process personal data without consent in specific circumstances (eg, to perform a contract to which the data subject is party, complying with a legal obligation to which the controller is subject). However, special protection is still established for so-called sensitive data (eg, revealing racial or ethnic origin, political opinions, religious beliefs, trade union membership, genetic data, biometric and other health data, etc); use of this data is allowed only with the specific consent of the data subject or upon the occurrence of specific circumstances.

The GDPR has also strengthened the rights of data subjects in terms of:

- transparent data treatment;
- right of access;
- data rectification, erasure and portability;
- restriction of processing;
- objection; and
- communication of personal data breaches.

Personal data of athletes and spectators must be treated in accordance with the GDPR as well. Therefore, it is necessary to provide an adequate privacy policy to data subjects and obtain specific consent for sensitive data treatment.

## 6. Dispute Resolution

### 6.1 National Court System

Decree Law No 220/2003 regulates the independence of sports law from the ordinary law, "except for relevant cases for the State legal system related to subjective legal situations connected with the sports system" and establishes exclusive jurisdiction of sports bodies (see 1.4 Disciplinary Proceedings) for technical matters

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(eg, observance and application of sports regulations) and disciplinary matters.

For technical and disciplinary matters, sportpeople must compulsorily apply to the competent sports justice bodies, whose decisions cannot be challenged before ordinary/administrative courts unless said matters require the solution of “relevant cases for the State legal system” (eg, criminal offences).

For administrative disputes (eg, enrolment, affiliation and registration to competitions), the parties need to pursue remedies before sports justice courts (each federation ensures at least two levels of judgment and, in specific cases, it is possible to challenge said decisions to the CONI Collegio di Garanzia dello Sport; see also **1.4 Disciplinary Proceedings**), before they challenge sports justice decisions before the Lazio Regional Administrative Court (Article 135.1.g of the Italian Code of Administrative Proceedings).

For disputes concerning labour and/or economic relationships between sports individuals and entities, the parties, in general, may apply to ordinary courts or refer the dispute resolution to arbitration. However, note that most collective agreements provide an exclusive arbitration venue for the resolution of said disputes (see **6.2 ADR, including Arbitration**).

For criminal offences, two separate disputes – one before the ordinary court and one before the sporting justice bodies – proceed in parallel, and said duplication of disputes can sometimes lead to conflicting decisions (see **1.1 Anti-doping**).

## 6.2 ADR (Including Arbitration)

Arbitration courts can be used in labour and/or economic disputes in accordance with Article

806 of the Italian Code of Civil Proceedings and Article 4.3 of the CONI Sports Justice Code.

Arbitration for labour and/or economic matters is commonplace in Italian professional sports, as collective agreements stipulated by the players’, coaches’ and sports directors’ unions with federations and leagues, as well as professional contracts, all include arbitration clauses as an exclusive remedy.

Competent panels generally issue arbitration awards that are binding between the parties. Arbitration awards can only be challenged for invalidity under the Code of Civil Proceedings, subject to certain specific grounds and limitations.

## 6.3 Challenging Sports Governing Bodies

### Enforcement of Sports Sanctions

Federations have the power to impose sanctions on affiliates and members, since accepting sports law and justice – including sanctions – is an affiliation/membership requirement. Sports justice provides a wide range of sanctions, the extent of which depends on their recipients (eg, athletes or clubs), and the type and seriousness of the violation.

Examples of sanctions on clubs are warnings, fines, points deductions, transfer bans, relegation and exclusion from competition. Examples of sanctions on individuals are warnings, fines, temporary disqualification/ineligibility, bans from federation body activities and lifetime bans.

Also, mitigating and/or aggravating circumstances, unlawful association and recidivist conduct may be taken into account whenever they are provided by Sports Justice Regulations.

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Sports justice decisions are binding on the parties and failure to observe them could lead to additional and more severe sanctions.

To verify compliance with federation rules, federations can be supported by internal supervisory bodies. For example, the FIGC and FIP are respectively supported by CoViSoC and ComTec, committees with ongoing monitoring, supervisory and control functions over professional clubs, especially in relation to the observance of economic and financial parameters.

## Challenging Sports Justice Decisions

Only decisions concerning economic and administrative disputes can be challenged before ordinary/administrative courts. In particular, economic arbitration awards may be challenged before ordinary courts in accordance with the Code of Civil Proceedings. Administrative decisions may be challenged – after exhausting sports justice dispute resolution mechanisms – before the Lazio Regional Administrative Court. Decisions relevant to the State legal system can be challenged, and said relevance shall be assessed on a case-by-case basis. Please see **6.1 National Court System**.

## 7. Employment

### 7.1 Sports-Related Contracts of Employment

#### Professional and Amateur Sports before the “Sports Reform”

The relationship between sports organisations and athletes used to be regulated in a completely different manner depending on the professional or amateur status of the athletes. According to former Law No 91/1981, only professional athletes were employees and subject to specific

provisions, such as derogations from labour law (eg, the inapplicability of certain provisions of the “Workers’ Charter” – eg, the prohibition on using audio-visual equipment and control instruments over employees, the prohibition on health checks on employees, procedures related to disciplinary sanctions imposed by federations, protection against wrongful termination, etc). They were also exempt from non-competition agreements due to the unique nature of their sports activities.

Further, only professional athletes enjoyed labour protections like health and accident insurance, welfare, social security, and retirement benefits under the Civil Code or special laws.

Their employment contracts, based on standard forms compliant with relevant collective agreements, had a maximum duration of five years.

Conversely, amateur athletes were bound to their respective clubs and federations through membership (a so-called sports bond, see below) and they did not qualify as employees. Consequently, they were not subject to the application of Labour law or Law No 91/1981, and did not benefit from mandatory welfare and social security contributions. Economic relations were regulated through simple economic agreements and athletes were generally paid in the form of expense reimbursements, travel expenses, bonuses, etc.

Further, the duration of amateur relationships was subject to the “sports bond”, the rules of which were established by each federation and during which athletes could terminate their relationships with their clubs only if the latter released them or in exceptional cases regulated by each federation.

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## The “Sports Reform”

From July 2023, the new Legislative Decree 36/2021 introduced the new figure of the “sports worker”, which applies to all people involved in sport (eg, athletes, coaches, sports directors, trainers, referees, etc) who, regardless of their professional/non-professional status, are paid to perform sports activities.

Professionals are presumed to be employees, while amateurs are considered self-employed in the form of co-ordinated and continuous collaboration, unless it is proved that the services of the person involved in sport:

- are permanent in nature and exceed 18 hours per week (excluding those for participation in sports events); and
- are partly carried out in non-technical/sports aspects.

Under the new legislation, exceptions to labour law, as well as certain aspects typical of professional employment (eg, maximum contract duration, transfers of employees from one club to another, prohibition of non-compete clauses, etc) now apply even to amateur sports persons. Further, all sports employees now benefit from an insurance policy against work accidents and illnesses and also from legislative protections concerning workplace safety, health protection, illness, injury, pregnancy, parenting and unemployment. In relation to social security/welfare protections, sports employees can register with the Sports Workers’ Retirement Fund at the National Institute for Social Security (*Istituto Nazionale della Previdenza Sociale*) (which can also be accessed by the self-employed if specific conditions are met).

## Abolition of the “Sports Bond”

Another major innovation of the new Sports Reform is the abolition of the “sports bond” for non-professional athletes, thereby granting athletes more freedom to change clubs, while providing clubs with compensation for training young athletes.

Article 31 of Legislative Decree No 36/2021 orders the elimination of the sports bond by 1 July 2023 (or 1 July 2024 for renewals of previous memberships). Nevertheless, clubs will be entitled to training compensation whenever one of their young athletes signs their first professional/amateur sports work contract with another club.

Said compensation shall be distributed proportionally to all the training clubs attended by the athlete during their youth based on the duration and the extent of said training. Compensation is calculated based on the athlete’s age and the economic value of the first contract with the new club, with specific criteria set by each federation.

## 7.2 Employer/Employee Rights

Employer/employee relationships are generally regulated by the law and collective agreements – stipulated by athletes’, coaches’ and directors’ unions with the relevant federations and leagues – establishing respective rights and obligations. Said rights and obligations may be general (eg, duty of loyalty) or specific (eg, limits to the performance of other sports, work or business activities during the contract term) and may vary depending on the sportsperson under consideration.

In case of breaches of the collective agreement, the sportsperson may receive sanctions (eg, warnings, fines, salary reduction and, in the most serious cases, compensation for damages

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and the termination of the contract); while the club may be mandated by the competent panel to stop said breach, compensate all damages caused to the counterpart and, in the most serious cases, terminate the contract.

Disputes on employer/employee relationships are generally referred to dedicated arbitrations (see **6.2 ADR, Including Arbitration**).

Disputes involving players often arise from a player's exclusion from the first team training sessions, mobbing, unpaid salaries, damage to the reputation of the club and/or its management, etc. Examples of disputes involving coaches and sports directors often involve actions harming the employer's reputation during the employment term.

### 7.3 Free Movement of Athletes

The number of foreign athletes allowed to participate in Italian sports varies depending on the league and federation rules.

For example, for the 2023-24 season, the FIGC stated that Serie A clubs could sign a maximum of three non-EU players from abroad, while Serie B and Serie C clubs could only sign Italian and EU athletes.

Rules and restrictions related to foreign athletes are also established by other National Federations (professional basketball, for instance, has looser restrictions on foreign athletes compared to its amateur counterpart, which prioritises Italian-trained players).

In any case, teams must observe Italian legislation on entry visas for non-EU citizens.

## 8. Esports

### 8.1 Esports Overview

Despite esports being a rising phenomenon in Italy, no specific legislation has been created so far.

Therefore, there is no legal definition of a "professional video gamer" and no dedicated tax regimes. Legislation on professional sports is not applicable; therefore, professional video gamers are deemed self-employed persons. Consequently, they are subject to the general legislation applicable to self-employment, particularly concerning tax obligations.

It is also common to find underage professional video gamers in various esports events; their activity is subject to limitations under general underage labour legislation.

In this non-regulated scenario, Italian members of Parliament have recently introduced multiple draft laws to lay the groundwork for the regulation of esports.

Nonetheless, sports organisations are exploring the world of esports (eg, the Italian "Lega Serie A" organises the "E-Serie A", a virtual Serie A football championship).

## 9. Women's Sport

### 9.1 Women's Sport Overview

In recent years, Italian women's sports have seen growing interest from the public, television networks and sponsors. While some disciplines (especially volleyball) have always been highly popular among women, football is the fastest-growing discipline among Italian women's sports.

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The FIGC began a path of reforms involving professional clubs, granting exceptional authorisation to buy the sporting title of women's amateur clubs. This led to the establishment of Women's Serie A – the first professional women's competition in Italian sports.

Despite increasing numbers, female athletes continue to face substantial disadvantages and discrimination compared to their male counterparts, especially in professional sport. This has motivated international institutions to take action against discrimination (eg, the FIFA RSTP – especially Article 18-quarter – has established protection for female footballers' rights to maternity leave and their right to work during and after pregnancy, with severe sanctions on breaching clubs and on federations failing to guarantee these protections).

Italy's legislature advocates for gender equality in sports, and the "Sports Reform" takes into account gender equality as one of its purposes, establishing the "Fund for professional women's sports" and promoting gender equality in sports management and administration roles.

Most importantly, due to the introduction of the "sports worker" figure, all sportswomen are now eligible for welfare, retirement, and social security protections (including those related to pregnancy and maternity) that the law had not historically granted to any amateur or female athletes (see **7.1 Sports-Related Contracts of Employment**).

Female professional athletes can take advantage of all aspects of professional sports contracts, such as engaging in collective agreements, the adoption of a standard employment contract and the right to be assisted by a sports agent in transfer operations, etc.

## 10. Non-fungible Tokens (NFTs)

### 10.1 Non-fungible Tokens (NFTs) NFT and Italian Law

Despite their increasing relevance, NFTs are not regulated by Italian Law. Awaiting specific regulations at national and European levels, law operators are trying to regulate NFTs through the analogical application of several pieces of legislation regarding similar assets (eg, in terms of copyright, money laundering, consumer protection, etc).

#### NFT and Italian Sports

Due to the popularity of NFTs with sports fans, sports organisations and athletes are increasingly entering into agreements with NFT companies in order to create unique collections to be placed on the market.

This is the case with the football Serie A, which has entered an agreement with French NFT platform Sorare, the basketball Serie A1, which has issued a collection of NFTs on the occasion of the 2022 Italian Cup Final Eight, and many important clubs (eg, Inter Milan, AC Milan, Juventus, AS Roma, SS Lazio).

#### Sponsorships

In addition to the initiatives above, crypto companies are trying to increase their brand value and widen their fan base through the subscription of sponsorship agreements with leagues and clubs: the most relevant examples involve entities like Lega Serie A, Inter Milan, AC Milan, AS Roma and SS Lazio, and companies like Socios, Zytara Labs, BitMEX and Binance.

However, the volatility of the cryptocurrency market, particularly its recent downturn, has led to crises for several crypto companies. This instability has resulted in disputes, especially



in cases where sponsored football clubs have faced non-payment of fees per their sponsorship agreements.

## 11. Regional Issues

### 11.1 Regional Issues Overview

Brexit also had an impact on sports in Italy, in particular in relation to freedom of movement and limitations to non-EU citizens (see **7.3 Free Movement of Athletes**). British athletes are non-EU individuals, therefore they are subject to all the limitations established by the law, federations and leagues in relation to foreign and/or non-EU athletes.

## 12. Artificial Intelligence (AI)

### 12.1 AI Overview

The use of AI in sports is becoming pivotal as it represents a means to improve the quality of sports performance and scouting (see **5.5 Sports Data**), offers a better match experience to fans (eg, live statistics), provides more accurate refereeing during competitions (eg, VAR/Instant Replay, Hawk-Eye, etc), enhances sponsorship, ticketing and media opportunities by better targeting audiences and tailoring marketing products.

Despite its potential, AI also poses serious risks, especially in relation to the use of people's biometric data for illegal purposes and indirectly increases the risk of personal data breaches (eg, data of fans). For these reasons, sports organisations will be required to make investments in cyber security and monitoring systems to prevent potential risks.

Moreover, the evolving landscape of EU regulations around AI will likely impose further limita-

tions on its usage. The European Union is actively working to enhance regulations to ensure the safe and transparent use of AI within member states.

## 13. The Metaverse

### 13.1 Metaverse Overview

The Metaverse offers many opportunities for revenue generation and enhancing the fan experience.

For example, clubs can duplicate ticketing revenues through the creation of their own stadium in the Metaverse, and fans can enjoy an immersive experience within a sporting event wherever they are.

However, the integration of the Metaverse in sports also raises significant concerns, echoing issues related to AI and personal data management (see **12.1 AI Overview**). The primary risks involve the potential for unauthorised leakage and misuse of sensitive personal data, including images and biometric information of users. Additionally, the ability to monitor user habits within the Metaverse could lead to undue influence on consumer behaviour and personal choices, posing ethical and privacy challenges.

The adoption of the Metaverse in Italian sports is not widespread yet, and the legal framework is yet to catch up with this technological advancement. However, Lega Serie A in 2022 was the first professional league to show an official football match in the Metaverse in selected jurisdictions. More recently, to promote the upcoming 2024 European Athletic Championships, the whole venue of the competition (Rome Olympic Stadium) can be visitable in advance through the Metaverse, where famous athletes will be represented by avatars.

## Trends and Developments

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**LAWP Studio legale e tributario** is a law and tax firm with over 20 years of providing assistance in corporate and commercial transactions (including M&A, financing and joint venture transactions in the sports industry). LAWP is renowned for its proficiency in civil, commercial and tax law and is highly regarded for its

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# ITALY TRENDS AND DEVELOPMENTS

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## Changes in Rules Concerning Debt Restructuring for Italian Football Clubs

### *Provisions entered into force in April 2023*

In recent years there has been uncertainty about what football clubs could do to pursue debt restructuring proceedings in compliance with the Italian Football Association (*Federazione Italiana Giuoco Calcio*, or FIGC) Internal Organisation Rules (*Le Norme Organizzative Interne Federali*, or NOIF), especially after the reform of Italian bankruptcy laws that led to the entry into force of the new Italian Corporate Insolvency Code (*Codice della Crisi di Impresa e dell'Insolvenza*, or CCII).

Prior to April 2023, a FIGC affiliation was revoked in case insolvency was judicially declared and/or determined, regardless of the recourse to any procedures aimed at ensuring business continuity. Besides, clubs did not have to fulfil any particular information obligation to the FIGC and its supervisory body (*Commissione di Vigilanza sulle Società di Calcio Professionistiche*, or Co.Vi.So.C) in relation to the use of insolvency procedures.

Said rules appeared to be restrictive, since a declaration of insolvency would not entitle clubs to successfully pursue debt restructuring, and caused uncertainty about the means for clubs to regain their financial stability.

For this reason – also in light of the financial crisis of some major Italian clubs – in April 2023 the FIGC decided to amend the NOIF to ensure consistency with the newly approved CCII by establishing the possibility for football clubs facing a financial crisis and/or insolvency to undertake debt restructuring procedures under the CCII to the extent said procedures are aimed at ensuring continuation of the business and the preservation of corporate assets.

Pursuant to said amendments, it is now clear that football clubs are allowed to initiate financial restructuring proceedings like debt restructuring agreements, composition with creditors, certificated reorganisation plans, etc.

The aim of these restructuring proceedings is to ensure a reduction of liabilities through a negotiation with creditors and potential implementation of other instruments to negotiate a rescheduling of payment terms.

The recourse to procedures under the CCII and/or pending disputes do not automatically affect debts strictly related to sport (eg, player, staff and sports employee salaries and exit incentives; debts towards FIGC, leagues, domestic and foreign clubs, such as transfer fees and training compensations, etc). In these cases, creditors are not automatically subject to the effects of CCII procedures – especially protective measures – and clubs must meet the relevant payment deadlines otherwise they may face disciplinary sanctions (eg, from fines in the least severe cases, to exclusion from competitions in the most severe cases). However, it is important to note that there remains the possibility for mutual agreement between the parties to amend the terms and conditions of the relevant payments.

Other kinds of debts, such as fees due to suppliers and/or sports agents; non-sports employees' salaries, deductions and social security contributions related to employees' salaries (even if sports-related), VAT, corporate income taxes, etc, are generally subject to the effects of CCII procedures and said effects can be raised against FIGC and Co.Vi.So.C. only when said CCII procedure is approved with a final decision (or an equivalent final measure) and a copy of

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said decision or equivalent measure is filed with Co.Vi.So.C..

Clubs entering procedures with the aim of liquidation and/or pursuing indirect business liquidation and/or winding up procedures are subject to the revocation of their FIGC affiliation and exclusion from competitions (Articles 16.6, 16.6bis and 16.6ter of the NOIF).

However, as a consequence of entering procedures under the CCII, the April 2023 NOIF established that clubs would be subject to a transfer ban for two consecutive transfer windows (Article 90.4 of the NOIF as of April 2023).

However, said ban was not final and irrevocable as it could be lifted subject to certain conditions. Moreover, despite the transfer ban, football clubs were still allowed to acquire new players if they sold enough players to cover the cost of new ones for that season (a calculation taking into account the balance between the overall cost of salaries of players sold and acquired).

Moreover, pursuant to Article 90.5 of the NOIF, football clubs could apply for a lifting of the transfer ban through the contribution by the shareholders of equity-like contributions covering any negative net balance of the club's financials caused by the acquisition of new players.

### *New provisions adopted by FIGC in December 2023: a change of direction*

Despite the new regulatory framework of April 2023 providing clearness and more flexibility for clubs intending to resort to the CCII, in December 2023 the FIGC further revised the provisions concerning debt restructuring for football clubs, imposing stricter consequences for those clubs planning to initiate said proceedings.

Further, in December 2023 the FIGC amended the NOIF again and introduced the following sections:

- Article 90.4ter of the NOIF, whereby clubs are sanctioned with a two-window transfer ban in case of entering proceedings under the CCII; and
- Article 90.4quater of the NOIF imposing a two-window transfer ban in case proceedings under the CCII lead to a final approval by the competent court (or equivalent measure).

Most importantly, unlike the transfer ban provided under the previous version of the NOIF, the current rule dictates, for all clubs initiating debt management and/or restructuring proceedings, the application of a transfer ban which is not subject to limitation or revocation. In particular, the transfer ban now applies even if teams have sold enough players to cover the cost of new ones for that season. The ban is now absolute, with no exceptions, even if a club sells players for more than they plan to spend on new ones, or the club acquires equity resources to cover any negative balance, thus making it impossible for clubs to complete any player acquisitions.

In summary, while the April 2023 version of the NOIF had the effect of encouraging clubs to pursue debt restructuring and avoid bankruptcy (with all the relative consequences on the regular progress of competitions), the latest version approved in December 2023, which will enter into force on 1 July 2024, will seriously discourage clubs from initiating any form of liabilities management and/or debt restructuring proceedings. This could end up having the opposite effect: since an absolute transfer ban would severely hamper the competitiveness of a sanctioned club, the club may prefer to undergo a winding up proceeding. This represents a stark

# ITALY TRENDS AND DEVELOPMENTS

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contrast to the treatment of “normal” companies, for whom the preferred route would still be to manage liabilities and restructure debts using one of the instruments made available by the CCII.

Despite this potential issue, a debate on the possibility of further strengthening said sanctions (eg, points deductions) is ongoing among the FIGC and football clubs.

## PNRR and Other Initiatives for the Development of Sport Infrastructure PNRR and national support funding

COVID-19 restrictions in recent years have caused extensive damage to the worldwide economy, and have forced governments to take corrective actions to avoid aftershocks.

On 22 April 2021, the European Union approved an enormous economic investment package (the “Sustainable Finance Package”) to achieve three main goals on a short-, medium- and long-term basis among member states:

- repairing the economic and social damage caused by COVID-19;
- addressing persistent territorial gaps, gender disparities, weak productivity growth and low investment in human and physical capital; and
- boosting ecological and digital transition.

Italy received EUR191.5 billion from the European Union to be allocated to projects divided into six macro categories (eg, digitalisation, ecological transition, infrastructure, health, etc). EUR700 million of these funds have been allocated to the sports industry.

The Italian Department of Sport under the Prime Minister Counsel resolved to allocate the above resources for the following initiatives:

- regeneration of sports facilities, to be achieved through upgrading and energy efficiency of existing facilities;
- building new sports infrastructure, ensuring compliance with principles of green transition, mitigation of climate change and digital transformation; and
- creating parks and outdoor equipped trails with new technologies to promote sports practice.

Sustainable Finance Package funding to revamp sports infrastructure has also been supplemented by additional funding allocated by the Italian government under the PNC (*Piano Nazionale Complementare*). For example, part of the PNC funds have been allocated to the regeneration of important sports venues, such as the “Artemio Franchi” Stadium in Florence.

The availability of public grants under Sustainable Finance Package and PNC programmes encouraged Italian sports federations to cooperate with the government, local public authorities as well as sport clubs to promote initiatives for the construction and recovery of sports facilities, taking urgent actions to allocate said resources given that their availability is conditional upon funded projects being completed within 2026.

Furthermore, said public grants freed up other resources within municipalities and other public administration, which led to projects that are co-financed by local administrations with the support of governmental funding (for instance, in 2023 the Municipality of Venice approved an ambitious project for the construction of a new sports arena and a new stadium, along with accompanying facilities).

The above initiative also sparked increased interest from private and institutional investors

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in supporting clubs in projects connected to the revamping of sports infrastructure, especially those involving stadiums and arenas, given the potential upside deriving from the possibility of creating a multifunctional venue able to host a variety of entertainment events.

### *New rules concerning management and construction of sports infrastructure*

In addition to the Sustainable Finance Package/PNC, the Italian government is promoting investments in state-of-the-art sports infrastructure by introducing new “concentration, acceleration and simplification measures” with the specific aim of attracting private investment in sports infrastructure.

In the context of the “Sports Reform”, Legislative Decree No 38/2021, which entered into force on 1 January 2023, was specifically tailored to sports infrastructure and Article 4 establishes the principles to be met by investors and developers seeking to build and/or redevelop sports facilities. In particular, investors and developers must submit to the competent public entity a document setting out the technical and economic feasibility of the proposed project alternatives, as well as a financial plan indicating, for instance, the costs and benefits of the alternatives, the impact on stakeholders and the main terms and conditions of the proposed legal relationship with the competent public entities involved in the project.

The Legislative Decree also provides that investors and developers may include in the document of technical and economic feasibility (i) the construction of real estate to be used for different non-sport related purposes, which are complementary or ancillary to allow the financing or the usability of the sports facility and (ii) proposals concerning the full exploitation for commercial,

tourism, educational and recreational purposes of all areas pertaining to the facility on all days of the week.

Investors and developers engaged in sports infrastructure projects in Italy have the opportunity to ensure the economic and financial sustainability of their ventures through specific mechanisms. These include seeking financial support from the public entities involved in the project. Such support can manifest in various forms, such as receiving consideration for developing the facility or obtaining the transfer of ownership or other rights over the facility that is being redeveloped.

Further, specific rules are also established in favour of non-profit sports clubs and associations intending to develop sports facilities.

The entry into force of Legislative Decree No 38/2021 may also facilitate the further development of various forms of co-operation between private and public entities – eg, through public-private partnerships (PPPs), project financing and/or granting of surface rights over the land where facilities are built.

PPPs are long-term relationships between public entities and private parties, aimed at pursuing a public interest, whereby the private party generally assumes most of the economic risks of the project and manages the project (eg, a sports facility), and is entitled to obtain a revenue stream from the relevant facility, whilst the public entity generally holds minority investments and assists the private party in achieving its goals.

Project financing is a complementary instrument to PPP and is used to direct private funds to finance public infrastructure investments. Through project financing, the realisation and/

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or modernisation of sports facilities are financed in whole or in part by a private party, which in return is allowed to manage and exploit the facility for sports events and commercial activities, retaining the related revenues. In addition, private investors may decide to find further partners interested in financing the project (eg, sponsors) who will be granted certain benefits (eg, naming rights to the stadium/arena).

Surface rights are regulated by Articles 952 et seq. of the Italian Civil Code, which provides that the party having the surface rights becomes the owner of the buildings built on the relevant surface until the expiry of the surface right. As a consequence, parties owning a stadium and/or an arena have the utmost freedom in managing and exploiting it in their best interests.

In recent years there have been a few examples of Italian football clubs that both adopted project financing and obtained surface rights: for instance, Juventus FC and Udinese Calcio signed agreements with the municipalities of Turin and Udine respectively under which the clubs were granted the surface rights in respect of the stadium areas for 99 years, so that they both became the owners of their respective stadiums at least until the expiration of the surface rights. To raise the necessary funds for the works, both clubs resorted to project financing and granted naming rights of their stadiums to their sponsors.

### *Impact of ESG criteria*

The recent surge in sports infrastructure development goes hand-in-hand with a growing emphasis on compliance with ESG and sustainability principles across the sports industry.

This focus on sustainability in sports investments is exemplified by the Italian Institute for Sports

Financing (*Istituto per il Credito Sportivo* or ICS), a public bank owned mostly by the Italian Economic Ministry and which facilitates financing in favour of clubs and sports entities for the construction and modernisation of sports infrastructure. The ICS developed and released in March 2023 a platform to measure the ESG impacts and Social Return on Investment (SROI).

Thus, starting from March 2023, clubs and other sports entities applying for funding by the ICS will see their financing applications assessed based on an ESG rating and SROI measurement, regardless of the size or type of organisation. As a result, funding will be prioritised for projects that demonstrate a strong commitment to sustainability.

More generally, by-laws of sports entities may include ethical and/or sustainability rules that must be adhered to in the management of the company, allocation of a portion of profits for sustainability purposes, evaluation parameters for sustainability policies undertaken by directors and related bonuses based on the level of sustainability periodically achieved.

The Italian government is focusing on sustainability in sports as well, not only by encouraging investment in sustainable infrastructure, but also by, for example, releasing guidelines to realise sustainable sports events.

For instance, Udinese Calcio is setting a national standard in terms of sustainable sports through its efforts to achieve carbon neutrality in football matches, promote sustainable transport, reduce the use of non-recyclable items during sports events, select suppliers who prioritise sustainability, and promote awareness campaigns among fans and partners.



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## *Tax Benefits for the Hiring of Foreign Professional Players by Italian Football Clubs*

Legislative Decree No 209 of 27 December 2023, has completely reformed the inbound workers regime (*regime degli impatriati*), a special tax regime applicable to individuals who, both acting as employees or self-employed workers, under certain specific circumstances, could benefit from a variable, partial Italian personal income tax (PIT) exemption. In doing this, the part of the regime which was previously applicable to professional sportspeople (hereinafter also referred to as “Old Regime”) has been completely revoked.

Regarding the Old Regime, it is worth remembering that a 50% Italian PIT exemption used to apply for a five-year period to professional sportspeople, namely athletes, coaches, team managers and athletic trainers performing sports activities on a continual basis in return for remuneration, and who are affiliated to a National Sports Federation recognised as professional by CONI before 1990. Further conditions for eligibility under this regime were that the relevant individuals had to be over 20 years of age, and their total income related to their sporting activities needed to exceed EUR1 million.

The introduction of these conditions was a strategic decision aimed at protecting domestic talent development while making Italy an attractive destination for internationally renowned sports professionals (after all, the rule was originally intended for workers with high skills and specialisation). It is difficult to say if this goal has been entirely achieved.

In addition to the above conditions, to access the Old Regime professional sportspeople had to actively opt into it and, in addition to the Italian PIT on their sports income, they were required to calculate and pay an additional charge amount-

ing to 0.5% of the taxable income derived from their sports activity.

For professional sportspeople who transferred their legal residency and signed a professional contract by 31 December 2023, the provisions of the Old Regime continue to apply.

While the Old Regime has ceased to apply to professional sportspeople, it is crucial to recognise that the new inbound workers regime (the “New Regime”) does not necessarily extend its changes to all individuals in the sports world. Notably, those not typically recognised as professional sportspeople or as professionals affiliated with a National Sports Federation, such as sports agents, might still be eligible under the Old Regime.

In its current formulation, the New Regime may apply to employment income and self-employment income derived in Italy by individuals who transfer their tax residency pursuant to the amended Article 2 of the Presidential Decree No 917 of 22 December 1986.

Such income, up to a limit of EUR600,000 per year, is eligible for a 50% exemption from Italian PIT.

The regime is applicable from the year in which the individual acquires tax residency in Italy and continues to apply for the subsequent four years. For the application of the New Regime, the following conditions must be met:

- the individual undertakes to reside for tax purposes in Italy for at least four tax periods; and
- the individual has not been tax resident in Italy in the three tax periods preceding their transfer.

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The New Regime will apply to individuals who transfer their tax residency to Italy starting from the 2024 tax period.

## Hypobaric Chambers and Status of Italian Regulations

### *Italian legislation until 2022*

Anti-doping efforts in Italy are reinforced by a dual approach that encompasses both sports law and criminal law (see 1.1 Anti-doping of the Italy Law and Practice chapter), with sports institutions and the Italian government adopting their own legal acts to fight doping both inside and outside sports.

With reference to Italian sports rules, the WADA Prohibited List is adopted and implemented on an annual basis within the Italian sports system by NADO Italia. Similarly, the Italian government implements its own anti-doping measures which, in compliance with the 2005 UNESCO Convention Against Doping in Sports, may contain more restrictive measures to fight doping in sports than the one imposed by WADA.

As a consequence, the Italian government has enhanced specific regulations providing further restrictive measures. In particular, Law No 376/2000 requires that a list of prohibited substances and methods (mainly based on the WADA list) must be approved on an annual basis through a Decree of the Ministry of Health.

A notable divergence between ministerial decrees issued by the Italian government and the WADA Prohibited List was Italy's absolute prohibition of "hypobaric/hypoxic practices", as reflected in the Ministerial Decree of 28 June 2022. This contrasted with NADO Italia and WADA's anti-doping measures, which did not forbid these practices.

### *Criticism and the new Italian regulations from 2023*

The result of the above was a sui generis legal framework under which athletes deciding to use hypobaric/hypoxic practices, despite not breaking any sporting rules and not jeopardising the integrity of competitions, would be criminally liable under Article 586-bis of the Italian Criminal Code (see 1.1 Anti-doping of the Italy Law and Practice chapter).

This led to much criticism from Italian athletes, who felt that they were disadvantaged in comparison to foreign athletes who could use hypobaric/hypoxic practices without any criminal and disciplinary consequences, especially because the majority of the international scientific community does not consider such practices to be unfair and/or harmful to health when used under expert supervision.

For these reasons, after a debate within the Italian scientific community, the latest Decree of the Ministry of Health dated 3 October 2023 eventually revoked the ban regarding hypobaric/hypoxic practices, adopting the same approach already adopted by WADA and NADO Italia in this regard.

This new legislation will therefore enable Italian athletes and/or athletes training in Italy to use the same methodologies used by other athletes abroad to improve their sports performance.

As an outcome of said liberalisation, companies producing and selling hypobaric/hypoxic chambers may be encouraged to explore the Italian market as a new source of revenue.

# JAPAN



## Law and Practice

### Contributed by:

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**TMI Associates**

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**TMI Associates** has, since its establishment in 1990, strived to create a law firm distinct from any other in Japan. Over the past 30 years, the firm has experienced rapid organic growth in both head count and geographical spread, while maintaining its progressive culture. Based in Tokyo, TMI has, as of 5 January 2024, 629 lawyers and 93 patent/trade mark attorneys among a total of 1,204 personnel and it has become one of the five largest law firms in Japan.

In addition to TMI's domestic branch offices in Nagoya, Kyoto, Osaka, Kobe and Fukuoka, the firm has branch offices overseas, in Shanghai, Beijing, Singapore, Ho Chi Minh City, Hanoi, Yangon, Phnom Penh, Bangkok, Silicon Valley, London and Paris. TMI's sports and entertainment law practice constitutes a major aspect of the firm's work, with TMI representing sports organising committees, sports federations, professional leagues, teams and athletes.

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## 1. Regulatory

### 1.1 Anti-doping

There is no law in Japan imposing criminal penalties for doping. The Japan Anti-Doping Agency (JADA), which is responsible for all anti-doping activities in Japan, was established in 2001. In addition to determining standard doping test processes for Japan and implementing doping control procedures, JADA conducts anti-doping education and awareness campaigns. JADA established the Japan Anti-Doping Code (JADC), which is based on the World Anti-Doping Code established by the World Anti-Doping Agency (WADA) and incorporated WADA's prohibited list. The prohibited list is updated annually by WADA and includes substances such as cannabis, cocaine and heroin, which are illegal drugs in Japan.

In October 2018, the Act on the Promotion of Anti-Doping Activities in Sport (Law No 58 of 2018) was enacted as Japan's first anti-doping law. In March 2019, the Basic Policies for the Comprehensive Promotion of Measures Related to Anti-Doping Activities in Sports, which establishes the basic policy frameworks for anti-doping activities, were enacted in accordance with Article 11(1) of the above-mentioned Act.

In 2017, a candidate for inclusion on the Japanese national canoe team mixed a banned substance in the beverage bottle of one of his rivals and causing the rival to be suspended. Later, this disqualification was nullified, and the player who mixed the banned substance was banned by the national federation from competition for eight years.

### 1.2 Integrity

There is no law in Japan that specifically deals with an "athlete's" misconduct/cheating and

match-fixing offences. That said, if an athlete commits an act alleged to be illegal under the Penal Code or public gambling laws, the athlete will be punished. In addition, the sports organisation to which the offender belongs may punish them under its own rules.

Each sports organisation offers compliance training to its athletes in order to prevent illegal acts and misconduct occurring.

For example, in the J.League, the top professional football league in Japan, the Early Warning System introduced by FIFA is used to prevent match-fixing.

In 2011, a sumo wrestling match-fixing scandal arose, causing the spring tournament to be cancelled. More than 40 sumo wrestlers and masters were asked to retire or recommended to be dismissed. In 2020, a boat racer was sentenced to imprisonment with labour for three years and a supplementary fine of approximately JPY37 million for his involvement in a match-fixing scheme whereby he intentionally delayed finishing a boat race in order to receive an illicit payment. In the same year, in a case where a director of a football club that belonged to the Japan Football League (fourth division) unfairly requested the coach and players to fix a match, which request was refused, the Japan Football Association banned the director from any football-related activities for two years.

### 1.3 Betting

Under Japanese law, gambling activities, including running a gambling establishment or organising a group of gamblers, are subject to punishment (Articles 185 and 186 of the Penal Code), except where public agencies are specifically authorised by special laws to run gambling establishments in the fields of horse rac-

ing, boat racing, bicycle racing, auto-racing and sports promotion lotteries. In 2020, the Act on the Implementation of Sports Promotion Lotteries was amended, and from 2022, basketball has become subject to such a lottery, in addition to football (soccer). According to the Act, athletes, managers, coaches and referees of the games subject to the lotteries, as well as those under the age of 19, are not allowed to participate.

Persons who engage in illegal gambling may be punished not only by law, but also by the sports organisation or companies to which they belong.

## 1.4 Disciplinary Proceedings

JADA implements doping control in accordance with the JADC. In the event a positive doping test is obtained, a hearing will be held and sanctions (such as suspension) may be decided by the Japan Anti-Doping Disciplinary Panel. Although the body for sanctions is the Japan Anti-Doping Discipline Panel, the sports organisation to which those who are found to be in violation belong may impose separate sanctions.

Disciplinary procedures for other acts that violate the principles of integrity will be imposed under relevant regulations if:

- the prohibited acts subject to disciplinary procedures;
- the person subject to the disciplinary procedures;
- the details of the disciplinary action; and
- the procedures leading to the disciplinary action,

are provided for in such regulations, although the disciplinary action will vary from one sports organisation to another.

In addition, sports organisations or companies may punish their members for unethical behaviour in their private life (eg, for acts of infidelity).

## 2. Commercial Rights

### 2.1 Available Sports-Related Rights

In addition to sponsorship and broadcasting revenues, merchandising rights as well as ticket and hospitality revenue are major sources of revenue for sporting events. For example, the Tokyo Organising Committee of the Olympic and Paralympic Games (TOCOG) received about JPY14.4 billion in licensing fees and had forecasted about JPY90 billion in ticket revenue at the Tokyo 2020 Olympic and Paralympic Games (“Tokyo 2020 Games”). However, due to the COVID-19 pandemic, the Tokyo 2020 Games were held without spectators and all tickets were refunded. The Rugby World Cup 2019 Organising Committee received ticket revenues (JPY38.9 billion) from the 2019 Rugby World Cup, with no sponsorship, broadcasting and licensing revenues coming in.

Official resale services were provided for the Rugby World Cup 2019, while those for the Tokyo 2020 Games were cancelled due to the COVID-19 pandemic. Tickets for the Rugby World Cup 2019 were allowed to be resold at regular prices via official resale sites. Resale of tickets by other methods, such as auction websites, was prohibited by the terms and conditions applicable to ticket purchase and use.

The unauthorised resale of tickets, or acquisition of tickets for the purpose of unauthorised resale, is subject to criminal penalties under the Act on Securing Proper Distribution of Entertainment Admission Tickets through Prohibition of Unauthorised Resale of Specified Entertainment



Admission Tickets (the “Anti-Scalping Law”), which came into effect on 14 June 2019.

## 2.2 Sponsorship

A sponsorship contract is a contract in which a company or individual becomes a sponsor of sports rights-holder(s) and/or sports competition(s) and receives a certain sponsorship benefit in return for paying a sponsorship fee and/or providing its products and services as value-in-kind. The motivation for concluding sponsorship agreements is that sponsors can increase their brand value by associating their products and services with sports competitions and athletes while also leveraging the data of sports rights-holders for their businesses. Sports rights-holders, on the other hand, use sponsorship fees to stabilise and enhance their events/competitions and improve the performance and competitiveness of their athletes. Sponsorship programmes often afford sponsors exclusive rights to certain products or services categories, particularly in major sporting events and international scale sporting events. Please see **4.4 Recent Deals/Trends** for details of a different type of sponsorship programme in place for the Tokyo 2020 Games.

## 2.3 Broadcasting

Sports rights-holders grant broadcasters and media organisations the broadcasting and media rights, which include (i) the right to bring recording and broadcasting equipment into venues, and (ii) the right to record the sports competitions and events by themselves or through a third party and then to transmit and screen the same using live or delayed broadcasts, wire-broadcasts, internet distribution or other means. Broadcasters often attempt to increase viewer revenues by broadcasting high-value-added sporting content, while also increasing advertising revenues by increasing the value of their own media.

In order to obtain greater broadcasting-rights fees, several sports rights-holders, such as the leagues, collectively manage the broadcasting rights and sell them on an exclusive basis to broadcasters or media organisations. While the granting of broadcasting rights and the ownership of copyrights to the audio and video of broadcast games and others are separate issues, ownership of copyrights is also agreed upon in broadcast rights agreements.

For example, in July 2016, the J.League concluded an agreement with the Perform Group, which provides the DAZN live streaming service, for the sale of broadcasting rights of approximately JPY210 billion for a ten-year period beginning in the 2017–18 season, which was extended until the 2033–34 season in 2023. In this agreement, it was agreed that the copyrights in and to the footage of the matches belong to the J.League.

Because broadcasting-rights fees for large-scale international sporting events are increasing, for certain events such as the Olympics and the FIFA World Cup, the “Japan Consortium”, an organisation composed of NHK, a public broadcaster, and private broadcasters, has been formed to allow for the sharing of broadcasting rights, the securing of personnel and systems for jointly creating and broadcasting programmes, and the provision of more viewing opportunities. However, for the 2022 FIFA World Cup, the framework of the Japan Consortium was broken down as several private broadcasters withdrew due to the soaring broadcasting-rights fees, and only NHK, two private broadcasters and an internet video streaming platform company ended up acquiring broadcasting rights.

In addition, there are no specific laws or regulations in Japan which guarantee free-to-air coverage of designated sports events, unlike in the UK, for example.

## 3. Sports Events

### 3.1 Relationships

There is no right that protects the sporting events themselves, and the matches themselves are not protected by intellectual property rights under Japanese law.

Sports event organisers – including national federations, leagues and clubs – control their facilities and games by securing property rights, leasehold rights, and other facility use rights through contracts with the owners of the facilities and by granting access to athletes, coaches and spectators. In granting access, sports event organisers obtain permission to include the grantees' likenesses in the footage of the games. Furthermore, to protect broadcast rights, sponsorship rights and other commercial rights, organisers will (i) enter into contracts with athletes and coaches participating in the sporting events that set the terms and conditions of such participation, (ii) set forth various rules and regulations, and (iii) impose terms and conditions for tickets sold by sports event organisers to spectators.

### 3.2 Liability

Sports event organisers are legally obliged, when holding events, to consider the safety of participants. Although the obligation to give consideration to safety is not explicitly stated in Japanese law, judicial precedents stipulate that “the parties who have entered into a special social contract relationship based on a certain legal relationship are obliged to protect their lives and personal safety from the dangers associated with a legal relationship by one or both of them under the doctrine of good faith and mutual trust, as supplementary duties.”

Sports event organisers should work to prevent violence and disorder by implementing rules applicable to athletes and coaches, as well as rules applicable to spectators. They should collaborate with police and security companies. If an athlete violates the rules, they will be punished by sports event organisers. Depending on the location and content of a sporting event, the relevant parties, including sponsors, may be subject to the Urban Park Law, the Road Traffic Law, the Outdoor Advertisement Law and related ordinances, the Anti-Nuisance Ordinance, the Fire Service Law, the Food Sanitation Law, and other relevant laws and regulations. Event organisers may have clauses in their contracts with participants and spectators that restrict their liability, but any provisions in the terms and conditions with spectators purporting to exempt the organiser from liability to provide compensation are always void as a breach of the Consumer Contract Act.

## 4. Corporate

### 4.1 Legal Sporting Structures

In general, professional sports clubs operate as joint-stock companies, and sports organisations that are not professional sports clubs may operate in a variety of forms, including as joint-stock companies, incorporated associations, incorporated foundations, specified non-profit organisations (NPOs), or voluntary organisations. In many cases, national sports federations in Japan operate as incorporated associations or foundations.

There are many possible reasons for opting for corporate status or a certain entity type, including tax benefits. For example, the primary reason for selecting a joint-stock company is that the organisation's activities are for profit. The primary reason for choosing an incorporated

association or foundation is that the organisation's activities are not for profit. Certain incorporated associations and incorporated foundations are authorised by a Public Interest Corporation Certification. Having a Public Interest Corporation Certification offers tax advantages, such as income tax exemptions.

## 4.2 Corporate Governance

In 2019, the Japan Sports Agency developed two sports governance codes: one for the national federations and the other for general sports organisations. In 2020, the Japan Sport Association (JSPO), the Japanese Olympic Committee (JOC), and the Japanese Para-Sports Association (JPSA) began evaluating their respective compliance with the code for national federations. As of the end of 2023, first evaluations of all national sports organisations have been completed.

In September 2023, the Japan Sports Agency revised the governance code for national federations: 13 rules contained in the governance code remained as they were but the explanations were slightly changed to help ensure the effectiveness of the governance code. A national federation that is evaluated as non-conforming in the examination may be subject to a reduction in the amount of subsidies provided by the Japan Sport Council (JSC). Furthermore, when a general sports organisation applies to the JSC for a grant, it is required to self-explain and publicise its status of compliance with the governance code. The governance code does not specifically provide for matters regarding bankruptcy of a sports organisation.

## 4.3 Funding of Sport

The JSC, JOC, JPSA and JSPO are awarded administrative grants, subsidies, etc, by the Japan Sports Agency, and they then provide

funds to the various national federations to improve athletic performance and international competitiveness as well as to enhance the competitive environment. This sports promotion fund is also provided to athletes and coaches of Japan's national teams. Such subsidies are estimated to account for over 20% of the income of the national federations.

Subsidies may also be granted to other athletic organisations by the Japan Sports Agency and by the JSC as sports promotion lottery subsidies. Furthermore, "lottery tickets for the Tokyo 2020 Games" and "lottery tickets for the Rugby World Cup 2019" were sold and a portion of the proceeds was used to support each event respectively.

## 4.4 Recent Deals/Trends

In Japan, the Rugby World Cup 2019 was held in 2019 and the Tokyo 2020 Games were held in 2021, with both events being extremely important to the Japanese sports industry. For the Rugby World Cup 2019, there was a total of JPY67.6 billion in revenue, including JPY38.9 billion in ticket revenue. The total revenue for the Tokyo 2020 Games was JPY640.4 billion.

In sponsorship contracts for large international sporting events and other events, the sponsor is often granted exclusivity over a particular product or service category in order to increase the value of its sponsorship. However, at the Tokyo 2020 Games, with the approval of the IOC, a scheme was adopted whereby multiple companies coexisted as sponsors in the same categories – such as banking, aviation, and newspapers – which is a new and unique form of sponsorship. As a result, domestic sponsorship revenues for the Tokyo 2020 Games reached an Olympic-record of JPY376.1 billion.

## 5. Intellectual Property, Data and Data Protection

### 5.1 Trade Marks

A trade mark right arises only after registration with the Patent Office by identifying the trade mark to be registered and filing an application with the Patent Office specifying the scope of the designated goods or services for which the trade mark is to be used.

Trade marks which do not have a distinctive function, which are contrary to the public interest, or which are similar to another person's trade marks, cannot be registered.

Sports organisations often register trade marks in the categories of clothing (class 25), toys and sports equipment (class 28), advertising (class 35), and the organisation, arranging and conducting of sports competitions (class 41).

The duration of a trade mark right is ten years, but because it is renewable, it can be made semi-permanent by repeating the renewal, which makes it easier to use in the sports business.

For this reason, sports event organisers, such as leagues, may require their member clubs to register the trade marks for their logos and emblems.

### Anticipation and Abuse of Trade Mark Rights

Anticipatory trade mark applications have been filed for famous names in the sports world. For example, this sort of anticipatory activity was disputed in the case of “Juventus”. In that case, the plaintiff, who held a trade mark registration for “Juventus” despite being unrelated to the “Juventus” football club in Italy's Serie A, claimed infringement of a trade mark right against a defendant who had been licensed by

the club and used the mark domestically. The court rejected the claim on the ground that the plaintiff's position constituted an abuse of rights.

### 5.2 Copyright/Database Rights

In Japan, the Copyright Act grants copyrights and moral rights of the author to the author of a work which is a cultural product. Databases that display creativity through the selection or systematic construction of information are protected as copyrighted work. Because a copyright accrues automatically when content is recognised as creative, sports organisations both create content themselves and acquire rights to copyrights under contracts with copyright holders. Unlike trade mark rights, copyrights have the advantage of being granted without applying for registration or involving complex procedures and are therefore widely used in sports businesses. That being said, it is necessary to bear in mind that copyrights may be unclear in terms of copyrightability or the attribution of rights, and it is therefore not easy to determine the presence of infringement. For example, the official emblem of the Tokyo 2020 Games was said to resemble the logo of an overseas theatre, and because the existence of copyright infringement was therefore at issue, TOCOG changed to another emblem.

### 5.3 Image Rights and Other IP

Although not stipulated by Japanese law, the rights to the names and portraits of celebrities, such as athletes (their image rights), are recognised. They are generally recognised as (i) the right to exclusively use names and portraits to attract customers and promote the sale of goods and (ii) “publicity rights” in the context of Supreme Court rules on tort under the Civil Code. In the case of infringement committed by a third party for the purpose of exploiting an athlete's ability to attract customers by their own

portraits, injunctions against infringing acts in tort and claims for compensatory damages are allowed. The following three types of infringement of publicity rights are common:

- the portrait being utilised as an independent product;
- placing portraits on products in order to differentiate products; and
- using the portrait as an advertisement for products.

## 5.4 Licensing

Under Japanese law, there are no special restrictions on the licensing of intellectual property rights, such as trade mark rights and copyrights, to third parties. In addition, the Supreme Court considers that the basis of publicity rights, such as names and portraits of athletes, as described in **5.3 Image Rights and Other IP**, is a moral right. Therefore, publicity rights are construed as personal and cannot be assigned. However, there is no restriction on the licensing of these rights to third parties. For this reason, sports organisations and athletes often license their intellectual property rights and publicity rights to sponsors and licensors for remuneration.

## 5.5 Sports Data

The data of athletes is used for coaching and training as well as improving their athletic performance. It is also used for fan engagement and to develop products and services for sponsors and other stakeholders.

On the other hand, by accumulating and analysing spectator data – such as visit history to venues, age of fans, and purchase history of tickets and goods – sports organisations have refined their marketing activities and increased the number of visitors and fans and acquiring sponsors; as well as improving product development and

sales promotional activities for sponsors and other stakeholders.

## 5.6 Data Protection

Sports data is subject to protection under the Personal Information Protection Law when it falls under the category of personal information (defined as information concerning an individual that can identify a specific individual by name, date of birth, or another piece of information contained in that data). Specifically, when providing such information to a third party, it is necessary to obtain the individual consent of the person in question or clarify in advance, by way of a privacy policy, the content, purpose of use, and method of provision of the information. In situations where personal data will be used jointly, the privacy policy should stipulate the categories of the jointly used personal data, the scope of the jointly using persons, the purpose of use, etc.

In addition, information regarding the results of doping control testing is strongly protected as “special care-required personal information” and it is essential to obtain the consent of the person in question when acquiring such information.

## GDPR Issues

When handling the personal data of individuals residing in the EU, it is necessary to comply with the GDPR. The European Commission adopted a privacy adequacy decision for Japan in January 2019, whereby the transfer of personal data between Japan and the EU has been made much simpler and smoother.

# 6. Dispute Resolution

## 6.1 National Court System

Any disputes concerning the existence or non-existence of specific rights and obligations or

legal relationships between the parties, which can be finally settled through the application of law, can be heard in court. However, non-legal disputes such as those involving athlete selection or those that fall completely within the jurisdiction of an organisation, cannot be settled in court. Domestic sports-related arbitration and mediation is undertaken by the Japan Sports Arbitration Agency (JSAA), detailed in **6.2 ADR, Including Arbitration**, and by those sports organisations that have their own mechanisms for dispute resolution. It is not necessary to use the arbitration or mediation of the JSAA, or dispute resolution procedures by sports organisations, prior to resolving a dispute in court.

## 6.2 ADR (Including Arbitration)

Any dissatisfaction with a decision made by a sports organisation may result in an appeal within the sports organisation itself or to the JSAA. Sports disputes that cannot be resolved in court may also be appealed. The scope of sports arbitration conducted before the JSAA covers “a decision made by a sports organisation or its organs in relation to a sporting competition or its operation”. Dispute resolution using the JSAA is conducted in accordance with the Rules of Sport Arbitration and other regulations. Any appeal to the JSAA must be filed within six months from the date on which a party became aware of the decision by the sports organisation concerned, and the arbitral award rendered by the JSAA shall be final and binding upon both parties. The sports governance code for national federations requires that national federations establish an automatic acceptance clause regarding the jurisdiction of sports arbitration conducted by the JSAA.

## 6.3 Challenging Sports Governing Bodies

Sports governing bodies may dismiss or suspend persons, reduce subsidies or impose sanc-

tions in accordance with their own rules. Any person who wishes to challenge the decisions made by a sports organisation may file an objection under the appeal system established within that sports organisation. The proceedings will be in accordance with the rules established by such organisation.

See **6.2 ADR, Including Arbitration** for further information on the appeals system administered by the JSAA.

## 7. Employment

### 7.1 Sports-Related Contracts of Employment

There are several types of relationships between sports organisations and players. These relationships depend on the nature of the sport (eg, individual or team), the history of the sport, the degree of professionalisation of the sport, the level of popularity of the sport, the level of competition and the policies of the governing body. For example, players who engage in individual sports, such as tennis or golf, may conclude a contract with each sports organisation hosting each competition and receive remuneration from the organisation concerned. In contrast, players who engage in team sports, such as baseball, football or basketball, may receive remuneration from their club (or the company that owns the club).

### Player Contracts

In general, a “professional player contract” is considered to be a consignment contract, instead of an employment contract. That being said, for certain sports, such as rugby, in addition to having professional player contracts, “semi-professional contracts,” having the characteristics of a consignment contract and an employment contract, are sometimes concluded

depending on the degree of professionalisation of the sport and the skill and competence of the athletes. These semi-professional contracts may include provisions wherein each player of the club becomes an employee of the company owning the club and continues to work for the company after retirement.

In addition, there are some sports where professional athletes have different contracts, and some where all professional athletes enter into the same uniform player contracts. Uniform player contracts are particularly present in large-scale and established sports, such as baseball, football and basketball in Japan.

### Salary Caps and Transfer Restrictions

Salary caps have been introduced in some sports. For example, in the J. League, there are certain limitations on players' salaries, which are based on contract type. A salary cap of JPY6.7 million applies to "Professional A" contract players in their first year, but there is no cap from the second contract year onward. An annual salary cap of JPY4.6 million applies to "Professional B" and "Professional C" contract players.

The Japan Fair Trade Commission has officially announced that any rules that limit or restrict the transfer of athletes indefinitely may violate the Anti-monopoly Act. Therefore, sports organisations having rules limiting or restricting the transfer of athletes are required to verify the rationality and necessity of such rules.

### 7.2 Employer/Employee Rights

In general, a professional athlete does not fall under the category of a "worker" under the Labour Standards Law. A worker under the Labour Standards Law is "a person who is employed at a business and to whom wages are paid regardless of the type of occupation".

In addition, labour unions may be organised and collective bargaining may be sought against employers if an athlete is recognised as a "worker" under the separate Labour Union Law. Under the Labour Union Law, a worker is a "person living on wages, salaries or other equivalent income regardless of the kind of occupation". In fact, the Japan Professional Baseball Players Association and the Japan Pro-Footballers Association are recognised as labour unions under the Labour Union Law. Therefore, in these cases, relevant leagues and teams may not treat an athlete in a disadvantageous manner because of the activities of the athletes' union, and they may not reject the collective bargaining sought by the athletes' union without due cause.

### 7.3 Free Movement of Athletes

There is no Japanese law directly restricting the participation of foreign athletes. That said, all activities undertaken in Japan by foreigners seeking entrance to Japan must correspond to an authorised activity under one of the residence statuses provided in the Immigration Control and Refugee Recognition Act. In general, the activities of a professional athlete would fall under the residence status of "entertainer", and the activities of amateur athletes (when the company pays such athlete a monthly remuneration of JPY250,000 or more) fall under the residence status of "designated activities".

Certain leagues have established foreign player quotas, including the leagues for baseball, football, basketball and sumo wrestling. For example, in the J. League, each J1 club is currently allowed to include five "foreigners" in the starting line-up, with exemptions for players from "J. League partner countries", which are Thailand, Vietnam, Myanmar, Cambodia, Singapore, Indonesia and Malaysia.

## 8. Esports

### 8.1 Esports Overview

In Japan, esports have been attracting increasing attention in recent years. Many large companies have entered the market, which was estimated to be worth over JPY12.5 billion in 2022, compared to approximately JPY9.8 billion in 2021. It is expected to grow to approximately JPY16.2 billion in 2023 and approximately JPY21.7 billion in 2025. Many esports competitions have been held recently with increasing number of professional esports teams. Guidelines and manuals have been developed by the Japan Esports Union and several legal issues relating to esports competitions with prizes and/or participation fees have been clarified to certain extent.

Esports are characterised by the ability to compete remotely and can therefore hold competitions while maintaining physical distance, which makes them uniquely suited to an online format. Even during the COVID-19 pandemic, some events were held online without a reduction in their size. In addition, esports have been embraced by traditional sports players, as these players can easily play esports titles and organise esports competitions.

Recently, children have become interested in esports and the number of young esports players is increasing. As a result, it has become necessary to consider the effects of esports on children's health (eg, gaming disorders and gaming addiction) and to think of ways to improve the environment for young esports players. In March 2020, a local authority enacted Japan's first ordinance aimed at reducing internet and video game addiction among young people, which recommends that guardians ensure their children under the age of 18 play computer games for a maximum of 60 minutes per day

and turn their smartphones off by 9pm, in principle. In response, certain residents filed lawsuits alleging violations of human rights such as the freedom to play games and the right to enjoy esports under the Constitution of Japan. The District Court, however, dismissed their claims, finding that the ordinance did not impose any specific restrictions on their rights and did not violate the Constitution on the grounds that the act of enjoying esports could be said to be merely a hobby or a preference.

## 9. Women's Sport

### 9.1 Women's Sport Overview

One of the most noteworthy events demonstrating the recent development and growth of women's sport in Japan was the establishment of a women's professional football league, known as the WE League, in 2020. The first season of the WE League commenced in September 2021. As the name WE League comes from "Women's Empowerment" it is not only promoting women's football, but more generally upholding its mission to "promote a society which allows everyone with a diversity of dreams and ways of living to individually shine through women's football and other sports".

Furthermore, as described in 4.2 **Corporate Governance**, the Japan Sports Agency developed its sports governance code in 2019. This code requires each sports organisation to secure diversity in the composition of its officers and counsel. In particular, the code requires each sports organisation to set forth a target percentage of female officers and counsel which is to be no less than 40%, and to implement specific measures to achieve that target. Consequently, each sports organisation is now making efforts to comply with such requirements and the per-



centage of female officers and counsel within each sports organisation is steadily increasing. In particular, the percentage of female directors of all national federation increased from 15.6% in 2018 to 26.5% in 2022.

Another noteworthy activity in relation to women's sport Japan is a the "1252 Project", which is promoted by a general incorporated association "Never Stop Playing Sports", led by a number of famous and successful athletes, including Olympians. This project confronts the issue of "female athletes and periods" together with top athletes and experts in the fields of education and medicine. The name of the project comes from the fact that females are affected by periods for 12 weeks out of the total of 52 weeks each year.

In addition, in order to eradicate covert filming/photography of female athletes for the purpose of sexually harassing them, and to thereby ensure a safe environment in which athletes can focus on their performance, seven sports organising bodies, including the JOC, JSPO, JPSA and JSC, are working together to try to resolve this issue. From a legal aspect, covert filming/photography is currently regulated by ordinances set forth by each prefectural government. It is worth noting that Kyoto Prefecture has recently revised its ordinance to add a blanket restriction on "indecent words and actions". As a result, filming/photographing females' breasts and buttocks in a persistent manner will now be restricted, even if the targeted female is wearing clothes/uniform.

## 10. Non-fungible Tokens (NFTs)

### 10.1 Non-fungible Tokens (NFTs)

NFT markets have emerged and been developed around the world since 2021, with NFT businesses also commencing in various indus-

tries in Japan in the spring of 2021. Several NFT markets have also launched in Japan, with an initial surge in NFT issuances, particularly in the arts, gaming, and talent-related industries. In the field of sports, several professional baseball, soccer, and basketball leagues and teams have launched licensed games and trading card services, etc, using NFTs.

Some sports teams have also begun issuing "fan tokens" using blockchain technology as a new source of funding. Thus, NFTs have the potential to become a new revenue source for both teams and leagues.

However, as NFTs are traded on the market for an unspecified period of time by an unspecified number of people, rights clearance becomes an issue. Proper clearing and agreement must be reached among all parties involved, including players, teams, issuers, and purchasers, not to mention the handling of portrait rights and rights to team uniforms, how returns from primary and secondary distributors are distributed, and how the NFTs are to be used by purchasers.

In addition, the enthusiasm which was generated when NFTs first appeared has cooled in recent times, and we have gradually seen cases of NFT businesses being terminated due to failing to generate the revenue that was initially anticipated. In fact, a video collection service using NFTs for a professional baseball league and a game using player image NFTs for a professional soccer league have both announced that they will stop their services in 2024. It is now time to explore new ways to utilise NFTs in the sports industry, not only for trading cards and games but expanding into new areas. In fact, there is a case of a Japanese ski resort using NFTs for tickets, which can be seen as a pioneering use case for NFTs.

## 11. Regional Issues

### 11.1 Regional Issues Overview

The impact of COVID-19 on the sporting world, which forced the postponement of the Tokyo 2020 Games, has been significantly reduced in 2023, with sporting events and spectator levels returning to pre-COVID-19 conditions.

From 2022, the Sports Agency has been leading the way in promoting digital transformation (DX) in sports. The introduction of DX in the sports world is intended to make it possible to provide the public and society with a wide range of knowledge and opportunities related to various sports, and to increase the effectiveness of “playing”, “watching”, and “supporting” sports. Specifically, various changes are expected in the future of the sports environment, including the economic world, aiming to expand the way sports are implemented by using advanced technology and big data, and to create new business models using digital technology.

In Japan, major international sporting events, such as World Athletics Championships Tokyo 25 and the 20th Asian Games Aichi-Nagoya 2026/5th Asian Para Games Aichi-Nagoya 2026 are scheduled to be held after the Tokyo 2020 Games. Based on the experience of the Games, the “Project Team to Study the Governance Structure of Organising Committees for Large-Scale International and Domestic Games” established by the Japan Sports Agency and the JOC developed the “Guidelines for the Governance Structure of Organising Committees, etc for Major International or National Games” in March 2023. The guidelines indicate both how the governance structure of the organising committee should be developed and also how information disclosure should be regulated. It is expected that such guidelines will be respected

not only by the organising committees for future large-scale sports games to be held in Japan, but also for other events as well.

## 12. Artificial Intelligence (AI)

### 12.1 AI Overview

At present, there are no laws or regulations that cover matters around AI in Japan. Examples of the use of AI within the sports industry include analysis of players’ performance, development of data-driven game tactics and strategies, supporting player adjustments to various conditions, supporting referee’s decision-making and scoring, improvement of fan engagement (eg, enrichment of the fan’s viewing experience), analytical predictions of degree of congestion around the stadia, and dynamic ticket pricing.

Since the logical process underlying an AI’s results is not clear, and there is no guarantee of the correctness of such results, it is necessary to sort out to what extent the results generated by AI should be accepted/utilised and not to thoughtlessly overestimate the same, as this could be a risk.

In addition, any results generated by AI may infringe upon third-party copyrights, and this issue is currently being discussed and deliberated on by the relevant authorities together with lawyers and scholars in the field.

## 13. The Metaverse

### 13.1 Metaverse Overview

The metaverse is currently being practically applied in various areas across Japan, such as in live music concerts, e-commerce, housing exhibitions, new car release events, virtual

towns and medical operations. Some examples of the metaverse being utilised within the sports industry are:

- the Fukuoka Softbank Hawks (professional baseball team)'s service, which allows users to enjoy a variety of content at the team's home stadium, the PayPay Dome, by recreating it in the metaverse;
- public viewing of the Japan national soccer team's game on the metaverse hosted by KDDI during the COVID-19 pandemic; and
- the Hiroshima Toyo Carp (baseball team)'s app in which fans can watch the games and communicate with each other.

Metaverse use may carry the risk of infringing upon another party's rights, including copyrights, trade mark rights and portrait rights, and issues relating to unfair competition may also arise. Therefore, it is important to have proper rights clearance in place.

## Trends and Developments

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**Nagashima Ohno & Tsunematsu**

**Nagashima Ohno & Tsunematsu** was the first integrated, full-service law firm in Japan and is one of the foremost providers of international and commercial legal services based in Tokyo. The firm's overseas network includes offices in New York, Singapore, Bangkok, Ho Chi Minh City, Hanoi and Shanghai, and it has collaborative relationships with prominent local law firms throughout Asia and other regions. The more than 500 lawyers at the firm, including about 40 experienced attorneys from various jurisdictions outside Japan, work together in custom-

ised teams to provide clients with the expertise and experience specifically required for each client matter. The firm has lawyers who are well-versed in international sports business, and has successfully represented a wide variety of clients in the sports industry, including top international athletes and coaches, professional sports organisations, international and national federations, event organisers, sponsors and partners, media companies, content providers and tech service companies.

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## NAGASHIMA OHNO & TSUNEMATSU

### Stadium and Arena Reform in Japan and the Use of Public-Private Partnerships to Finance It

“Changing Sports to a Growth Industry” is one of the ten strategic public-private joint projects established by the Japanese cabinet under its “Japan Revitalisation Strategy 2016”. The Japanese government has positioned “stadium and arena reform” as one of the main pillars of this project, and is aiming to implement 20 stadium and arena reform projects by 2025. The latest “Third Sport Basic Plan” announced in 2022 by the Ministry of Education, Culture, Sports, Science and Technology, which sets guidelines for the development of sports in Japan for the next five years, also clearly states that the government will promote, with the help of the private sector, stadium and arena reform as a foundation for the growth of the sports industry and the revitalisation of local economies.

As the innovation and multi-functionalisation of sports facilities progress globally, the momentum to build state-of-the-art stadiums and arenas in Japan is stronger than ever, both in the public and private sectors. One of the latest examples is ES CON FIELD HOKKAIDO, which opened in 2023 as the home stadium of the Hokkaido Nippon-Ham Fighters, a Japanese

professional baseball club. The construction cost of the stadium was approximately JPY60 billion and was privately funded by the owner company of the club and its partner companies. The naming rights of the stadium were sold to ES-CON JAPAN Ltd., a real estate company, for more than JPY470 million annually, which is the highest ever in Japan.

### *Long-standing issues with sports facilities in Japan*

According to research conducted by the Japan Sports Agency in 2023, there are 211,300 sports facilities in total in Japan. Among these, approximately 130,000 are school and university facilities, and approximately 52,000 are other public facilities. On the other hand, there are only approximately 30,000 private facilities.

One of the issues with public sports facilities, which account for a large percentage of sports facilities in Japan, is that they tend to place too much emphasis on reducing the maintenance and repair costs and emphasising the public nature of the facilities, such as by promoting their use by local sports communities through discounts to local residents. As a result, the comfort and convenience of spectators has not been properly taken into consideration, and the use

of public sports facilities by professional sports teams is often inflexible due to strict rules and conflicts that arise due to the need to allow local communities to use the facilities. In addition, the profitability of public sports facilities is often not pursued because the public sector does not usually have sufficient management expertise. Furthermore, almost half of the facilities are more than 30 years old, and it is difficult for some local governments to rebuild or make major repairs with public funds only. To solve these issues, co-operation and partnership between the public and private sectors is a central concept in the stadium and arena reform plan.

### *Designated manager*

One of the types of public-private partnerships that has been established to properly manage sports facilities is the “designated manager” arrangement, which is currently used in many publicly owned sports facilities. Under the Local Autonomy Act, when a local government finds it necessary to do so to effectively achieve the purpose of a public facility, it can appoint a private company to manage the public facility as a designated manager. Professional sports teams can become the designated managers of their home stadiums or arenas and operate the facilities to maximise their business opportunities.

One issue regarding the designated manager arrangement is that there is little incentive for a designated manager to make an effort to improve the profitability of the facility if it only receives a fixed management fee from the local government, as opposed to an arrangement under which its income is tied to the revenue generated from the operation of the facility, such as ticket sales. In addition, the Local Autonomy Act requires designated managers’ management standards and the scope of their operations to be set out in advance in local ordinances, and this hinders designated managers, such as pro-

fessional sports teams, from investing in and flexibly operating the facilities, because of the practical difficulties of amending local ordinances in a timely manner to meet changes in the needs of the teams. Furthermore, although there is no statutory limit on the length of appointment of designated managers, appointments are commonly only for three to five years. This makes it difficult for the designated managers to make capital investments, and secure and train human resources, as there is no guarantee that they will be allowed to manage the facilities for a long period.

To solve these issues, some local governments allow the designated managers to receive revenue generated from the operation of the facilities, such as ticket sales. Some local governments also appoint designated managers for relatively long periods, such as ten years, to promote capital investment and sufficient training of human resources by designated managers.

### *Private finance initiatives*

Another type of arrangement that is used in public-private partnerships is the private finance initiative (PFI). A PFI is a business scheme in which a private operator designs, constructs, maintains, manages and operates a public facility under the Act on Promotion of Private Finance Initiative (the “PFI Act”). In a PFI, a public organisation, such as a local government, publicly announces the basic policy of the PFI project as the administrator of the public facility, and selects a private operator to execute the project based on such policy. The selected private operator operates the project in accordance with a contract made between the public organisation and the private operator. PFIs allow private operators to improve the profitability of facilities and the quality of services by taking advantage of private-sector know-how.

Broadly, PFIs can be separated into types based on either the timing of the facility ownership transfer or the method of payment involved.

Classification by timing of transfer of ownership of facility.

- The build, transfer and operate (BTO) method – the private operator designs and constructs the facility, transfers the ownership of the facility to the public organisation, and then maintains and operates the facility.
- The build, operate and transfer (BOT) method – the private operator designs, constructs, maintains and operates the facility while retaining ownership of the facility throughout the project period, and then transfers the ownership of the facility to the public organisation at the end of the project period.
- The build, operate and own (BOO) method – the private operator designs, constructs, maintains and operates the facility while retaining ownership of the facility, and does not transfer the ownership of the facility to the public organisation even after the project period ends.

Classification by method of payment of fees.

- Service fee type – the public organisation receives fees from users of the facility, and the private operator receives service fees from the public organisation.
- Financially independent type – the private operator does not receive service fees from the public organisation but receives usage fees directly from users of the facility.
- Mixed type – the private operator receives service fees from the public organisation and also receives usage fees directly from users of the facility.

Under the PFI Act, private operators can make proposals to public organisations to establish a policy for implementing PFI projects. This is beneficial to professional sports teams in that it might enable them to operate their home stadiums and arenas in accordance with their own terms and conditions. In fact, in 2019, a private company submitted a proposal for the restructuring, development and operation of a part of the Todoroki area in Kawasaki City. Kawasaki City subsequently decided to implement the project as a PFI project with a consortium led by the private company. Kawasaki Frontale, a football club in the Japan Professional Football League, is a member of the consortium, and DeNA Kawasaki Brave Thunders, a basketball club in the Japan Professional Basketball League, has committed to co-operate with the consortium.

## Concessions

Concessions are a type of PFI and were introduced pursuant to amendments to the PFI Act that were made in 2011. The public organisation retains ownership of the facility and gives the right to operate it to a private operator. The private operator pays a concession fee to the public sector as consideration, operates the facility and receives fees from users of the facility. In recent years, the Japanese government has been promoting concessions as a form of public-private partnership. The “Basic Policy on Economic and Fiscal Management and Reform 2022” that was established by the Japanese cabinet in 2022 clearly aims to increase concessions in stadium and arena projects. In addition, the “Action Plan for PPP/PFI Promotion” and “Guidelines for Utilisation of Concession for Stadiums and Arenas,” which were both established by the Cabinet Office in 2022 are key public documents to promote concession projects for stadiums and arenas.

From the public sector's perspective, receiving concession fees from the private operator while transferring the risks associated with the operation of the facility to the private operator is an attractive way to utilise public facilities. Soliciting investment and service improvement by private operators is also a positive aspect of concessions. From the perspective of private operators, concessions are often granted for a term of ten years or more with limited grounds on which the public organisation can revoke concession rights during the concession period, and this makes it easier for private operators, such as professional sports teams, to make capital investments and train human resources from a long-term perspective. It is also attractive for private operators to be able to set the amount of the fees to be collected from users of the facility as they wish, without having to obtain the public organisation's approval. Further, under the PFI Act, security rights can be created over concession rights, and this provides comfort for financial institutions that provide loans to private operators.

Ariake Arena is the first sports facility in Japan to be operated under a concession arrangement. The arena, owned by the Tokyo Prefecture, was constructed as a venue for the 2020 Tokyo Olympic and Paralympic Games, and a concession arrangement was set up for its maintenance, management and operation after the Games. The members of the consortium that won the bid include private companies that were experienced in the operation of sports facilities and the holding of events, such as live music concerts. The consortium is expected to utilise the know-how of these private companies in the maintenance, management and operation of the arena.

Since concessions include the right to maintain, manage and operate the facility, but not the right

to construct the facility, when a new stadium or arena is constructed and is expected to be operated under a concession arrangement, it may be useful to concurrently use other PFI methods for the design and construction phase of the stadium or arena. In recent years, the Aichi Prefecture has adopted a method that combines the concession method, which enables stable and relatively flexible project management in the long term, and another method of PFI in a new arena project. By combining these two methods in the same project, from the beginning, the arena is expected to be developed in a way that ensures a high degree of flexibility in its future operation. The project also aims to build a scheme that maximises the use of the private sector's expertise.

### *Other forms of public-private partnership*

Other forms of public-private partnership for publicly-owned sports facilities include the "management permit" arrangement under the Urban Parks Act and the use of fixed-term building lease contracts.

The management permit arrangement allows private operators to manage facilities located in urban parks with the permission of park managers. This arrangement can be useful when managing and operating publicly-owned sports facilities in urban parks under a public-private partnership. For example, Yokohama Stadium, the home stadium of Yokohama DeNA BayStars, a professional baseball club, is located in an urban park in Yokohama City called Yokohama Park, and is operated by the club under a management permit arrangement.

An example of a fixed-term building lease contract scheme is Ookini Arena Maishima, which is owned by Osaka City. The arena was previously managed and operated under a designated manager arrangement, but in 2015, it was



switched to a fixed-term building lease contract that was made with the private company that manages Osaka Evessa, a professional basketball team. As a result of this, the public organisation that owns the arena was no longer required to pay management fees to the private operator, and became able to receive rent pursuant to the fixed-term building lease contract, thereby reducing its financial burden, and enabling the professional sports team to manage the facility more flexibly.

### *Conclusion*

As described above, there are various methods of implementing public-private partnerships that involve publicly-owned sports facilities. It is not easy for professional sports teams to develop and own large-scale sports facilities by themselves, as it requires a large amount of funds and a large area of land. Thus, it is important for them to understand the framework of those public-private partnerships and to solicit public organisations to collaborate with them and to select an appropriate business method for publicly-owned sports facilities. Professional sports teams need to encourage public organisations to adopt a more long-term, stable and flexible method of implementing public-private partnerships in order to improve their profitability.

# MEXICO



## Law and Practice

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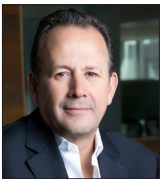
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**Galicia Abogados, S.C.** is a leading Mexican law firm with over 29 years of experience. The firm has a truly collaborative, people-oriented culture. It is renowned for its expertise in finance, energy and infrastructure, private equity, regulated industries, real estate and hospitality, and life sciences. The firm is unique among leading Mexican firms in providing comprehensive legal services that combine strong transactional and regulatory expertise with strategic capabilities in litigation and ESG. Sustainability is at the forefront of the agenda when advising clients. Diversity, equity, and inclusion (DEI) are

integral to the firm's core values. Thanks to the DEI-driven culture, almost half of the women at the firm have held partner, counsel, executive or management positions in the last five years. Galicia Abogados, S.C. is recognised as a leading firm in Mexico by Chambers and Partners and has received numerous Chambers and Partners awards, including Mexico Law Firm of the Year in 2013, 2015 and 2019; Latin America Law Firm of the Year in 2017; the Client Service Award in 2021 and 2022; and the Latin America Outstanding Contribution: Diversity & Inclusion Firm of the Year Award in 2022.

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## 1. Regulatory

### 1.1 Anti-doping

Doping in Mexico is not considered a criminal offence unlike in some other countries. However, it is still illegal and subject to the current anti-doping regulations.

The General Culture and Sports Law (*Ley General de Cultura Física y Deporte* or LGCFD) and its regulations outline the administrative sanctions for athletes who fail their anti-doping tests.

The National Anti-doping Committee (*Comité Nacional Antidopaje*) is responsible for promoting clean sports free of doping, in accordance with the principles of the Anti-Doping Code. Mexico is a signatory of the Anti-Doping Code through the Mexican Olympic Committee (*Comité Olímpico Mexicano*), which is responsible for accepting, implementing, and enforcing the principles of the code.

Anti-doping is mainly regulated through the Model Regulation for the National Anti-doping Organisation (*Norma Modelo para la Organización Nacional Antidopaje*), which incorporates the principles and standards of the World Anti-

Doping Code in the Mexican legal framework. This includes the WADA-prohibited substances list and its respective therapeutic use exceptions.

Noteworthy anti-doping cases in Mexico include the following:

- On 6 January 2023, Atlas midfield player Edyairth Ortega was removed from the team after failing an anti-doping test, which is currently being analysed by the World Anti-doping Agency.
- On 10 August 2019, Chivas player Víctor Guzmán was removed from the team after failing an anti-doping test, and as a result he missed the debut match in Liga MX.
- During the 2011 Golden Cup, Antônio Nelson Matias (aka Sinha), Guillermo Ochoa, Edgar Dueñas, Francisco Rodríguez and Christian Bermúdez tested positive for the banned substance Clenbuterol, and were removed from the tournament squad. However, all players were exonerated as FIFA determined that the accused had ingested the banned substance through contaminated meat.

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## 1.2 Integrity

The LGCFD outlines the criminal actions and administrative sanctions applicable to sporting misconduct for associations, federations, athletes, referees, club directors, club technical advisors, and even fans and attendees of sports events.

### Authorities in Mexico

Members of the National Sporting and Culture System (*Sistema Nacional de Cultura Física y Deporte*) in Mexico may also choose to adhere to the Good Government Code (*el Código de Buen Gobierno*), which is inspired by the recommendations of the Superior Sports Council (*Consejo Superior de Deportes*) (see 4.2 Corporate Governance).

## 1.3 Betting

Betting and gambling are generally illegal in Mexico, except for particular activities authorised by the Gambling and Raffles Bureau of the Mexican Ministry of the Interior (*Dirección General de Juegos y Sorteos de la Secretaría de Gobernación*).

According to the Federal Gaming and Raffles Law (*Ley Federal de Juegos y Sorteos*), sports are considered permitted gaming and/or betting activities in Mexico, as long as they are performed through licensed establishments. It is important to note that sports governing bodies in Mexico are not directly involved with betting-related offences or fines.

## 1.4 Disciplinary Proceedings

At the national level, the LGCFD regulates the sanctions for sports violations. The National Physical Culture and Sports Commission (*Comisión Nacional de Cultura Física y Deporte* or CONADE) is responsible for identifying and sanctioning the conduct regulated by this law,

and its decisions are based on the following criteria:

- the damages that have occurred or may occur;
- the intentionality of the action or omission constituting the offence;
- the seriousness of the offence; and
- the recidivism of the offender in accordance with Article 114 of the Regulations of the General Law of Physical Culture and Sports (*Reglamento a la Ley General de Cultura Física y Deporte*).

Article 152 of the LGCFD stipulates various administrative sanctions for athletes, depending on the severity of the offence. These sanctions include:

- a private or public warning;
- limitation, reduction or cancellation of economic support; or
- temporary or permanent suspension of their registration in the National System of Physical Culture and Sports (*Sistema Nacional de Cultura Física y Deporte* or SINADE).

In addition to this, Article 150 of the LGCFD mandates that sports organisations must include a section within their by-laws that specifies the corresponding offences and sanctions according to their sports discipline. This section must also detail the procedure for imposing such sanctions and the right to a hearing in favour of the alleged offender.

Mexican boxer Irma García, for example, was sanctioned by CONADE in 2018 for testing positive after an anti-doping test. CONADE suspended her for two years and stripped her of her gold medal from the 2018 Boxing National Games.

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## 2. Commercial Rights

### 2.1 Available Sports-Related Rights

In Mexico, there are no specific regulations pertaining to merchandising, hospitality, and ticketing, as these rights are primarily governed by commercial and civil law through private agreements between the parties involved.

According to Article 33 of the Law for the Celebration of Public Shows in Mexico City (*Ley para la Celebración de Espectáculos Públicos en la Ciudad de México*), the sale of tickets on public streets, altering prices offered at the box office, and ticket scalping are prohibited activities in Mexico. However, the battle against ticket scalping is not effectively tackled in the country. On 10 August 2022, a proposal was made to amend the Federal Consumer Protection Law (*Ley Federal de Protección al Consumidor* or LFPC) to include additional measures against the mass purchase of tickets for profit. This initiative remains pending as of today, but it is crucial to recognise that progress is being made daily in the fight against ticket scalping.

The Owners shall be responsible for overseeing compliance with the provisions of the previous paragraph, particularly in areas adjacent to the location where the public show in question is being held, and for promptly notifying the Mayor's Office when conduct contrary to said provision occurs, so that appropriate action may be taken in accordance with its powers in this matter.

Mexico City's Civic Culture Law (*Ley de Cultura Cívica de la Ciudad de México*) also includes penalties for ticket scalping and altering prices in line with Article 28 of the aforementioned law.

### 2.2 Sponsorship

It is very common for sponsors to want to place their brand in a space where it can be seen during the broadcast of sports events. They also engage in various activities to raise their profile and establish a presence at such events. Some sports broadcasts obviously attract far more viewers than others, which is why sports rights holders purchase the right to broadcast a particular event on their platform.

In Mexico, there is no specific legislation for sponsorship rights, but the general rules of the Federal Civil Code (*Código Civil Federal*) apply. Article 1839 of the Federal Civil Code states that “[t]he contracting parties may include such clauses as they deem convenient; but those which refer to essential requirements of the contract or are a consequence of its ordinary nature shall be deemed to be included even if they are not expressed unless the latter are waived in the cases and terms permitted by law.”

The sponsorship contract benefits both the sponsored party and the sponsor. The contract is personalised as it regulates specific rights of a particular individual or event in accordance with their characteristics and qualities, resulting in an agreement with rights and obligations for both parties.

It is common practice for sponsorship agreements to be time-limited, with the possibility of requesting extensions.

### 2.3 Broadcasting

In Mexico, broadcast television channels are no longer the sole option due to the presence of private broadcasting platforms for commercial use. These platforms generate revenue through subscriptions, either monthly or as part of a promotional package, which grant the right to



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access various content, including broadcasting rights for specific sporting events. Despite the subscription model, advertising remains a significant aspect of sports in Mexico, as it is one of the primary sources of income for sporting events.

Article 76 of Section I of the Federal Telecommunications and Broadcasting Law (*Ley Federal de Telecomunicaciones y Radiodifusión*) states the following:

“In accordance with its purposes, the sole concession shall be:

I. For commercial use: it confers the right to individuals or legal entities to provide public telecommunications and broadcasting services, for profit through a public telecommunications network.”

This category encompasses private broadcasting platforms that have the rights to broadcast sporting events for profit. Article 78 of the Federal Telecommunications and Broadcasting Law states the following:

“II. For the granting of telecommunications concessions, the Institute may take into account, among other factors:

- (a) The economic proposal;
- (b) Coverage, quality, and innovation;
- (c) Favouring lower prices for end-user services;
- (d) Prevention of ownership concentration that is contrary to the public interest;
- (e) Possible entry of new competitors into the market; and
- (f) Consistency with the concession programme.

III. For the granting of broadcasting concessions, the Institute will consider items a), b), d), e) and f). Additionally, it must ensure that the programming project aligns with the purposes for which the concession is requested, promotes and includes the broadcasting of national, regional, and local content, and complies with the applicable provisions.”

## 3. Sports Events

### 3.1 Relationships

Proprietary rights are prevalent in Mexican sports teams, particularly in sports such as football, motorsports, and baseball.

Generally, access and footage are regulated, and not everyone may access or obtain footage from a sports event. For these purposes, some companies and/or individuals acquire certain licensing rights to produce sporting material from specific events.

The LFPC grants certain rights to consumers, particularly in cases of event cancellation with refunds, among others.

Public sporting events are typically organised and managed jointly at a state level by private sector and state authorities for public safety and security matters.

### 3.2 Liability

The sports organisation’s primary responsibility is to provide a safe environment for participants. This entails having policies and standards that promote safe programmes in secure facilities, overseen by qualified personnel and trained volunteers.

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The sports organisation's second responsibility is to adequately care for and protect its assets and resources, including money, equipment, facilities, and intangible property such as data, corporate image, and marketing rights.

Failure to fulfil any of these responsibilities can result in unwanted consequences, some of which have legal implications:

- An injury to a participant can lead to a lawsuit that costs the organisation money and time, and potentially higher future insurance costs.
- Poor conflict management can lead to lawsuits that take an emotional toll on individuals, as well as cost money and time. Even if legal action does not result from poor decisions, these disputes will damage important relationships, exhaust volunteers and tarnish an organisation's goodwill and public image.
- Lastly, failing to take care of assets (whether tangible assets such as physical property or intangible assets such as intellectual property) is simply poor business management, which can, in turn, have detrimental financial and legal consequences.

Athletes cannot be held directly liable to spectators, except in cases of direct damage or injury.

Liability insurance policies are available for sports organisers in case they are held responsible for any unwanted consequences during their sporting events.

## 4. Corporate

### 4.1 Legal Sporting Structures

In general, sporting bodies possess distinct structures depending on their role in the sports industry. Sports clubs, sports associations and

sporting federations are typically incorporated as civil organisations (*Asociaciones Civiles*) to take advantage of tax benefits, issue deductible receipts to donors, and secure sponsorship in accordance with the LGCFD.

### 4.2 Corporate Governance

In Mexico, members of the National Sporting and Culture System (*Sistema Nacional de Cultura Física y Deporte*) may also opt to adhere to or subscribe to the Good Government Code (*el Código de Buen Gobierno*), which governs best practices in the industry to eradicate corruption for both private and public entities. This code establishes the main principles and minimum structures that sporting entities must implement to ensure transparency and good corporate governance.

The code outlines general principles of Mexican laws to avoid conflicts of interest that might be similar to the owner and directors' tests, requiring policies that guarantee the independence of the corporate bodies of sports entities.

However, the code does not prescribe a specific structure for corporate governance, meaning that sports entities can select the mechanisms to implement such principles through their by-laws, policies, and manuals.

This code only applies to and is implemented by parties adhering to the code, in addition to their by-laws, which are agreed upon by the companies' partners or shareholders.

Notwithstanding the above, the Civil Code and current tax legislation may impose certain structures for the incorporation of any company in Mexico and, in some cases, enable them to take advantage of certain tax benefits.

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Finally, for commercial companies, the Commercial Companies General Law (*Ley General de Sociedades Mercantiles*) and the Securities Market Law (*Ley del Mercado de Valores*) constitute the main legal framework for corporate governance in Mexico. However, sporting clubs are not usually incorporated as commercial companies, so such legal frameworks would not apply.

### 4.3 Funding of Sport

In Mexico, sport is funded privately through civil organisations, non-governmental entities, private companies, and publicly through government agencies, trusts, and scholarships to support athletes and clubs at both professional and amateur levels.

For example, in 2019, Claudia Sheinbaum (Mexico City's Head of Government) announced the creation of a trust for high-performing athletes and to foster community sports.

Another example of sports industry funding in Mexico is in 2021 when Mexico utilised FIFA funding to support the women's football league.

Notwithstanding the above, the sports industry suffered a significant financial blow in 2022 when the Federal Government withdrew its financing from international sporting events through the National Fund for the Promotion of Tourism (Fonatur). The current administration decided to commit these funds to the construction of the Tren Maya, an intercity railway line that will traverse the Yucatán Peninsula. Despite the cancellation of these funds, the country has managed to maintain these events through the involvement of private initiatives.

### 4.4 Recent Deals/Trends

The Major League Baseball World Tour 2023 includes a Mexico City series, sparking broadcasting agreements and investment in Mexico.

In 2022, Mexico's national football federation signed a record six-year contract with a New York-based marketing firm to promote its teams in the United States, encompassing both women's and men's teams. This deal could result in future opportunities to grow the sports market in Mexico with more broadcasting agreements, funding, or opportunities abroad for national athletes.

In 2022, Project Opera and Project Concerto deals concluded with the acquisition of Ocesa by Live Nation, which currently owns major event venues, ticket sellers, service providers, and promoting companies for major events in Mexico. This development has a significant impact on all sporting events throughout the country, considering the private investment of the foreign company in Mexico.

In 2026, Mexico's Azteca Stadium will host the opening game of the World Cup on 11 June in Mexico City.

## 5. Intellectual Property, Data and Data Protection

### 5.1 Trade Marks

The Federal Law on Protection of Industrial Property (*Ley Federal de Protección a la Propiedad Industrial* or LFPPI) regulates the Mexican Institute of Industrial Property (*Instituto Mexicano de la Propiedad Industrial* or IMPI), an independent agency of the Ministry of Economy responsible for the registration and administrative enforcement of trade marks and other industrial prop-

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erty rights. The registration process of a trade mark usually takes from six months to one year. Once obtained, the registration will be valid for ten years (renewable for periods of the same length).

In Mexico, registration is crucial for the enforcement of a trade mark, as under Mexican law and practice trade mark infringement actions can only be brought by holders/authorised licensees under trade mark registrations duly granted in Mexico by the IMPI. However, certain names and concepts cannot be registered as trade marks according to the LFPPI, including:

- three-dimensional shapes that are public property, have come into common use or lack originality, and the usual and everyday shapes of products;
- isolated letters, digits or colours, except for combined versions of such;
- translation into other languages, arbitrary spelling or artificial construction of non-registrable words;
- official symbols or emblems;
- medals or other prizes awarded at officially recognised exhibitions, fairs, congresses or cultural or sporting events;
- geographical names and maps, and also demonyms and adjectivals;
- names of towns or places;
- names, pseudonyms, signatures and portraits of any person, without the consent of such person or the relevant successors;
- titles of intellectual or artistic works, including publications, and the names of fictional or real characters, stage names and the names of performing groups, except where expressly authorised; and
- identical or confusingly similar marks to previously registered or filed trademarks, which

cover the same or similar products or services.

## 5.2 Copyright/Database Rights

The Federal Copyright Law (*Ley Federal del Derecho de Autor* or LFDA) governs the National Copyright Institute (*Instituto Nacional del Derecho de Autor* or INDAUTOR), an independent agency within the Ministry of Culture responsible for the administrative enforcement of copyright laws. INDAUTOR is authorised to conduct investigations, request inspections, enjoin copyright violations and impose sanctions. The LFDA grants an author both “moral” and “patrimonial” rights (moral rights recognise the author as the first and sole perpetual owner of the rights to their works; patrimonial rights allow the author to exclusively exploit the work or authorise others to do so). Penalties apply for violations of the LFDA. Moral rights are inalienable, do not expire, and may be inherited. Economic rights, on the other hand, grant the holder the exclusive right to exploit the relevant copyright, are transferable, and are valid for 100 years after the author’s death. In the case of joint works, protection is granted for the same period of time, starting from the death of the last surviving author.

Original works of authorship are protected even without registration or publication. Nevertheless, registration with INDAUTOR grants legal certainty and publicity to the copyrighted work. Therefore, although registration in Mexico is not mandatory, it is advisable to register copyrighted works as this grants pre-emptive rights in favour of its owner (meaning that the burden of proving ownership over the copyrighted work will shift to benefit the author, who will be the one stated on file unless proven otherwise).

The basic requirements for obtaining authors’ rights protection are outlined below:

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- Authors' rights protection in Mexico exists as a matter of law from the moment of fixation, which is defined as "[t]he incorporation of letters, signs, sounds, images, and other elements in which the work has been expressed, or the digital embodiment of said elements, which, in any form or material, including electronic means, permits its perception, reproduction, or any form of communication." The lack of formalities required to obtain authors' rights protection is expressly mentioned in the LFDA. This statute provides that the "[r]ecognition of authors' rights and neighbouring rights does not depend on prior registration nor on any document or formality".
- Only individuals can be granted authors' rights protection. The LFDA makes clear that legal entities (or corporations) may only be holders of authors' rights as agents or representatives of the original author and may only exploit or acquire the patrimonial rights of a work.
- Under the LFDA, a work must be original to qualify for authors' rights protection.
- In Mexico, computer software protection is limited to copyright protection under the LFDA (expressly excluding patent protection), which stipulates that it shall be equivalent to that of a literary work. In the case of computer programs, the economic rights concerning them, when created by one or more employees within a labour relationship, shall be attributed to the employer unless specified otherwise.

Data is not subject to intellectual property protection. Under the LFDA, databases that, as a consequence of their selection and arrangement, constitute intellectual creations are protected as compilations, enjoying the same protections as literary works for 100 years after the author's death. Creators of non-original databases enjoy

exclusivity rights for only five years. Holders of economic rights for both compilations and non-original databases have the exclusive right to reproduce, translate, adapt, distribute, and decompile the relevant compilation or database.

### 5.3 Image Rights and Other IP

Under the LFDA, the portrait of a person can only be used or published with her/his express consent, or with that of her/his representatives or the holders of the corresponding rights. The authorisation to use or publish the portrait may be revoked by the person who granted it, who, if applicable, will be liable for any damages that such revocation may cause. When, in exchange for payment, a person allows themselves to be photographed, it is presumed that they have granted the consent referred to in the previous paragraph and they will not have the right to revoke it, provided that it is used for the agreed purposes. Consent shall not be necessary in cases where the person is a minor part of a group or the photograph is taken in a public place and for informational or journalistic purposes. Image rights under Mexican law last for 50 years after the portrayed person's death.

While there is currently no regulation or case law related to passing-off doctrine, using someone's image for direct or indirect profit without their authorisation is considered an administrative infringement. This can result in fines of up to USD25,000, as well as potential claims for damages amounting to at least 40% of the gross sales of any infringing products or services.

### 5.4 Licensing

Applicants and holders of IP rights may assign and transfer their IP rights, wholly or in part, to another person (individual or entity). These transfers can be either through an assignment of rights (by donation, acquisition or sale of

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assets), a merger, or even through a swap contract. Licence agreements are also a common way to exploit IP rights, as they allow holders to grant third parties the right to use such rights in exchange for a royalty, while retaining full title and ownership.

Assignment of rights for works of authorship (copyrights) is capped at 15 years. The registered owner of a computer program also has the right to assign or licence it to any other individual or entity. The assignment of a computer program, as opposed to other copyrighted works, is not subject to any limitation of time. If any individual or entity other than the author or its successor(s), or authorised licensee, exploits such a computer program or database without authorisation, that individual or entity will be subject to the sanctions provided in the LFDA. Transfer or licence agreements are recorded before IMPI and INDAUTOR to be enforceable against third parties.

## 5.5 Sports Data

Sports data is generally limited for various reasons, including budget constraints. This attitude towards sports data is common and observed among sports teams, leagues and federations.

We consider that there are significant opportunities for numerous sports organisations to continuously harness sporting data. Such data may improve team performance, enhance financial situations if there is adequate exploitation in the country, and potentially generate royalties under certain circumstances.

## 5.6 Data Protection

In Mexico, the Federal Law for the Protection of Personal Data Held by Private Parties (*Ley Federal de Protección de Datos Personales en Posesión de los Particulares* or LFPDPPP)

governs the processing of personal data. This legislation applies only to data pertaining to individuals, including employees, customers, representatives or contractors, which is under the control of an individual or corporation (ie, a data controller), and it excludes data from corporations, as well as certain data from individuals acting in their capacity as representatives of their employer or professional services hirer (such as first name, surname, position held, and employment data including address, email address, telephone and fax numbers). Under the LFPDPPP, as with the GDPR, data controllers must process personal data in accordance with certain principles, including the principles of legality, consent, information, data quality, proportionality and liability.

Before processing personal data, data controllers must provide data subjects with a privacy notice containing, among other things:

- the personal data subject to processing;
- the purposes of processing;
- the mechanisms through which data subjects may access, rectify, cancel and oppose or limit the use and disclosure of their personal data (collectively “the ARCO Rights”);
- any potential transfers of data and the purpose of said transfers;
- the use of cookies, when applicable; and
- the means through which the data controller will notify any amendments to the privacy notice.

All processing of personal data is subject to data subjects’ consent, except in certain situations including when data is publicly available, when it is necessary for medical attention or when processing is permitted under applicable law. Consent may be tacit when general personal data (ie, name, email, telephone number, etc) is

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processed, but must be explicit (opt-in) when processing financial data (ie, credit card number, bank account statements) and in writing for sensitive data (ie, health condition, sexual preference and political affiliation). Data controllers and data processors must implement adequate physical, administrative and technological security measures to guarantee the integrity and confidentiality of the personal data. When a data controller not established in Mexico uses means located in the country, the LFPDPPP shall apply (unless such means are limited to transit purposes that do not involve personal data processing). Therefore, the relevant data controller might be required to comply with the obligations imposed by the LFPDPPP with respect to the processing of personal data and, consequently, the reporting of security breaches. More specifically, the LFPDPPP establishes the obligation for data controllers to immediately report data security breaches that materially affect the property or moral rights of data subjects, so that the latter can take appropriate action to defend their rights.

## 6. Dispute Resolution

### 6.1 National Court System

Unlike other countries, Mexico does not have specialised courts in sports law. Therefore, any dispute arising from the sports industry may be brought before the respective civil, commercial, intellectual property, administrative, labour or criminal courts, depending on the nature of the dispute. It is worth noting that Mexico does not have a jury system in place.

### 6.2 ADR (Including Arbitration)

The Ministry of Education (*Secretaría de Educación Pública*) operates its Appeal and Arbitration Sporting Centre (*Centro de Apelación*

*y Arbitraje del Deporte* or CAAD), which is the governmental body responsible for ruling on any disputes between athletes, federations, clubs and/or authorities. Additionally, the centre can act as an arbitration panel or even mediator in connection with sports-related legal disputes.

The LGCFD sets forth the rules for the mechanisms and appeal procedures to resolve sports-related disputes.

However, the CAAD's structure (as an administrative body) is not adequately equipped for resolving disputes. Article 4 of the Regulations for the Integration and Operation of the Sports Appeals and Arbitration Commission (*Reglamento para la Integración y Funcionamiento de la Comisión de Apelación y Arbitraje del Deporte*) establishes that the CAAD is composed of:

- Plenary/Board;
- General Secretariat;
- Administrative Co-ordination;
- Finance Sub-Directorate;
- Legal Sub-Directorate; and
- Projectionists, notifiers and other administrative and operational personnel.

In this regard, the law grants alternative dispute resolution powers to the CAAD; however, there are no formalised structures to adequately intervene in the resolution of sports-related disputes.

### 6.3 Challenging Sports Governing Bodies

CONADE has the power to enforce sports laws through administrative and criminal proceedings. Athletes, clubs, and other sporting entities may challenge CONADE's resolutions through an objection appeal (*recurso de inconformidad*) or appellate appeal (*recurso de apelación*).

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## 7. Employment

### 7.1 Sports-Related Contracts of Employment

#### Relationships Between Sports Organisations and Players

Relations between players and organisations are typically managed as labour relations under employment contracts. Central player contracts are usually executed for a fixed term, specific tournament, or season. The Mexican Federal Labour Law (*Ley Federal de Trabajo* or LFT) has a special chapter that regulates the work of professional athletes.

#### Salary Caps

Salary caps are uncommon in professional Mexican sports. A player's salary may depend on various factors, such as the category of events, the organisation, or the player's abilities. In fact, the LFT provides that different salaries among players performing the same activities are allowed.

#### Additional Considerations

Labour law stipulates that a professional player cannot be transferred from an organisation or club without their consent. Players are entitled to receive 25% of any transfer fee received by their employer.

Furthermore, professional players have additional legal obligations to the rest of regular employees, such as attending training sessions and events, complying with local, national, and international sports regulations, and refraining from mistreating referees, teammates, and opposing players. Non-compliance with these rules may be considered a breach of contract and a cause for termination of the labour relationship, without the payment of severance.

### 7.2 Employer/Employee Rights Governing Bodies

As a general rule set out in sports legislation, professional players must be granted the same employment benefits as any other employee, which include social security. However, the LFT stipulates that athletes must comply with local, national and international sports regulations.

Mexican sports governing bodies, such as the Mexican Football Association, have regulations requiring that labour disputes between players and their employers be resolved before each federation's conciliation and dispute resolution commissions. These commissions have the authority to issue binding resolutions for both players and clubs. Moreover, all professional federations must submit to the jurisdiction of CAAD and the Court of Arbitration for Sport (CAS) when it comes to appeals and arbitration proceedings related to sport-related disputes.

Players' rights to file claims before labour authorities cannot be waived. However, in practice, labour disputes are typically resolved before these governing bodies, in accordance with the regulations and standards of each federation.

A noteworthy example of a labour dispute occurred in 2019 when a claim against football team Club Tiburones Rojo Del Veracruz was filed by its players because the organisation owed them salaries. The dispute was resolved by the Mexican Football Association's Conciliation and Dispute Commission, which issued a resolution obliging the club to pay the players their outstanding wages. The team was also disaffiliated from the Mexican Football League due to this dispute.



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## 7.3 Free Movement of Athletes

### Number of Foreign Athletes

Sports governing bodies have the authority to limit the number of foreign players in a sport or a specific tournament according to each sport's regulations. For example, only nine foreign players may be enrolled in a football team in the Liga MX.

### Visa Restrictions

There are no significant visa restrictions that apply to athletes in Mexico. Like any other foreign employee, athletes must obtain a work visa issued by the immigration authorities.

## 8. Esports

### 8.1 Esports Overview

In Mexico, there is currently a lack of regulation for esports, which are primarily managed commercially by players and their teams, with limited sponsorship available. The market appears to be a niche with significant potential for growth in the coming years, as more events, tournaments, and platforms emerge.

The legal framework applicable to esports in Mexico primarily falls under the Civil Code, the Commerce Code, and Intellectual Property Law. The small market is increasingly influenced by streamers and the presence of companies such as Ubisoft and Bungie, which are promoting competitive events more frequently.

## 9. Women's Sport

### 9.1 Women's Sport Overview

The Olympic Charter states that the practice of sport is a human right. In 1994, 280 delegates from various countries, including Mexico, met in

London to sign the Brighton Declaration, aiming to address gender imbalance in sports.

Regarding economic resources, an example can be found in an interview by Grupo Expansión with Beatriz Ramos, General Director of Communication and Marketing of the Mexican Football Federation. She mentioned that half of the people in 2022 were unaware of MX Female League, the women's football league, even though it was established back in 2016. She also noted that since the creation of the league, the highest number of spectators at a match was over 5,000 people at the Estadio Universitario de Nuevo León for the Apertura 2022 final. This final broke audience records with 5.3 million viewers across all platforms, partly due to its simultaneous broadcast on free-to-air TV, pay TV, and a streaming platform.

To promote gender equality in sports, CONADE has implemented a multi-strategic programme since 2004 to raise awareness of the barriers faced by women in sports. Ana Gabriela Guevara Espinoza, General Director of CONADE, also created the Gender Unit. Since its creation, Mexico has seen an increase in the number of women participating in various sporting disciplines. This institution adheres to the rules set forth in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), signed by Mexico in 1979, which aims to protect women's rights to participate in recreational activities, sports, and all aspects of cultural life.

Women athletes in traditionally male-dominated sports, such as football, have gained more recognition in Mexico. Initiatives like the creation of the MX Female League have facilitated this progress, as women in Mexico are increasing-

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ly demanding equal conditions and pay in the world of sport.

## 10. Non-fungible Tokens (NFTs)

### 10.1 Non-fungible Tokens (NFTs)

The NFT market in Mexico is currently small but has significant growth potential, given the versatility of NFTs. They can represent various assets and rights across different sectors and can even be fractionalised into multiple NFTs.

New Mexican NFT creations are emerging, with local designers exploring themes related to sports, wrestling, football, and even mascots like Dr Simi, the mascot of Farmacias Similares, Mexico's largest drugstore chain. In 2022, for the Qatar World Cup, a series of NFTs, mainly featuring official jerseys, were launched in collaboration with the National Selection and Bitso and were sold using the Ethereum cryptocurrency.

Various football clubs and companies in Mexico are increasingly entering the NFT market, selling NFTs in public auctions to raise funds in exchange for certain rights or benefits. Notable examples include the NFT auctions of Necaxa, Chivas, and Farmacias Similares.

Although NFTs are not specifically regulated by Mexican law at the federal or state level, they are generally legal, with certain exceptions. If an NFT has an underlying asset or refers to a security, such as shares in a Mexican company, this may raise concerns from regulators. While there are no precedents, Mexican regulators have clearly stated that transactions involving NFTs representing securities are prohibited.

It is worth noting that receiving digital assets on behalf of third parties or clients may be consid-

ered deposit-taking activities, which are regulated by financial laws in Mexico. Therefore, while there is ample opportunity for growth, the NFT market also comes with certain restrictions and risks.

## 11. Regional Issues

### 11.1 Regional Issues Overview

There is no applicable information in this jurisdiction.

## 12. Artificial Intelligence (AI)

### 12.1 AI Overview

In Mexico, there are currently no laws or regulations governing the AI landscape. However, since mid-2023 several football clubs have been incorporating AI tools to analyse player data for matches; however, these tools do not yet include player performance or medical needs of the players, indicating that the AI tools in Mexico are still somewhat limited, even though Mexican football clubs are hiring foreign AI providers, including See U Play.

AI innovations also provide helpful insights for scouting, and video review, potentially providing a competitive edge against other clubs that are not yet utilising AI.

The legal implications of AI in sports is a rapidly evolving area. As AI technologies continue to advance, their integration into sports raises complex legal considerations, in particular regarding the use of AI in officiating and broadcasting, and the ethical and legal aspects surrounding data privacy, player consent, and fair competition.

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## 13. The Metaverse

### 13.1 Metaverse Overview

The Metaverse is still in its early stages in Mexico; however, there are many sporting institutions like Liga MX that are interested in the possibilities provided by a potential Metaverse. Many Mexican companies are developing their own virtual reality worlds that could allow a more lively interaction between people, regardless of their actual location.

Also, the Metaverse envisioned by the sporting community in Mexico will allow blockchain as a security measure to protect sensitive data, and will include NFTs and cryptocurrency transactions when fully developed.

## Trends and Developments

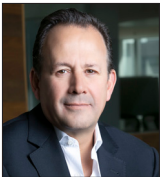
### Contributed by:

Humberto Perez Rocha, Ricardo Montejano  
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**Galicia Abogados, S.C.**

**Galicia Abogados, S.C.** is a leading Mexican law firm with over 29 years of experience. The firm has a truly collaborative, people-oriented culture. It is renowned for its expertise in finance, energy and infrastructure, private equity, regulated industries, real estate and hospitality, and life sciences. The firm is unique among leading Mexican firms in providing comprehensive legal services that combine strong transactional and regulatory expertise with strategic capabilities in litigation and ESG. Sustainability is at the forefront of the agenda when advising clients. Diversity, equity, and inclusion (DEI) are

integral to the firm's core values. Thanks to the DEI-driven culture, almost half of the women at the firm have held partner, counsel, executive or management positions in the last five years. Galicia Abogados, S.C. is recognised as a leading firm in Mexico by Chambers and Partners and has received numerous Chambers and Partners awards, including Mexico Law Firm of the Year in 2013, 2015 and 2019; Latin America Law Firm of the Year in 2017; the Client Service Award in 2021 and 2022; and the Latin America Outstanding Contribution: Diversity & Inclusion Firm of the Year Award in 2022.

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# MEXICO TRENDS AND DEVELOPMENTS

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## Recent Trends

### *EURO 2024*

In July 2023, a year from the start of the UEFA EURO 2024, the UEFA EURO 2024 Environmental, Social and Governance (ESG) strategy was published, aiming to set new standards in ESG for such events.

The UEFA EURO 2024 ESG strategy is an ambitious plan, structured around three core pillars, which encompass 11 areas of action. These areas are further supported by a variety of topics, targets, and key performance indicators, as outlined in the UEFA publication. Some of the most prominent features of this strategy include:

- reducing the impact on the environment, including in the areas of climate protection and waste management;
- investing in a climate fund dedicated to projects focused on mitigating unavoidable tournament-related emissions;
- preventing and fighting all forms of discrimination, and ensuring the rights of all are respected and protected;
- advocating for physical activity and offering healthy food and beverage options across stadiums and tournament venues;
- promoting solidarity within German and European society by fostering ties with and supporting grassroots football;
- adopting transparent, responsible and accountable forms of conduct in the event's operations;
- sharing knowledge and good practices in continuous discussions with stakeholders; and
- co-operating and innovating with host cities, partners and other football stakeholders to shape a sustainable legacy.

Several countries are going through major shifts regarding ESG and sustainability, trying to adapt legislation and regulations to foster a more sustainable future.

Several countries have publicly stated that in matters of sustainability, everyone is playing on the same team to ensure a better sustainable experience for fans around the world – a sentiment shared by many, from UEFA President Aleksander Čeferin, to tournament ambassadors, as well as team and club captains, who are now promoting these principles in the sporting community.

### *Paris Olympic and Paralympic Games Organising Committee 2024*

Embracing a philosophy of “do more with less”, the Paris 2024 Olympic and Paralympic Games Organising Committee is setting a new benchmark in hosting a major international sporting event with a deep commitment to social and environmental responsibility. Their approach involves building fewer venues, producing less equipment, and substantially decreasing the use of single-use plastics. This strategy is designed to lessen the carbon footprint and resource consumption of the Games, without compromising the experience for spectators.

The committee also proposes building better temporary infrastructure using cleaner energy sources, working in partnership with local businesses, while prioritising the use of existing temporary infrastructure. These efforts will be the result of a strategic alliance with the French Ministry of Sport, the Olympic and Paralympic Games and the National Olympic and Sports Committee, supported by the French Agency for Ecological Transition (ADEME), which will also be issuing practical guides and methods

for collective dynamics supporting environmental transformation.

### *Reopening of Bullfighting Arena in Mexico City*

In June 2022, a federal judge issued a suspension that forced the owners of la Plaza México to refrain from hosting bullfighting events, and to seek alternative sources of income. Since that day, la Plaza México has been closed for bullfighting events and has mostly hosted alternative sporting events.

After almost two years, on 6 December 2023, Mexico's Supreme Court revoked the suspension issued by the federal judge, allowing the reopening of la Plaza México for bullfighting events. The ruling hinged on the argument that the suspension imposed undue restrictions on the rights of those legally engaged in bullfighting-related activities.

However, after the first event, in January 2024, a local association filed a new constitutional trial (Amparo) and obtained another suspension by the end of the month. La Plaza México immediately filed a remedy that was listed for resolution on the same day, and got the second suspension revoked to continue bullfighting events, including the anniversary events on 4 and 5 February 2024.

Now that bullfighting has returned to Mexico City, la Plaza México continues to host other sporting events, and has become a unique blend of tradition and sports in Latin America.

In Mexico, only four states prohibit bullfighting in their legislation: Sonora, since 2013; Guerrero, which modified the law in 2014; Coahuila, in 2015 and finally, Quintana Roo, which banned the practice in 2019. The cultural shift that may

end bullfighting for good is still ongoing, and the following years will be key in determining the future of bullfighting in Mexico.

### *America Club and Play City Casinos spin-off*

On 26 January 2024, Televisa publicly announced that a date for the spin-off of part of its business had already been set, and that this would result in the creation of a new company to be listed on the Mexican Stock Exchange. This listing would be under the Las Águilas ticker symbol, which will include, among other businesses, PlayCity Casinos, America Football Club, and Azteca Stadium. The expected date for this spin-off is 20 February 2024. The proposed reorganisation will require regulatory approval from the National Banking and Sureties Commission (*Comisión Nacional Bancaria y de Valores*) in order to list the respective company's shares.

This strategy will allow a more strategic focus and flexibility for the group companies, simplifying Grupo Televisa's structure and leaving the telecommunication company as a separate business from the rest, which will also reduce corporate expenses, making both businesses more efficient.

As a result of the transaction, both the new and old companies will be able to focus on growing opportunities and have better access to capital, financing and investors.

This trend confirms the shifts that the sports industry has been undergoing in recent years, as the commercial model is changing to adopt emerging revenue streams, that will continue to transform the industry itself, including its regulations.

## Sports Technology

The world of sports is undergoing a seismic shift. Technology and AI are no longer on the sidelines; they are game changers, pushing the boundaries of what is possible in sports. From athletes training with cutting-edge wearables to fans enjoying immersive VR experiences, this tech revolution is transforming how we experience sports on every level.

In the pursuit of excellence and enhanced performance, athletes, coaches, teams, and sports enthusiasts are now embracing the latest technological advances.

The impact is multifaceted, affecting not just player performance but also how we watch, analyse, and experience sports in this digital age.

### *Wearable devices – athlete performance enhancement*

The creation, development and improvement of cutting-edge technological wearable devices has become a common practice, allowing athletes to push the boundaries of human potential even further. From elite competitions to amateur sports, these devices are transforming the landscape of sports training, strategy and athletes' well-being and lifestyle.

Athletes of all levels around the world are now wearing and adopting the use of technological devices that monitor and analyse a wide range of aspects of their performance, providing invaluable insights into their physical condition, rate of perceived exertion, and recovery. These technological devices vary from smartwatches, fitness trackers and even smart clothing equipped with sensors that enable real-time tracking of metrics such as heart rate, sleep patterns, recovery needs and rate of perceived exertion. These devices have not only empowered athletes to

optimise their training regimes but also allowed coaches and sports analytics experts to tailor training sessions and strategies to optimise the performance of each athlete.

GPS tracker vests have become an indispensable tool for coaches and sports analytics experts. These devices, which are usually embedded in athletes' jerseys or equipment, offer a granular understanding of player movements, effort and rate of perceived exertion during training sessions and matches. The resulting data has helped teams to redefine team tactics, assess player workload and minimise the risk of injuries through informed statistics analysis.

Another game-changing technology making waves is virtual reality (VR). Athletes are now immersing themselves in simulated environments that replicate real game scenarios, offering a unique training experience. These VR devices enhance cognitive skills, decision-making abilities and spatial awareness, providing athletes with new mental capabilities for when they step onto the playing field.

As technology continues to permeate the sports world, the performance of athletes is reaching unprecedented levels. The relationship between athletes and their high-tech devices is not just about winning, it is about evolving, pushing boundaries and setting new benchmarks for what athletes can achieve.

The widespread adoption of technologies, wearable devices and tracking systems has brought both benefits and challenges to the sports world. On the one hand, these innovations can enhance the accuracy of refereeing decisions and provide useful athlete performance analysis. However, issues related to privacy, data ownership, and the potential for technological malfunctions have



raised legal concerns. Athletes, teams, and governing bodies are navigating a complex landscape of rules and regulations to ensure ethical and legal usage of these devices. Additionally, cases of cheating or manipulation through technology may result in legal consequences, emphasising the need for comprehensive guidelines and enforcement mechanisms within the realm of sports and technology. It is expected that sports regulatory bodies and federations will issue some regulation or guidelines for the proper and legal use of wearable devices prior to some of the upcoming major sporting events.

## AI and Sports

In the sports world, a new technological revolution is taking place with the use of AI and data analytics. The integration of algorithms, data, AI and data analytics has become a game-changer, offering teams a competitive advantage and reshaping the landscape of sports performance analysis.

Athlete performance has reached new levels with the implementation of AI, which enables coaches and trainers to get immediate insights from vast data sets. This new information varies from monitoring player movement on the field to assessing physiological data. AI algorithms are used to identify patterns and trends that might not be identified by the human eye. This new data allows coaches to tailor training performance, prevent injuries and optimise strategies for peak performance.

Data analytics is also driving informed decision-making in sports, providing teams and athletes with a deep understanding of player performance, opponent strategies, and team dynamics. This data-based approach influences recruitment strategies and nutritional and lifestyle improvements.

AI adoption has grown rapidly, and teams and athletes now use it mainly for:

- talent identification and acquisition;
- game analytics;
- training and coaching;
- predictive modelling;
- strategy improvement;
- injury prevention;
- fan engagement; and
- immersive experiences.

The integration of AI has brought about significant improvements in decision-making accuracy during games and events. From video-assisted refereeing to predictive analysis of game situations, technology has played an important role in enhancing the fairness and integrity of sports.

The legal regulation and implication of AI in sports is a rapidly evolving territory. As AI technologies continue to advance, their integration into various facets of sports raises complex legal considerations. The use of AI in officiating and broadcasting, and even player performance analysis, raises questions about the ethical and legal aspects surrounding data privacy, player consent, and fair competition. Legal frameworks must adapt to address issues such as the ownership and sharing of AI-generated data, the potential for bias in algorithms, and the overall impact on the integrity of sports. Achieving a balance between embracing innovation and safeguarding the rights and fairness in sports is a multifaceted challenge that requires collaboration between sports organisations, legal experts, and technology developers.

## Technology and Fan Engagement

Fan engagement has become a crucial aspect for teams, leagues and federations. With the boom of virtual reality (VR) and cutting-edge

technology, sports organisations are exploring innovative ways to connect with their fan base, creating immersive experiences that go beyond the traditional way of experiencing sports.

VR has emerged as a game-changer in the sports industry, offering fans a front-row experience from their homes. VR allows fans to experience the excitement of live events as if they were physically present in the stadium. This is accomplished by creating immersive 360-degree views and real-time interaction with the surroundings, transforming the way fans can experience and live sports.

Live VR broadcasts enable fans to watch matches from different angles, providing a personalised viewing experience. Teams, leagues and federations are constantly investing in VR content production to deliver to their fans exclusive behind-the-scenes access, training sessions and interviews, creating a more intimate connection between fans and their favourite athletes.

Augmented reality (AR) has also seen strong growth in sports and fan engagement. AR applications allow fans to overlay digital information onto the real-world environment, bringing interactivity to a whole new level. Sports teams are using AR to create interactive match day experiences, allowing fans to access real-time players statistics, instant replays as well as interactive games through their smartphones or AR glasses.

VR and technology are not only transforming the at-home viewing experience but also revolutionising stadium engagement. Teams are implementing AR elements within stadiums to provide fans with interactive displays, gamified experiences, and real-time updates during matches. Additionally, intelligent stadiums are starting to emerge, which are equipped with advanced technology that enhance the overall fan experience, offering connectivity, interactive apps and personalised services.

The legal regulation and technological advancements in sports have significantly transformed the landscape of fan engagement. With the rise of digital platforms, social media, and immersive experiences, sports organisations are facing the challenge of balancing innovation with legal considerations. The integration of technologies such as AR, VR, and data analytics enhances the fan experience but also raises concerns about privacy, data security, and intellectual property rights. As regulatory frameworks evolve, sports entities navigate a complex terrain to ensure compliance while leveraging technology to create more interactive and personalised fan interactions. Striking the right balance between innovation and legal compliance is crucial for fostering a dynamic and engaging sports environment while safeguarding the rights and interests of all stakeholders.

# NEW ZEALAND



## Trends and Developments

### Contributed by:

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**Young Hunter Lawyers** is a well-established law firm in Christchurch New Zealand, operating throughout New Zealand in commercial and dispute resolution matters and with an established sports law practice over the past 25 years. It advises individuals and organisations across a broad spectrum of sports law areas. These have included hearings before the Sports Tribunal of New Zealand, the Court of Arbitration for Sports, and other New Zealand internal tribunals. Young Hunt Lawyers has considerable experience in the mediation of sports

disputes, and judicial review proceedings. It has acted and advised on anti-doping matters, player misconduct matters, eligibility and selection processes and disputes, employment (including player contracts and health and safety), investigations and reviews, risk management, sponsorship, intellectual property and brand protection, and governance and administration including constitutions, policies and rules in respect of regional sports trusts, national sporting organisations, charitable organisations, incorporated societies and clubs.

## Authors



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Ian has extensive experience in the mediation and arbitration of sporting disputes, as counsel and as an arbitrator. He is an arbitrator member of the CAS; a member of the World Athletics Disciplinary Tribunal; a member of the FIA Anti-Doping Committee; and a current member of the Sport Resolutions International Panel. Ian is a former President of ANZSLA (the Australian and New Zealand Sports Law Association), a former director of High Performance Sport New Zealand (HPSNZ) and is a current Director of Snow Sports New Zealand, among others.



**Michael Toomey** is a consultant in Young Hunter Lawyer's commercial team. He has broad commercial experience including in sports law, with particular interests in

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### Introduction

Sports law in New Zealand has become increasingly dynamic over recent years, a trend which reflects the breadth of sporting activity in New Zealand, at all levels, and both professional and amateur.

This article explores some of the key developments and trends which will continue to shape sports law in New Zealand in 2024 and beyond, in sports governance; integrity; and athlete rights.

### Governance

A current area of focus is the reform and strengthening of governance arrangements within sports organisations. These reforms follow global trends and calls for greater transparency and accountability, which has meant that sporting entities and bodies have been under significant pressure to improve and enhance their governance structures and performance.

In the New Zealand context, a range of different legal structures are used by amateur and professional sports to govern their activities.

These include the use of limited liability companies – particularly in professional sports, such as rugby, cricket, netball and other commercially focused sporting activity.

Some sports organisations are registered under the Charities Act 2005. However, charitable status requires an entity to have certain characteristics, most importantly the requirement that the objects of the charity be designed to benefit the community as a whole. This requirement has, for example, excluded organisations which have purposes of promoting competitive sport as an end in itself, and not as a means to advance valid charitable purposes.

However, the most commonly used legal entity for sports organisations is the incorporated society.

The Incorporated Societies Act 2022 replaced an Act which had been in place since 1908 and under which over 30,000 incorporated societies are registered. Registration provides many advantages, including separate legal personality, and limited liability. But there were problems with the 1908 Act. It did not set out the obligations of those who volunteer to run the incorporated societies or give sufficient guidance to them. It did not provide a framework for dispute resolution. And it failed to expressly set out what is legally necessary to run an incorporated society.

The purposes of the 2022 Act are, among other things, to “provide a legislative framework that promotes high-quality governance of societies”

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and to make the law of societies more accessible. The purposes of the Act also recognise the principles that:

- societies are organisations with members who have the primary responsibility for holding the society to account;
- societies should operate in a manner that promotes the trust and confidence of their members;
- societies are private bodies that should be self-governing in accordance with their constitutions, any by-laws, and their own tikanga, kawa, culture, and practice, and should be free from inappropriate government interference; and
- societies should not distribute profits or similar financial benefits to their members.

The overhaul of the Incorporated Societies Act reflects a reform process which began in 2010 and took 12 years to conclude, with the passing of the Act in April 2022. It also reflects a growing trend towards openness and transparency, with changes to the obligations resting upon officers and members of societies, mirroring the obligations in the Companies Act 1993, and the Trusts Act 2019.

Apart from the impetus towards governance improvements created by the new legislation, improvements in governance and “good governance” models have been driven by the government organisations that fund and support sport – in particular, Sport NZ, and its subsidiary, High Performance Sport New Zealand (HPSNZ), the organisation which leads the high performance system in New Zealand and is responsible for the allocation of resources to sports organisations and athletes. Both have, over many years, provided substantial guidance in this area, including best practice guides, template constitutions and

rules, and checklists for use and adoption by sports organisations.

Increasingly, government funding is contingent upon incorporated societies adopting best practice models as a condition of funding at all levels from community or grass roots sports levels, through to high performance.

There is a complex transitional process in place while incorporated societies re-register under the 2022 Act. The consequence of failure to re-register before 5 April 2026, is that societies cease to be incorporated, but may continue as unincorporated societies, without a separate legal personality, without any automatic right to assets, and with potential personal liability for members.

These consequences, which have been well signalled in advance, are the reasons why 2024 will see significant activity in this space, as societies and lawyers grapple with the new and significant additional mandatory requirements and accompanying processes.

Given that many incorporated societies are operating on constitutions which were written, in many cases, decades ago, and that most such societies are run entirely by volunteers, the re-registration process presents significant practical and logistical challenges to those societies, and to lawyers who will be required to assist them through the re-registration process.

## Integrity

In New Zealand, as around the world, maintaining integrity and combating corruption in sport has become a priority for policy makers, sports governing bodies and law enforcement agencies in New Zealand.

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In the wake of high-profile investigations into the culture of numerous high-performance sports including gymnastics, cycling, women's football, women's hockey, women's rugby and canoe racing, as well as reviews of the Sports Tribunal of New Zealand and of elite athletes' rights and welfare, Sport NZ commissioned a comprehensive Integrity Review which, in September 2019, identified the issues which had arisen across the sector as different elements of a core issue within the sector – integrity.

The Sport Integrity Review made 22 recommendations designed to address issues identified within the sport sector, including proposed interventions and improvements to institutions and mechanisms already in place, along with new initiatives.

An immediate outcome was the establishment of the Sport and Recreation Complaints and Mediation Service (SRCMS), a “complaints and mediation service for sport and recreation across Aotearoa New Zealand...”.

Sport NZ then appointed the Integrity Working Group (IWG), to consider the establishment of a government-funded sport integrity organisation, with the express purpose to “evaluate a range of options and recommend... what is considered the most appropriate institutional arrangement(s)/structure(s) to manage all the various integrity elements across the system and accommodate the 22 recommendations from the Integrity Review once implemented”.

These purposes required an assessment of the then current institutional arrangements involving Drug Free Sport NZ, the Sports Tribunal of New Zealand, the integrity functions within Sport NZ and independent services funded by Sport NZ, such as the SRCMS.

The IWG provided its final report to Sport NZ and the Minister for Sport and Recreation, in April 2022. It reported that, despite progress within the sector, there remained a lack of capability in relation to integrity issues, particularly in the reporting and management of complaints – where sport organisations, particularly smaller ones, were struggling to keep up with what had become an increasingly complex and multidimensional area. The report also identified a lack of independent oversight, a confusingly multilayered and inconsistent system, and very limited guidance in relation to competition manipulation.

The IWG's conclusions included the following.

- The current integrity system was not considered to be athlete and participant centred, with trust lacking.
- Existing initiatives were still in their infancy and with little to suggest that athletes and participants were at the centre of the system or involved in the design of education, training, and dispute resolution processes.
- The current integrity system was complex and lacked accessibility for participants, with resolution of integrity issues being entirely dependent on the effectiveness of the mechanisms adopted by the relevant sport organisation. The SRCMS, while offering some promise, was entirely consensual in nature, had no decision-making role, and no ability to enforce any outcomes.
- The current integrity system lacked clear integrity standards. While there had been good work done by Sport NZ in issuing useful resources, there was no obligation upon sports organisations to adopt them, and their take up had been mixed.
- There was also no national Code of Sport Integrity setting minimum standards, which

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had resulted in a lack of consistency across the whole sporting sector.

- Independence was lacking within the sector, where Sport NZ and HPSNZ had become involved – because of their close relationships with NSOs and organisations as funders and providers of other support. The IWG concluded that the perception of a lack of independence was in fact a lack of actual independence. Even the independence of the SRCMS was compromised by the fact that it was funded by, contracted to, and monitored by Sport NZ.
- The existing system had caused significant costs within the sector when integrity issues arose, both financial and human, because of the ineffectiveness of the current mechanisms. In the most serious of cases, major investigations and reviews had been required, at substantial cost to the sector, and personal harm having been experienced by survivors of integrity breaches.

The IWG considered three alternative options for the future. The option recommended, and adopted, was the creation of a new, standalone integrity entity, with responsibility for sport integrity and entirely independent of Sport NZ. The recommendations also included the introduction of a national Code of Sport Integrity, the adoption of competition manipulation standards, and the adoption of the Macolin Convention.

The upshot of the IWG report was the passing of the Integrity Sport and Recreation Act 2023, with a commencement date of 1 July 2024. The purpose of the Act is to establish the [Integrity Sport and Recreation] Commission which is to: “enhance integrity within sport and physical recreation to protect and promote the safety and well-being of participants and the fairness of competition:

- with respect to anti-doping, give effect to the World Anti-Doping Code in New Zealand in order to achieve the Code’s purposes of –
  - (a) protecting athletes’ fundamental right to participate in doping-free sport and in this way promote health, fairness, and equality for athletes worldwide; and
  - (b) ensuring harmonised, co-ordinated, and effective anti-doping programmes at an international and national level with regard to detection, deterrence, and prevention of doping.”

The objective of the Commission in performing its functions and exercising its powers under the Act, is to achieve the purposes set out above by:

- preventing and addressing threats to integrity in sport and organised physical recreation; and
- promoting participants’ trust and confidence and integrity within the sport and physical recreation sector.

The phrase “threat to integrity” has a statutory definition which includes manipulation or attempted manipulation of results or sporting competitions; sports betting activity connected with competition; manipulation or misuse of inside information; doping; racism, unlawful discrimination, bullying, violence, abuse, sexual misconduct, intimidation or harassment in sport, and corruption fraud and other forms of deception or breach of trust in sport. It also means a failure by an organisation in the sport and physical recreation sector to take reasonable measures to prevent such activities, and to safeguard children in sport.

The functions of the Commission are set out in Section 13 of the Act and are extensive – there are 18 specified functions, grouped under the

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headings of Promoting, advising, and leading on integrity in sport and recreation; Integrity Codes, investigations, discipline and dispute resolution; Sports Anti-Doping; and various general provisions.

An Establishment Board has been appointed to oversee the work of the Integrity Transition Programme (ITP), in preparation for the commencement date of the Commission, 1 July 2024, which includes the Integrity Code of Conduct which is due to be published in draft for feedback and testing by the sports sector in March 2024, with a projected release date in mid to late 2024.

There is no doubt that the passage of the Integrity Sport and Recreation Act 2023 and the establishment of the Commission represents the most significant overhaul and resetting of New Zealand's sporting legal landscape since, at least, the passage of the Sports Anti-Doping Act 2006.

## Athlete Rights

This area has become a hot topic in the New Zealand sports law landscape in 2024 and promises to be so for some time to come.

As noted above, numerous reviews into high-performance sport in different sports have led to an increased level of awareness of issues such as athlete welfare and wellbeing, and mental health. While the integrity reforms discussed above deal with some of those matters, there are other aspects of "athlete rights" that are of particular interest and current focus.

This includes the legal status of athletes, and whether they are to be regarded as employees or not. These issues are closely linked with the ability of athletes to negotiate for better levels of protection than they are perceived to have at present, and greater levels of compensation.

Generally, New Zealand athletes are employees, or independent contractors, or may be "grant recipients". The nature of the relationship depends on the particular sport. For example, all professional rugby players in New Zealand are employees of New Zealand Rugby, the national NSO, and New Zealand's professional cricketers operate on an independent contractor-type model. In both cases, a collective approach to bargaining of the terms of engagement and employment is taken. Similar arrangements apply to professional netballers.

Whether an athlete is an employee, or an independent contractor, or a grant recipient has significant implications for that athlete's rights. Employers and employees in New Zealand are subject to the Employment Relations Act 2000 (ERA), together with other statutes such as the Holidays Act 1993, the Health and Safety at Work Act 2015, and the Human Rights Act 1993.

Employees benefit from the ERA's prescription of minimum wages, holiday leave requirements, the right to additional remuneration for those who work on holidays, and the obligation to ensure that employment agreements are recorded in writing. Save for initial employment trial periods, and unless the employment arrangement is subject to a fixed term – for good reason – an employee's employment can only be terminated for cause, for reasons of redundancy or medical incapacity, and in all cases only after a fair process has been followed by the employer before determining an employee's employment.

The most significant development in this area has been a decision of the Employment Relations Authority (Authority) in favour of a union of high-performance rowers and cyclists called "The Athletes' Co-operative" (TAC), in its claim against HPSNZ, in January 2024.



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The problem addressed by the Authority's decision arose when the TAC sought to commence bargaining with HPSNZ for a collective agreement covering elite athletes who are members of the TAC. The TAC had given HPSNZ a notice to initiate bargaining in accordance with the ERA and contended that HPSNZ was obliged to engage with it in collective bargaining, in good faith. None of the TAC's athlete members are, or were previously, employed by HPSNZ within the coverage the TAC proposed.

HPSNZ declined to engage in collective bargaining on the basis that it did not employ athletes, including the members of the TAC. It maintained that it could not be required to do so and that there was no relevant employment relationship. It also contended that the members of the TAC were not employees.

The dispute was – ostensibly – not about status or whether the members of the TAC were employees of HPSNZ rather than independent contractors. The Authority described the contention as being “whether the TAC had validly initiated bargaining, and whether HPSNZ was obliged to engage in good faith bargaining despite the fact that it did not employ nor did it intend to employ any of the TAC's members”.

The Authority accepted that none of the athlete members of the TAC were “currently” employees of HPSNZ and that the provision of funding, and the terms and conditions of that funding, were not matters in relation to which there was any direct employment or contractual relationship as between those athletes and HPSNZ. Rather, the athletes had direct relationships with their respective NSOs, Cycling New Zealand and Rowing New Zealand.

The TAC submitted that as a union – required by the ERA – it had initiated bargaining with a single employer, namely HPSNZ. It contended that the Act applied and that HPSNZ was obliged to enter into bargaining for a collective agreement.

HPSNZ submitted that the Act contemplated collective bargaining occurring between an employer and a union representing employees of that employer and that because the TAC athletes were not employees, and the establishment of an employment relationship was a precondition to the collective bargaining regime, the Authority had no jurisdiction to direct that collective bargaining be engaged upon.

The Authority recorded that “HPSNZ has no intention of employing the members of TAC... There is no mutual intention as to future employment, nor does HPSNZ wish to employ any persons within the proposed coverage of the notice issued”.

Despite these matters, the Authority concluded that a notice to initiate collective bargaining did not require that a proposed employer have employees within the proposed coverage area identified in notice. Nor was it necessary that a union seeking to initiate bargaining have members that were, at the time of the initiation of that process, employees of the employer. On that basis, the Authority found that a valid notice initiating bargaining had been given by the TAC, and that HPSNZ was obliged to comply with the provisions of the Act concerning such bargaining.

It is hardly surprising that HPSNZ was concerned at the outcome and has appealed to the Employment Court. In announcing the decision to appeal, HPSNZ noted the wider implications of the ruling which had been instrumental in driv-

ing the decision to appeal. It noted the concern that the Authority ruling “could have implications not just for HPSNZ, but other government agencies and businesses across New Zealand”, and that the appeal has the support of the Minister for Sport – who is no doubt concerned not only about the implications for HPSNZ, but about the implications for other government sectors – and the sports sector generally.

Although the outcome does not directly confirm that the TAC athletes are employees of HPSNZ, it appears that, in substance, the Authority’s view is that they must be regarded as at least potential employees – despite HPSNZ’s insistence that it has no intention of employing the athletes.

However, the conclusion that an employer which has not previously employed, which does not currently employ, and which has no intention of employing members of the union may be required to enter into collective bargaining such that there is a “problem arising out of an employment relationship” – the pre-requisite to jurisdiction – appears to require a particularly difficult and strained analysis.

So too the analysis that concludes that an expansive meaning of “employee” is supported by the statutory context – a conclusion which means that the term includes persons who are not employees and who the employer has not does not intend to employ.

The implications of a conclusion that athletes are potentially employees of HPSNZ – or, alternatively, the NSOs through which they are engaged and through which they receive grant funding – are significant. In addition, whilst the stated objective of the TAC is to address a perception that the HPSNZ funding model does not give

sufficient priority to issues such as athlete well-being and compensation, the broader implications of a determination that an employment relationship exists may have been overlooked.

For example, if athletes are employees, one consequence would be the greater level of control by their employer than they would have as independent contractors or grant recipients. Such control could extend to such things as the athletes’ activities, their training regimes, the choice of equipment they use, the leave they can take, coaching arrangements, athletes’ relationship with social media, and the ability of athletes to conduct business enterprises on their own account.

Media reports indicate that the TAC is focusing on the extent of remuneration/compensation received by athletes, and clearly the implications for the sector are significant enough in this respect. All stakeholders recognise that in the current climate the available funding for sport is capped and is unlikely to increase in the short to medium term. It is obvious that what the TAC seeks is the reallocation of government funding to the athletes, at the expense of the funding agency – HPSNZ – or the NSO which has responsibility for administering the funding received from the government via HPSNZ, and maintaining the high-performance system in New Zealand.

The case has parallels with the UK decision of *Varnish v British Cycling*. Ms Varnish brought a claim against British Cycling and UK Sport, contending that she was an employee. The Employment Tribunal ruled that relationship between Ms Varnish and British Cycling and UK Sport was more akin to that of a student receiving a grant than of an employer/employee arrangement. That decision was upheld on appeal.

# NEW ZEALAND TRENDS AND DEVELOPMENTS

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Contributed by: Ian Hunt and Michael Toomey, **Young Hunter Lawyers**

While direct comparisons between New Zealand and UK employment law cannot easily be made given the different statutory and legal context, it is clear that the ERA decision has thrown the proverbial cat among the pigeons, and the outcome of the appeal will be closely watched. The prospect of further appeals cannot be discounted.

## Conclusion

The above summary by no means reflects all the trends or developments about which comment could be made. What can be said, without doubt, is that the New Zealand sports law landscape is incredibly diverse, active and interesting, and promises to be so throughout 2024 and beyond.

# PHILIPPINES



## Law and Practice

### Contributed by:

Ignatius Michael Ingles

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Contributed by: Ignatius Michael Ingles, The Law Firm of Ingles Laurel Calderon

The Law Firm of Ingles Laurel Calderon (ILC Law) is a nine-member boutique law firm located in the business district of Makati City, Philippines. Established in 1992, ILC Law specialises in corporate, labour, litigation, tax, and foreign investments law. Its dedicated sports law practice focuses on athlete representation and protection, trade mark and brand protection, labour and immigration law compliance, and advisory work for sports associations and federations. Its managing partner, Enrico Ingles, sits as the only Filipino arbitrator of the Court of

Arbitration for Sport. ILC Law's sports law team has recently helped protect national and professional athletes comply with immigration and labour laws, represented professional football players in front of FIFA, and advised national athletes on anti-doping matters. ILC Law currently serves as the legal counsel of FIBA in the Philippines for trade mark registration and protection, and also crafted and implemented the Rights Protection Program for the recently concluded 2023 FIBA Basketball World Cup.

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## 1. Regulatory

### 1.1 Anti-doping

Doping is not a criminal offence in the Philippines. However, the use of WADA-designated Substances of Abuse is a criminal offence. The possession, use, sale, and trafficking of cocaine, heroin, methylenedioxymethamphetamine, and tetrahydrocannabinol (cannabis/marijuana) are prohibited under the Comprehensive Dangerous Drugs Act of the Philippines. On a related matter, doping may be argued to be prohibited under Presidential Decree No 483, which criminalises any fraudulent, deceitful, unfair or dishonest means, method, or practice employed to influence the result of any sports contest – as doping can be seen as a dishonest means or method employed to influence the result of any sports contest.

The National Anti-Doping Organisation in the Philippines is the Philippine National Anti-Doping Organization (PHI-NADO). WADA has accredited the PHI-NADO. The purpose of PHI-NADO is to implement the WADA Code and spread awareness about anti-doping, which it does through educational programmes and coordinating with the local national sports associations (NSAs). The Philippine Olympic Committee and the NSAs are responsible for implementing anti-doping measures in their respective sports.

Some recent noteworthy anti-doping cases involved basketball player Kiefer Ravena during a FIBA Basketball tournament in 2018 (methyhexaneamine, DMBA, and higenamine), cyclist Ariana Dormitorio during the Asian Games in 2023 (erythropoietin), and basketball player Justin Brownlee (Carboxy-THC).

### 1.2 Integrity

Presidential Decree No 483 (P.D. 483) criminalises game-fixing, match-fixing, point-shaving, and game machination in the Philippines. These offences are punishable with imprisonment for a period of up to six years. The sports governing bodies or the NSAs deal with integrity issues through their own internal disciplinary mechanisms and sanctions, without any prejudice to criminal prosecution by the state under P.D. 483. The Games and Amusements Board (GAB) is also tasked to investigate game-fixing in professional sports and mete out sanctions against erring players and coaches.

Recent cases involve alleged game-fixing by players of a collegiate basketball team in 2019 and players in a professional basketball tournament in 2021. After investigation, the GAB revoked the professional basketball licences of the players involved in the 2021 incident.

### 1.3 Betting

Sports betting is legal in the Philippines, as long as the sports betting activity or operation is registered with the Philippine Amusement and Gaming Corporation (PAGCOR). Established by Presidential Decree No 1869, as amended by Republic Act No 9487, PAGCOR is a government-owned and controlled corporation which regulates gambling and sports betting. Would-be sports betting operators must secure a PAGCOR-licence before starting their activities. Those who operate without a licence face sanctions and penalties.

The sports governing bodies or the national sports associations typically follow the betting-related rules and guidelines of their respective international federations as regards betting-related offences of athletes. At the time of writing, there have not been any noteworthy bet-

ting cases in sports involving athletes and their sports governing body.

## 1.4 Disciplinary Proceedings

The sports governing bodies or the national sports associations have their own respective internal mechanisms and procedures for disciplinary proceedings against their athletes. The rules and guidelines governing these internal procedures are often difficult to secure, even by the athletes facing disciplinary sanctions themselves. However, as a minimum requirement by law, due process must be afforded the athlete in the form of a written notice and the chance to be heard. Unfortunately, there have been cases where an athlete has been penalised even without the benefit of a notice and a chance to be heard.

## 2. Commercial Rights

### 2.1 Available Sports-Related Rights

Notable sports-related commercial rights include the usual rights under the Intellectual Property Code such as trade mark and copyright. On the tax side, athletes have a right to tax exemption for any prizes and awards they win in local and international sports tournaments sanctioned by their respective sports organisations. National athletes are also granted commercial benefits in the form of 20% discounts on purchases of food, sports equipment, and medicine. This 20% discount extends to lodging and transportation expenses.

Rights-holders and event organisers have commercial rights over merchandising and ticketing profits as well. To protect rights-holders from the proliferation of counterfeit merchandise and the unauthorised use of marks, the Intellectual Property Code and local ordinances provide remedies

ranging from criminal conviction to immediate forfeiture of goods. And while there is no national law that deals with and punishes ticket touts and scalping, cities that normally host sports events have their own local ordinances that criminalise ticket touting and scalping. These ordinances were used to great effect during the FIBA 2023 Basketball World Cup to combat the illegal sale of tickets.

### 2.2 Sponsorship

One major way sponsors use sports is to own a team in a professional league, such as the Philippine Basketball Association (PBA) and the Premier Volleyball League (PVL), which adopt a franchise system. For example, teams in the PBA include the Rain or Shine Elastopainters, named after a brand of paint, and the Barangay Ginebra San Miguel, named after a brand of gin. In the PVL, there are teams named after a chocolate snack, Choco Mucho Flying Titans, and after a media company, Signal HD Spikers. Brands, therefore, get exposure through team names, logo exposure in arenas, and logo placement on jerseys.

Companies, both those that own teams in professional leagues and those that do not, use athletes as models for their print advert materials and as influencers. For example, former professional basketball player Chris Tiu has been posed for skincare adverts, and current professional player Kiefer Ravena is the brand ambassador of the Jordan Brand in Asia. As influencers, professional athletes such as Alyssa Valdez and Jia Morado de Guzman and national athletes like Junna Tsukii and Maxine Esteban are examples of influencers who use Instagram to promote brands they partner with.

Professional and collegiate athletes in the Philippines are treated as celebrities. Therefore,



product launches, store openings, and other launches will have athletes in their guest list.

Sports rights-holders attract sponsor investments through airtime adverts during live events, in-arena bannerings and advertising, logo placements in pre-game and game uniforms, and sponsorship of key events, highlights, and promotions during the games.

Typical sponsorship contracts will include the terms and obligations on social media engagement (what to post, when to post, how frequently to post, etc), the schedule of photo or video shoots, the compensation, and a lockdown/non-compete exclusivity clause that may last two to three years beyond the term of the contract.

## 2.3 Broadcasting

In the Philippines, broadcasting rights for the televised leagues are awarded through bidding. A memorandum of agreement contains how much the deal is worth, how many years or seasons the contract would be live for, whether the broadcasting rights are exclusive, among other terms. Once broadcasting rights are granted to a media company, they have the right to choose which of the TV or radio stations the company owns will air the games. Media companies may also bundle these rights with the right to stream through YouTube or other online streaming services.

For leagues with multiple sports, such as the popular University Athletics Association of the Philippines (UAAP), the media company also decides which sports to air. The media company must also promote the games they air.

One way in which sports organisations attract broadcaster investment is through the marketing of rivalry games. For example, demand for tickets for rivalry games in the UAAP is higher

than for any other game, even if the game is not a play-off or final four match. Likewise, viewership on TV is also higher when the game is between rivals Ateneo de Manila University and De La Salle University. This is the same case for Philippine Basketball Association games. The rivalry between Magnolia and Ginebra has been known as Manila Classico, and games featuring these teams generate a higher viewership than other regular games.

Lastly, sports associations may also allow the filming of athletes off the court for certain promotional videos, such as clips of them saying “only here on [insert media company name]” or through clips of them answering short personal questions for the entertainment of fans, to be aired during commercial breaks.

According to the Intellectual Property Code, broadcasts are protected by copyright law for a period of 20 years from the date the broadcast. Rights of broadcasting organisations can be found in Chapter XIV of the Code.

## 3. Sports Events

### 3.1 Relationships

Sports events are typically organised and managed by a professional league (such as the Philippine Basketball Association) or a college or university athletic association (such as the University Athletics Association of the Philippines). For international events in the Philippines, these are normally organised by a local organising committee set up for that particular event (such as the South East Asian Games) or the sports governing body for that specific sport.

As rights-holders, these sports organisers have proprietary rights in sports events, based on both copyright and trade mark laws under the

Intellectual Property Code of the Philippines. Sports organisers control these rights through the enforcement of contracts and with the help of local law enforcement. Organisers also co-ordinate with social media platforms to immediately remove illegal live streaming of sports events. Commercial participation in such events is typically governed by sponsorship, licensing, and broadcasting contracts. Hence, the Civil Code of the Philippines also serves as supplemental legislation because of the chain of contracts which generally characterise sports events.

### 3.2 Liability

Duty of care in sports is governed by provisions of the Philippine Civil Code, particularly Article 2176 which obligates one who causes damage to another, either by fault or negligence, to pay for the damage done, and Article 1173 which sets the general duty of care as the diligence of a good father. Sports event organisers fall under this general standard of care. When minors are involved, the standard is stricter, as seen in a Supreme Court case wherein a sports organiser was held liable for the death of a teenage mini-marathon runner. Clear and unequivocal waivers may be used to limit liability, but liability arising from intentional harm, future fraud, and gross negligence may not be excluded. The assumption of risk doctrine may also be invoked by sports organisers, as long as the risks are reasonably foreseeable. To keep sporting events safe, organisers often contract security agencies. For larger events, organisers co-ordinate with the local government and local police to maintain peace and order both inside and outside the venues.

The same duty of care applies to athletes' liability to spectators. However, athletes are protected if the injury to a spectator is a foreseeable event, based on the assumption of risk. Hence,

an athlete may be held liable for spectator injury if these were intentional (as was seen in a basketball incident where an athlete attacked a fan).

## 4. Corporate

### 4.1 Legal Sporting Structures

Professional sports clubs are commonly stock corporations registered with the Securities and Exchange Commission (SEC). As professional sports clubs exist with a view for profit, stock corporations are adopted as these allow the owners to earn profits via dividends as stockholders. Adopting a different structure would prevent investors from receiving dividends.

Non-professional sports clubs and sports governing bodies or national sports associations (NSAs) are commonly non-stock non-profit corporations, also registered with the SEC. Non-stock corporations are established and operated by their members who are not allowed to receive any dividends. As amateur clubs exist more to develop camaraderie among their members and not to earn profits, these clubs adopt a non-stock non-profit structure which has tax benefits. Sports governing bodies or NSAs are required to adopt a non-stock non-profit structure in order to apply for membership and recognition with both the Philippine Olympic Committee and Philippine Sports Commission.

### 4.2 Corporate Governance

There are no sport-specific corporate governance codes, except the provisions found in Republic Act No 6847 which created the Philippine Sports Commission. These provisions govern the sports governing bodies or national sports associations (NSAs) of each sport. Among these are the requirements that these NSAs are autonomous and that no team, school,

club, organisation or entity shall be admitted as a voting member of the NSA unless 60% of the athletes comprising the team school, club, organisation or entity are Filipino citizens.

Owner and directors' tests, such as tests on self-dealing directors, may be found in the general law on corporations (The Revised Corporation Code) which apply to these sports governing bodies or NSAs.

### 4.3 Funding of Sport

The PSC is the main governmental funding source for Philippine sports. Congress allocates PSC's funds from the Annual General Appropriations Act. To augment the budget allocated by Congress, the PSC also receives a legally mandated portion of the gross income of PAGCOR, the government-owned and controlled corporation in charge of regulating gambling and casinos. PSC's funds are pooled into the National Sports Development Fund (NSDF), which finances the sports events in which the Philippines participates.

As for distributing these funds to the NSAs, the PSC has discretion to decide which NSA receives a portion of the NSDF and how much. Factors that influence the distribution and allocation of funds include the prestige of the sport and also the chances of securing Olympic medals for a particular sport. Once the NSA receives the money, it is then held accountable by the PSC and is subject to audit.

### 4.4 Recent Deals/Trends

Private funds being allocated for sports is a recent trend in the Philippines to help boost sports. Seeing the success of corporate sponsorships and investments in sports, both for-profit companies and non-profit foundations have funnelled funds to various sports. The range

of private involvement in Philippine sports varies, from top companies owning sports teams for marketing purposes to multi-million-peso sponsorships of top college and professional athletes to sports foundations (organised by wealthy philanthropists and businessmen) spending on Olympic athletes. Private funding has been considered one of the reasons why the Philippines has improved in international sports, as government funding is normally unsustainable to finance prolonged training and development required by high-level international athletes.

## 5. Intellectual Property, Data and Data Protection

### 5.1 Trade Marks

Trade marks may be registered online with the Intellectual Property Office (IPO). Trade mark owners only get the rights in a mark through registration. Generally, only a registered trade mark is protected by law. Hence, once registered, third parties may not use it without the owner's consent.

The law prohibits the registration of a mark which:

- is immoral, deceptive, or scandalous;
- disparages or falsely suggests a connection with a person (whether living or dead), institutions, beliefs, or national symbols;
- brings contempt or disrepute to another;
- has the Philippine flag (or flag of another country) on it;
- includes the name, portrait, or signature of a living person, except with their consent;
- uses the portrait of a dead president, during the life of their spouse, except with the latter's consent;

- is misleading as to nature, quality, characteristic, or geographical origin;
- is generic or simply identifies the product it will be used on;
- is simply descriptive of the product; or
- is contrary to public order or morals.

Notable registered sports trade marks involve collegiate teams, where the numerous marks associated to a college or university are all registered with the IPO, and the respective brands of sports teams and the companies which own them.

## 5.2 Copyright/Database Rights

The law on copyright is found in Part IV of the Intellectual Property Code of the Philippines (“the Code”). Under the Code, literary and artistic works are considered original intellectual creations, and are protected from the moment of their creation. Common defences include fair use, the fact that the work is a non-copyrighable work, private reproduction in a single copy for use in study or research, and personal use.

As regards the existence of a legal database right, the law on copyright protects the creation of such database, as it might be considered as derivative work or as a compilation of data and other materials. To establish such claim, it must be proven that the process of creating the database (such as the selection, coordination, and arrangement of the compiled information and data) is original to the maker.

## 5.3 Image Rights and Other IP

Image rights in the Philippines generally equate to the right of publicity; a right recognised in the United States. While the right of publicity has yet to explicitly find its way into Philippine jurisprudence or in express provisions of law, aggrieved parties may use Section 169.1 of the Intellectual

Property Code for relief. This section refers to false designations of origin or false description or representation.

World Champion Boxer Manny Pacquiao has used Section 169.1 to sue a videoke product-maker for making use of his name image without his consent. He won the case in the Court of Appeals in 2009, with the Court of Appeals stating that Pacquiao’s image should be protected from unauthorised endorsements under Section 169.1.

## 5.4 Licensing

Sports bodies and athletes monetise their IP and image rights through both licensing and endorsement contracts. In terms of assigning IP rights to third parties, the assignment must be in writing and filed in the Intellectual Property Office. If the assignment is not registered, it is void as to third parties; however, it is still binding between the parties.

## 5.5 Sports Data

The use of athlete and spectator data is not as extensive in the Philippines as compared to other jurisdictions. However, there has been a push to commercialise and monetise sports data in live sports events to further enhance fan experience. The recent legalisation of sports betting has opened up opportunities for monetising sports data, but it still has to comply with any data-sharing regulations under the Data Privacy Act of 2012.

## 5.6 Data Protection

The Data Privacy Act of 2012 (DPA) is the main law which governs data protection in the Philippines. It is supplemented by the Implementing Rules and Regulations (IRR) issued by the National Privacy Commission (NPC), which is the government agency tasked to implement

the DPA. The DPA protects any personal information, defined as any information in which the identity of an individual is apparent or can be reasonably and directly ascertained by the entity holding the information, or when put together with other information would directly and certainly identify an individual.

The DPA protects sensitive information to a greater and stricter extent. Sensitive personal information pertains to a person's race, education, criminal record, and religion, among others. Processing and sharing of sensitive personal information requires prior consent at all times. This is an important consideration in collegiate sports, especially as student-athletes must give their prior consent to the sharing of their transcript of records when they transfer from one school to another.

## 6. Dispute Resolution

### 6.1 National Court System

The role of national courts in dealing with sports disputes differs on the type of sports dispute.

For field-of-play calls, the Supreme Court, in a 1995 case, has set a policy of refusing to resolve field-of-play call disputes. Unless there is an arbitrary and brazen violation of sports rules by the sports officials and organisers, national courts will leave things as they are.

For sports disputes involving the application of local laws within the sports context, parties may immediately seek redress in the national court system, unless there is a provision between the parties mandating recourse through alternative modes of dispute resolution or via the internal processes of a sports governing body. Exam-

ples of these sports disputes are those involving sports injuries and employment claims.

For sports disputes involving the interpretation of the rules of sports governing bodies (such as on eligibility matters and disciplinary issues), parties must generally exhaust the internal mechanisms of the sports governing body before national courts can be tasked to rule on the matter. This is based on the analogous doctrine of exhaustion of administrative remedies. However, if there is a human rights element or the act of the sports governing body is oppressive or arbitrary, immediate recourse to a local court may be possible.

### 6.2 ADR (Including Arbitration)

The Philippines currently does not have any set mode of dispute resolution specific for sports. Parties who wish to use alternative modes of dispute resolution (ADR) may do so under the aegis of Republic Act No 9285, the ADR Act of the Philippines. Private dispute resolution providers, such as the Philippine Dispute Resolution Centre, Inc, have drafted their own sports mediation and arbitration rules, which may be used by sports governing bodies if they choose to do so.

### 6.3 Challenging Sports Governing Bodies

Sports governing bodies may enforce sanctions on their players and members either through their own internal rules (as long as minimum due process requirements of prior notice and the chance to be heard are met) or through the court system (with contract law principles and remedies as a basis).

Parties who wish to challenge decisions of governing bodies will have to exhaust the internal mechanisms first. This will generally involve requesting reconsideration of an assailed deci-

sion and thereafter elevating it to the international federation with jurisdiction over the local governing body. If the decision is wantonly arbitrary and oppressive, local courts may also be an avenue of redress.

## 7. Employment

### 7.1 Sports-Related Contracts of Employment

The governing law for labour and employment in the Philippines is the Labor Code of the Philippines. To determine whether an employer-employee relationship exists between parties, the Supreme Court has repeatedly used the fourfold test employing the four elements: first, the selection and engagement of the employee; second, the payment of wages; third, the power of dismissal over the employee; and fourth, the employer's power to control the employee's conduct. Despite the presence of all four elements in the relationship between professional teams and their players, and a 2012 Supreme Court case involving the illegal dismissal of a player-employee by his professional team, professional sports teams have still treated their players as mere independent contractors in practice. This is in clear contrast to what is written in the law, the nature of the relationship, and the international trend that considers players employees of their professional teams. This leads to both tax and employment law complications, and removes protections that should have been afforded a player if they were to be considered an employee in the first place.

The Philippine Basketball Association, the longest-running professional basketball league in the Philippines, employs both a standard contract for its players and a salary cap. Other professional leagues leave it up to their teams to have their own contracts with their players.

### 7.2 Employer/Employee Rights

Despite the employer-employee nature of the relationship between the professional team and its players, legal precedence, and international trend, the rules on employer-employee rights are rarely applied or followed in professional leagues in the Philippines. Hence, professional athletes who are illegally removed or dismissed from their teams are often left in quandary on the proper legal course of action to take. Should they file with the Labour Arbiter (as employees) or with the regular courts (as independent contractors)? While the answer should be with the Labour Arbiter, the practice in the Philippines of considering professional athletes as mere independent contractors has given erring employees the additional defence of lack of jurisdiction whenever a case is filed with the Labour Arbiter.

A noteworthy case is the 2012 Supreme Court Case of *Negros Slasher, Inc v Alvin Teng*, where the Supreme Court ruled that a player-employee was illegally dismissed by his professional basketball team after he had refused to play a championship game. The Supreme Court recognised the player as an employee and that his dismissal was too harsh a penalty.

### 7.3 Free Movement of Athletes

There are no specific laws capping the number of foreign athletes competing in a sport tournament or competition, as these "caps" are normally set by the league or association conducting the competition. There are, however, visa, immigration, and labour law considerations that foreign athletes or coaches must consider before playing or working in the Philippines. In a nutshell, foreign athletes or coaches must secure a pre-arranged employee commercial visa (9g visa) and an alien employment permit (AEP) before working in the Philippines.

One of the substantial conditions to secure an AEP is the prior determination of the non-availability of a person in the Philippines who is competent, able, and willing to perform the same services which the foreigner will be engaged to do. This was the main issue in a 1991 Supreme Court case involving an American basketball coach employed by a professional basketball team. In that case, the Supreme Court ended up cancelling the American's AEP after it found that there were other local coaches who could have done the same job.

## 8. Esports

### 8.1 Esports Overview

Esports is extremely popular in the Philippines. Its rise from the early 2000s to the present has been exponential. It is predominantly mobile-based, with the Mobile Legends: Bang Bang being the most popular game with more than 25 million monthly active users in 2020. Professional esports players ranked within the world's top 20 for aggregate earnings in 2023, bolstered by a popularity brought forth by successes in international esports events (both held in the Philippines and abroad) and the near-celebrity status of players and gaming influencers sponsored by gaming companies. Notable deals include the launch of a gaming platform by esports gaming company Mineski Global on apps such as GCash, LYKA, and Viber. The popularity of esports has also spilled into the academe, with the Lyceum of the Philippines University recently launching a four-year undergraduate course specialising in Esports Management and Game Design and Development.

## 9. Women's Sport

### 9.1 Women's Sport Overview

The Philippine sports landscape has historically been male-dominated and basketball-centric. However, recent trends have swayed the pendulum towards women's sports. Collegiate and professional women's volleyball bring in crowds of nearly 25,000 to big games, which is significantly more than the attendance numbers of a typical professional basketball game. The success of women athletes on the international stage has also shone a well-deserved light on women's sports. Olympic Gold Medalist Hidilyn Diaz leveraged her success by starting a weightlifting academy for children and signing lucrative endorsement deals. The Philippine National Women's Football Team made waves in its first appearance in the FIFA World Cup, with their success pushing for more grassroots development throughout the country, and also earning them an enviable kit deal with Adidas. International athletes such as Maxine Esteban and Junna Tsukii have also found success in other sports such as fencing and karate.

The Philippine Sports Commission has since created a Gender and Development Program to hold tournaments, and share updates and news about women's sports and female athletes. Other private organisations, such as Girls Got Game, have also popped up to bolster different sports in the youth sector.

## 10. Non-fungible Tokens (NFTs)

### 10.1 Non-fungible Tokens (NFTs)

A few athletes ventured into the world of NFTs in late 2020 and 2021 to start various NFT projects. A notable athlete actually started an NFT project to help fund a certain national team, but this was later scrapped after negotiations

fell through and the NFT bubble popped in late 2021. While the NFT market in the sports sector in the Philippines is currently and virtually non-existent, there are still opportunities for those who seek an alternate mode of funding and are brave enough to face the risks of such a volatile environment.

## 11. Regional Issues

### 11.1 Regional Issues Overview

Player movement outside the Philippines has been a recent trend and issue. Filipino professional basketball, football, and volleyball players have found employment in neighbouring countries such as Korea, Japan, and Thailand. This comes with legal requirements that foreign team-employers have found surprising and burdensome.

Every Filipino worker who has employment abroad, such as a professional Filipino athlete of a team abroad, must register as an overseas foreign worker with the Department of Migrant Workers (DMW) before leaving the Philippines. The law requires mandatory registration in order to protect Filipinos working abroad and to prevent human trafficking. Upon registration, the DMW will issue the OFW an overseas employment certificate (OEC). Without the OEC, there is a risk that the airport immigration officials will not allow the players to leave the Philippines.

## 12. Artificial Intelligence (AI)

### 12.1 AI Overview

There is no key AI legislation and regulations in the Philippines. At most, general laws concerning intellectual property and data protection will apply to AI in the field of sports. Both intellectual property and data protection will also be

most affected by AI, as there are inherent risks of infringement and leaks of personal data with AI and sports.

## 13. The Metaverse

### 13.1 Metaverse Overview

The Philippines has always been a country known for its internet use and social media engagement, with data showing that sponsors can reach up to 69% of the country's population through Facebook and nearly 50% through YouTube. Hence, the application and use of the Metaverse in Philippine sports holds great opportunities for sports stakeholders, despite the adoption rate of the Metaverse still remaining quite low compared to traditional internet use.

Stakeholders can use the Metaverse to further boost individual and corporate brands, enhance the reputation of personal coaches and athletes through more access to highlight videos and teaching seminars, and give sponsors a new platform to increase brand recognition.

However, those who wish to make the jump into the Metaverse must recognise the natural risks of data breaches and manipulation, intellectual property violations, and the proliferation of bots and troll accounts. Enforcing the underlying laws will also be an issue, given the already ephemeral nature of the internet and the easy anonymity that comes with it.



## Trends and Developments

### Contributed by:

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The Law Firm of Ingles Laurel Calderon (ILC Law) is a nine-member boutique law firm located in the business district of Makati City, Philippines. Established in 1992, ILC Law specialises in corporate, labour, litigation, tax, and foreign investments law. Its dedicated sports law practice focuses on athlete representation and protection, trade mark and brand protection, labour and immigration law compliance, and advisory work for sports associations and federations. Its managing partner, Enrico Ingles, sits as the only Filipino arbitrator of the Court of

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Preventing match-fixing and a focus on protecting women from abuse and misogyny have been the two key recent developments in Philippine sports law.

### Match-Fixing and Presidential Decree No 483

The country's fight against match-fixing and maintaining sports integrity is a key development in Philippine sports. Recent years have seen an uptick in high-profile controversies involving match-fixing allegations in basketball, including a 2019 incident involving 17 basketball players in the Maharlika Pilipinas Basketball League (MPBL), a professional league founded by world boxing champion and former Senator Manny Pacquiao. The match-fixing incident led to investigations and cases filed with the Department of Justice, which in turn found probable cause against the basketball players. In early 2024, the MPBL and the former Senator announced that it has imposed a lifetime ban on 47 of its players and officials.

In 2023, news broke out that a Singaporean had allegedly tried to manipulate games in the Philippine Basketball Association (PBA) finals in 2018. The news grabbed the headlines, as the

PBA is the longest-running professional basketball league in Asia. The PBA has since vowed to investigate the allegations and crack down on match-fixing.

Match-fixing has also marred collegiate basketball. In 2019, reports surfaced that Centro Escolar University had removed seven players from its line-up due to suspicions of match-fixing.

These incidents have cast a light on Presidential Decree No 483, a 1974 law which criminalises game-fixing, point-shaving, and game-machination.

Under the law, game-fixing is “any arrangement, combination, scheme or agreement by which the result of any game, races or sports contests shall be predicted and/or known other than the basis of the honest playing skill or ability of the players or participants”.

Point-shaving is defined similarly, except that the intent of the schemes is deliberately to limit points or scores to influence the result of games and matches – presumably to influence betting lines.

Game-machination provides a catch-all provision, where the use of any other fraudulent, deceitful, or unfair means to influence the results of games, races, or sports contests is considered a crime.

While PD 483's definitions of the criminal acts remain robust, its penalties have been subject to criticism. As written, anyone convicted under PD 483 can face jail sentences of up to six years. While this is still a hefty penalty to reckon with, interest groups have advocated for Congress to finally amend the 50-year-old law – especially since the corresponding penal fine remains PHP2,000, a large enough amount in the 1970s, but a far cry from criminal deterrence in the 2020s.

There have been talks of finally amending the law, with a 2019 House Bill proposing an increase of the jail time to 12 years and imposing on professional athletes a perpetual disqualification from any sport – but this bill has languished within the halls of Congress.

In 2024, on top of the news of the lifetime bans on the MPBL players, sports-minded senators have authored separate bills to increase the penalties of game-fixing, with a bill imposing a fine of up to PHP50 million. Whether these bills will become laws remains to be seen.

## Violence Against Women and Their Children and the Safe Sports Act

The rise of violence against women and their children in professional sports, in the Philippine Basketball Association in particular, has been a disturbing and alarming trend in the Philippines. According to journalist and podcast host Ceej Tantengco, at least one publicised case of domestic abuse by a professional basketball player in the PBA has been reported from 2018 to 2022.

Violence against women in the PBA made headlines in 2022 when former reporter Agatha Uvero alleged that her then husband and PBA player Paul Desiderio physically abused her multiple times – some of which happened while she was two months pregnant with their child.

This trend has cast a light on the legal repercussions of violence and abuse under Republic Act No 9262 or the Anti-Violence Against Women and Their Children Act, better known as VAWC. Enacted in 2004 to combat violence committed against women and their children in the context of romantic relationships, the law criminalises any act or series of acts committed by any person against the following:

- a woman who is his wife or former wife;
- a woman with whom the person has or had a sexual or dating relationship;
- a woman with whom he has a common child; or
- a woman's child, whether legitimate or illegitimate.

The Supreme Court case has even extended the application of VAWC to protect women in illicit relationships.

In the early years of the law, a man who had beaten his wife had questioned its constitutionality before the Supreme Court, claiming it was a violation of the equal protection clause because it only protected women and their children. The Supreme Court disagreed with the argument and stated that the VAWC was constitutional because of the historically unequal power dynamics between men and women, and because women were more susceptible to abuse than men.

VAWC's scope of protection is broad. It prohibits not only physical violence, but also sexual, psychological, and even economic abuse.

Sexual violence refers to any act which is sexual in nature committed against a woman or her child, such as rape, acts of lasciviousness, and sexual harassment. It also includes making demeaning sexual remarks, forcing one to watch pornography, and even compelling one's wife to live in the same house as a mistress or lover.

Psychological violence is anything that causes mental or emotional suffering to the victim. Public ridicule, damage to property, and repeated marital infidelity are all statutory examples of psychological violence. Even abusing a victim's pet is considered psychological abuse.

Economic violence occurs when the perpetrator makes or attempts to make a woman financially dependent. Examples are withdrawal or non-payment of financial support, preventing a woman from engaging in any legitimate profession or job, destroying household property, and controlling the resources of the family to the extent of the loss of financial independence.

Those convicted of VAWC face jail time of up to 12 years.

Aside from full-blown judicial proceedings for the conviction of perpetrators, protection orders can also be issued to protect victims from further harm. These protection orders come in either barangay protection orders (BPOs) issued by the local government, or temporary or permanent protection orders (TPOs or PPOs) issued by the courts. The issuance of these protection orders is summary in nature. Despite due process arguments against these protection orders, the Supreme Court has declared their consti-

tutionality on the basis of the public policy to protect women and children.

However, despite VAWC as a viable remedy, it seems there are no convictions under the law yet for the basketball players involved in the publicised reports from 2018 to 2022, as news reports are silent on the matter. The same could be said on the issuance of permanent protection orders. As for sanctions imposed by the league itself on the players, there have been no publicised reports, whether from the news or the PBA.

Athlete protection from abuse has also placed the spotlight on the Safe Spaces Act of 2018 (SSA). The SSA was enacted to prevent and criminalise gender-based sexual harassment in four distinct spaces: public places, training settings, the workplace, and, interestingly, online.

To start, the SSA has defined "gender" as "a set of socially ascribed characteristics, norms, roles, attitudes, values and expectations identifying the social behaviour of men and women, and the relations between them". It also defines "gender identity or expression as the "personal sense of identity as characterised, among others, by manner of clothing, inclinations, and behaviour in relation to masculine or feminine conventions". "Gender identity" also includes a definition of transgender as a person who "may have a male or female identity with physiological characteristics of the opposite sex".

Gender-based sexual harassment in streets and public spaces include "any unwanted and uninvited sexual actions or remarks against any person regardless of the motive for committing such action or remarks that occur in public spaces such as streets, buildings, schools, churches, restaurants, public washrooms, and even in public utility vehicles". Public spaces

include sports stadia, arenas, and other sports venues. Criminal acts in these public spaces cover stalking and catcalling, which has been defined to include wolf-whistling, and misogynistic and homophobic slurs. Hence, athletes are now protected from abusive spectators who hurl abusive invectives during games.

In the workplace, the SSA now punishes gender-based sexual harassment, effectively expanding the protection previously offered by the Anti-Sexual Harassment Act, which criminalised acts when persons in authority demand, request, or require sexual favours from subordinates, regardless if these demands, requests, or requirements are accepted. With the SSA, mere unwelcome sexual advances and sexual conduct affecting the dignity of a person – not necessarily a subordinate – are criminal acts. Hence, female trainers, staff, and even coaches are covered by SSA's protection.

Given the popularity of collegiate sports in the Philippines, the SSA's application in education and training institutions is a welcome development to protect student-athletes from gender-based sexual harassment. Schools must now adopt practical mechanisms to prevent gender-based sexual harassment, including designating an officer-in-charge to accept complaints of gender-based sexual harassment and implementing a grievance procedure for complaints by students and staff adopted by the school. In the context of student-athletes, the SSA will apply to punish unscrupulous coaches and administrators on top of any liability under child welfare laws and the Anti-Sexual Harassment Act.

Of particular interest is the application of the SSA to the online world, particularly because of rampant gender-based sexual harassment in esports and game streaming. The SSA defines gender-based online sexual harassment as:

“acts that use information and communications technology in terrorising and intimidating victims through physical, psychological, and emotional threats, unwanted sexual misogynistic, transphobic, homophobic and sexist remarks and comments online whether publicly or through direct and private messages, invasion of victim's privacy through cyberstalking and incessant messaging, uploading and sharing without the consent of the victim, any form of media that contains photos, voice, or video with sexual content, any unauthorised recording and sharing of any of the victim's photos, videos, or any information online, impersonating identities of victims online or posting lies about victims to harm their reputation, or filing false abuse reports to online platforms to silence victims”.

As can be seen, the SSA's scope of protection in online spaces is wide and extensive, granting more flexibility and leeway to enforcers and prosecutors to file cases. However, the main challenge is still ascertaining the identity of online abusers who generally hide behind the anonymity of the internet. In this regard, victims of online abuse may call upon the cybercrime divisions of either the Philippine National Police or the National Bureau of Investigation to help track down the abusers. With the SSA in place, there is now at least a legal basis to pursue and hopefully convict these online reprobates.

It will be interesting to see how these two developments pan out in the next year or so.

# POLAND



## Law and Practice

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## 1. Regulatory

### 1.1 Anti-doping

#### Criminal Doping in Poland

Sports doping is not criminalised in Poland, with certain exceptions. Most notably, providing minors with prohibited substances is a criminal offence which carries up to three years' imprisonment (Article 48 of the Polish Anti-Doping Act). Additionally, Article 49 of that Act penalises unlicensed distribution of such prohibited substances. Beyond the above regulations, doping-related activities may also trigger general criminal liability if they, for instance, jeopardise human life or health.

#### Prohibited Substances

The Polish Anti-Doping Act defines the substances and methods that are prohibited by referring to Annex 1 of the International Convention Against Doping in Sport.

#### Polish Anti-Doping Authority

The Polish Anti-Doping Agency (POLADA) has reshaped the Polish anti-doping efforts. As an independent legal entity operating under the Sports and Tourism Ministry, POLADA is authorised to enforce anti-doping rules, while its inspectors have powers similar to those of public officials. Established under the Polish Anti-Doping Act, POLADA collaborates with the law enforcement authorities and generates part of

its own revenue, though it relies chiefly on state funding. Despite its crucial role, POLADA faces financial constraints, with the budget capped at PLN3 million (approximately USD800,000) in 2017, which was its first year, and PLN6.7 million (approximately USD1.7 million) up until 2026.

#### World Anti-Doping Code Incorporation

Poland has incorporated the World Anti-Doping Code by way of the Anti-Doping Act. It may also be noted that Mr Witold Bańka, former Polish Sports Minister, has served as President of the World Anti-Doping Agency since 2019.

#### Recent Cases

A Polish national football team player tested positive for chlortalidone after the UEFA Conference League match on 16 March 2023. Initially, UEFA benched him for three months on 13 April 2023, later extending the ban to eight months, making him eligible to play again on 13 December 2023.

### 1.2 Integrity

Poland has been waging a war on match-fixing since 2004, in the wake of a much-publicised football corruption scandal involving a referee nicknamed “the Barber”, which led to approximately 600 indictments, 50 clubs being implicated and many of them being relegated. The scandal has prompted amendments to Polish law.

## Penalties for Match-Fixing

Currently, the Polish Sports Act strictly criminalises match-fixing, with the penalties including up to eight years' imprisonment for accepting or offering benefits for dishonestly influencing a sports event's outcome, and up to ten years if such benefits are substantial. Facilitating match-fixing for personal or financial gain also carries severe penalties. These sanctions apply irrespective of any betting activities on the fixed events. Using insider information or tipping off others for betting purposes is punishable by up to five years' imprisonment. Match-fixing convictions may further lead to civil disenfranchisement or disqualification from holding public office.

## Significant Progress

These stringent measures have significantly enhanced the integrity of Polish sports. While there have been no major corruption scandals recently, reports have emerged of extensive betting in the lower Polish football leagues, involving bets placed abroad. However, these reports remain unconfirmed.

## 1.3 Betting

In the wake of the 2009 political lobbying scandal, Poland has implemented some of the world's most stringent gambling and betting regulations. The government closely monitors betting activities, whereas conducting unlicensed operations or breaching the regulations has severe legal and financial ramifications. The state retains exclusive rights to certain betting operations, blocking private sector participation.

## Requirements for Bookmakers

In Poland, bookmakers must obtain a Finance Ministry licence, a process known for its complexity. Unlicensed online betting and gambling sites are black-listed and access to them is

restricted. Nevertheless, bookmakers often work around this by launching new domains. The Finance Ministry keeps a list of state-approved betting companies.

Pursuing unlicensed betting is a fiscal offence, fined under the Polish Fiscal Penal Code. Thereunder, participating in unlicensed gambling can carry a fine, and forfeiture of any winnings and placed bets.

## Betting-Related Offences

Betting-related offences among athletes are regulated in the Polish Sports Act, as explained above. Poland's stringent regulations have significantly curbed betting-related offences. Nonetheless, unconfirmed reports suggest that betting corruption has taken on new, more sophisticated forms, often manifesting themselves at the lower tiers of Polish sports.

## Fees Charged to Bookmakers

Some Polish Sports Federations charge bookmakers for utilising their sporting results in the wagers. The Polish competition authority has scrutinised this in terms of potentially breaching the fair competition rules.

## 1.4 Disciplinary Proceedings Sports Federation Rules

Under the Polish Sports Act, Polish Sports Federations have exclusive authority to establish disciplinary procedures, except for doping-related disciplinary actions, which are state-controlled, as discussed in **1.1 Anti-doping**.

The disciplinary regulations across different sports federations vary. Nonetheless, they all lean towards resolving 'internal' issues within the sports organisations themselves, without any administrative authority or civil court intervention, whenever possible.

## Polish Arbitration Tribunal for Sports

While Poland follows a typical “what happens within the sports federation stays within the sports federation” approach, and sports federations themselves govern disciplinary proceedings, a unique Polish solution is the introduction of the Polish Arbitration Tribunal for Sports of the Polish Olympic Committee. This arbitration tribunal is mentioned directly in the Polish Sports Act, unlike other arbitration institutions, which are all private endeavours. The Tribunal hears appeals in accordance with the Act and in line with the specific sports federation rules. These proceedings must be in line with the principles of right to defence and availability of appeal. The disciplinary sanctions can range from issuing a warning to expulsion from the sports federation.

In certain cases, after exhausting all the available internal measures, disciplinary decisions can be appealed to the Court of Arbitration for Sport in Lausanne (CAS).

## 2. Commercial Rights

### 2.1 Available Sports-Related Rights

#### Ticketing

In Poland, tickets to sports events are sold mostly via online platforms, both national (eg, abilet, eBilet, AleBilet) and international (Eventim, etc). Some organisations, eg, the Polish Football Association (PZPN) and the Ekstraklasa, sell tickets through their own official online channels. The tickets usually have the holder’s name printed on them, to prevent scalping and to protect buyers from scammers and cybercriminals.

#### Ticket Resales

Secondary ticket sales are not fully prohibited in Poland. There are several platforms offering tickets that have already been purchased by

someone else. Whether it is possible to enter an event holding a second-hand ticket usually depends on the event organiser and on the specific internal event regulations.

When it comes to the statutory law on this matter, it is not prohibited to resell tickets at their nominal price or at a lower price, but it is illegal to sell them at a higher price point. Nevertheless, there are many sales platforms that offer second-hand tickets at much higher prices, sometimes more than twice the original. The Misdemeanour Code penalises both buying tickets for reselling at a higher price point and selling them at a profit. According to the Misdemeanour Code, the possible penalty for such an offence varies. It can be either imprisonment or a fine.

#### Combating Illegal Ticket Sales

Various measures to combat scalping are currently in use. Ticket sellers most commonly use such protections as:

- penalising the resale of tickets at a higher price than the original;
- admitting to an event only the person whose name is printed on the ticket;
- CAPTCHA-type safeguards enabling the seller’s system to differentiate real buyers from bots trying to buy tickets for the purpose of reselling;
- time limits in between purchase transactions; and
- search engine developers, such as Google, blocking advertisements from services providing illegal resales.

#### Merchandising

In terms of merchandising, two important rights enjoyed by Polish Sports Federations arising directly from the currently applicable state regulations deserve attention. First and foremost,

Polish Sports Federations may use items representing the national team's kit for their own business purposes, to the extent expressly specified in a given sports federation's rules and regulations, or in those of the international sports organisation operating in a given discipline, with which that federation is affiliated.

Second, national sports federations have exclusive rights to use the images of players representing the nation (as long as they appear in national team uniform). National sports federations may use those images for their own business purposes without the need to ask players for their consent and without the need to pay anything to them. As controversial as this sounds, these regulations have been tested in the courts, which have confirmed their validity.

## 2.2 Sponsorship

Sponsorship is one of the main sources of sports funding in Poland. Clubs, associations, Polish national sports federations and sportspersons are funded, to a certain extent, by both state and local governments, but also by non-government investors. Each year, a certain part of the state budget is assigned to the Sports Ministry to co-finance sports. Such funds are distributed among the national sports federations and organisations in charge of supporting holding sports events.

Local governments spend approximately 2% of their total annual budgets on culture and sports development. They can also hold stakes in sports clubs, thus providing them with funding, which is the case with a large number of Polish professional clubs.

As far as investors and sponsors are concerned, they can be either state-owned companies, eg, PKN Orlen and Totalizator Sportowy, or private-

ly-held companies, such as InPost Polska, to name but a few. In 2022, PZPN teamed up with InPost in what was the biggest strategic sponsorship agreement in its history.

### Sponsorship Types and Parties' Obligations

Depending on a given sponsor's commercial strategy, the forms of sponsorship may differ. The most common sponsorship types include advertising, equipment, employment, licence and mixed sponsorships. Typically, sponsorship agreements list the ways in which the sponsor will support the sponsee, as well as the latter's obligations in return.

Sponsors can offer to foot the club's bills, pay for the players' accommodation, donate the sports kits, etc. In exchange, the sponsee must promote the sponsor's trade mark or business name, which will for instance be printed on the jerseys worn during sports events or displayed on the banners alongside the club's or the federation's logo. Sponsors can also request board seats in the association's internal governing bodies, in exchange for the resources provided to such an association. Most commonly, sponsors require no-competition agreements to be executed with the sponsee.

### Sponsorship Agreements

Sponsorship agreements are not directly regulated by Polish statutory law. Among the standard elements of such agreements are the value of sponsorship and the list of obligations on the part of the sponsee in exchange for certain cash benefits. Sponsorship agreements can be concluded either for a specific period or indefinitely.

## 2.3 Broadcasting

The discipline that garners the most public attention in Poland is undoubtedly football, with speedway and volleyball being second and

third. Therefore, the most lucrative broadcasting agreements in the recent years have been those concerning the broadcasting of major football and speedway events. One of the broadcasters, Canal+, has lately struck a deal with the Ekstraklasa, the Polish top-division football league, for PLN1.3 billion (approximately EUR400 million) for the next three seasons (starting from 2023/2024). Canal+ also has a deal with the Ekstraliga, the Polish top-division speedway league, worth PLN242 million (approximately EUR55 million) for 2022–2025. The pay-per-view formula is commonly used in Poland with respect to martial arts events. For comparison, the contract for broadcasting the Orlen Basket Liga, the Polish top basketball division, signed in 2023 until 2030 is for only about PLN3 million (approximately EUR700,000) per year to be divided among 16 clubs.

Audio-visual broadcasting has been well described in the Polish legal doctrine, but it still raises many questions and spurs discussions. Polish Sports Federations commonly sell packages of audio-visual broadcasting rights, for example, the rights to televise the matches of all top-division clubs in a given discipline. This has been raising some eyebrows in terms of compliance with the competition laws.

### Copyright Laws and Broadcasting Contracts

Given the nature of sports events, they are difficult to protect under the Polish copyright regulations. Hence, the organisers in protecting their interests draw on various co-existing legal grounds. First and foremost, ticket purchasers may not film or record certain types of events for any other purposes than their personal use. Second, televising sports events is legally protected and subject to broadcasting rights, hence national sports federations must have contracts in place with potential broadcasters. Under such

contracts, organisers undertake to hold a specific event consisting of certain matches, and to provide the on-site equipment to record and disseminate the match footage.

### Free Public Access

Broadcasters may not hold exclusive broadcasting rights to events believed to be of major public importance. The state draws up a list of such events, which should be prepared openly and transparently. The state also must specify whether such events should be available in free public access in whole, or in part, as a live broadcast, or as a partial rerun.

The Polish Broadcasting Act lists such events; at time of writing, it contains only sports events. The events listed there are the summer and winter Olympics, football World Cup and European Championship semi-finals and finals, as well as all other matches played by a Polish national team. If any Polish broadcaster holds exclusive broadcasting rights to the above events, they are legally bound to allow other broadcasters to briefly report on those events. The state may add other significant sports events to the list, if it decides they are as important as those already listed in the Polish Broadcasting Act.

## 3. Sports Events

### 3.1 Relationships

#### Mass Sports Event

If it is estimated that a sports event will gather more than 1,000 people in an open space (for example, a stadium), the Mass Events Safety Act regulates most of the security measures that must be fulfilled in order for the event to be lawful.

In order to organise a mass sports event, the organiser must obtain a permission from the relevant local authority. Organising an event without such permission would trigger the organiser's liability and it could even lead to imprisonment. The organiser must notify the relevant authorities about the intention to organise such an event at least 30 days prior to the contemplated event date.

Organisers also have to consider how the event is supposed to be funded. If needed, they can conclude sponsorship agreements, or apply for government programmes that provide funding for the given type of sports event.

If a given event meets a certain importance threshold, it can be organised under the auspices/patronage of the Sports Minister. If it is a lower-range event, relevant local authorities could step in as patrons.

The organiser is obliged to create a set of internal event regulations that will be binding for everyone attending the event, regardless of their position or function. Such regulations should also contain important information about the event itself, such as the event's date, its location, athlete and spectator participation conditions, personal data protection measures and organiser liability regulations.

### **Contractual Obligations Between the Organiser and the Spectators**

Not only does a ticket sale allow a spectator to enter a certain sports event, but it also establishes a contractual relation between the buyer and the organiser. The contractual obligations usually entail event recording regulations, safety measures to be adhered to by the spectators, or potential liability for breaching the event rules by those spectators. The organiser must clear-

ly state whether the spectators are allowed to record footage of the event, depending on any other relations the organiser might have with the broadcasters.

### **3.2 Liability Organiser's Liability**

The Mass Events Safety Act places the duty of care on the organiser of a sports event, if such event qualifies as a mass event. If such requirements are not fulfilled, there are measures regulated in the Polish Civil Code that individuals can take against the organiser, if the organiser can be legally classified as an entrepreneur. There are also EU regulations in force regarding the safety of football matches and other sports events.

Under the Mass Events Safety Act, the organiser must apply all reasonably practicable public safety precautions, ensuring an adequate number of medical staff on the premises during the event, and establishing whether the technical condition of the building and the equipment is appropriate. The organiser can be also be held liable if they do not ensure such public services as police or fire department oversight, to the legally required extent, depending on the given event.

### **Violence and Disorder**

If the organiser fails to apply the safety measures regarding spectator behaviour during any sports event, and if – as a consequence – any of the participants suffer any kind of harm, there is a possibility of civil liability, but only if the blame can be undoubtedly attributed to the organiser itself, for not ensuring sufficient public safety protection.

### **Spectators' Liability**

Not only the event organiser can be held liable for their conduct or negligence, but so can the

spectators, who carry a duty to behave so as not to pose a threat to any other participants. Such obligation is a manifestation of symmetrical responsibilities between the organiser and the spectators and other participants.

## 4. Corporate

### 4.1 Legal Sporting Structures

Polish sports governing bodies are organised within specialised legal frameworks closely mirroring the operational and regulatory characteristics of associations. Conversely, sports clubs are established as legal entities, encompassing both commercial companies and associations, to facilitate their activities and governance.

#### Sports Governing Bodies

The Polish sports governance model primarily draws on two key entities: sports associations and Polish Sports Federations, both regulated by the Polish Sports Act and the Polish Associations Law.

A sports association, comprising at least three sports clubs, functions as either an association or a union of associations, hence it has legal personality. Such associations frequently form regional branches that, while operational, do not hold separate legal personalities.

The other fundamental legal structure on the Polish sports scene is that of the Polish Sports Federations. These are private legal entities; however, their role is sometimes similar to that played by the administrative bodies. Sports associations can establish Polish Sports Federations with the requisite approval from the Sports Minister. Despite being specifically mandated under the Polish Sports Act, Polish Sports Federations operate largely within the confines

of the Polish Associations Law, the provisions of which apply accordingly.

#### Professional and Amateur Sports Clubs

Pursuant to the Polish Sports Act, sports activities are conducted in the form of sports clubs, while sports clubs operate as legal entities. Most Polish sports clubs operate as partnerships limited by shares or as associations.

Amateur sports clubs are more likely to operate as associations. The Polish Sports Act also provides for a special form of operations – that of a student sports club. For obvious reasons, this form is preferred by youth sports clubs. This is because professional sports clubs chiefly focus on generating and maximising their profits. Additionally, regarding team sports, the Polish Sports Act requires that only clubs operating as public limited companies or private limited liability companies are admitted to professional team sports leagues.

### 4.2 Corporate Governance

The Polish Sports Act is the supreme law governing Polish sports, premised on the idea that sports are of civic interest and that state interference should be limited, especially in the organisation of sports by entities other than Polish Sports Federations. However, the Act does not fully address the governing bodies' organisational structures, particularly at non-central levels, leaving a gap in discipline-specific governance.

#### Sports Associations

The organisational and operational frameworks of sports associations are outlined by the Associations Law, while particular clubs are governed by the Commercial Companies Code. The role of international regulations, incorporated into the Polish legal system, has prompted the emergence of international sports law, highlighting the complex nature of sports governance.

The current laws are deemed insufficient by the sports industry, with the bulk of sports organisations being regulated outside any statutory provisions, granting sports organisations both legislative and executive powers. These organisations enforce rules, impose sanctions and grant participation rights.

Polish sports associations independently establish their disciplinary regulations within confines of the Polish Sports Act. Each association's internal disciplinary rules are binding for its members and athletes.

## Sports Clubs

Local sports clubs' legal structures vary depending what form of incorporation they choose and what level of competition they participate in, for instance, a commercial company, an association, a foundation or a co-operative, with the debt liability regime varying respectively.

### 4.3 Funding of Sport

Professional sports in Poland are both state-funded and privately sponsored. Certain governing bodies' responsibilities with respect to earmarking state funds for sports infrastructure are defined by statute. Such authority trickles down from central to local government entities, with budgets distributed among Polish Sports Federations and organisations responsible for holding sports events. The Polish Sports Act lays the groundwork for sports funding, at both central and local levels.

The Sports Minister's task is to fund keynote sports events and promote national sports. Funds are earmarked for developing and maintaining sports facilities, promoting school sports, providing scholarships for national team members, and preparing national teams for the Olympics, Paralympics, and World and European

Championships. Some of the monies also support national team athletes in need of medical care and attention.

Local authorities focus on supporting sports clubs within their jurisdictions, including providing training programmes and equipment, and covering athletes' and coaches' salaries. Notably, local governments spend approximately 2% of their budgets on sports and cultural development.

The Polish government offers various funding programmes tailored to specific beneficiaries. The "Klub" programme financially supports small and medium-sized clubs. There are also talent scouting initiatives for school children and teenagers, promoting physical activity among these age cohorts.

Sports commercialisation and increasing public interest have led to a spike in marketing value, attracting more investors and sponsors. However, private equity still plays a relatively minor role in sports funding, arresting the development of various disciplines with untapped potential. Instead, state-owned companies, particularly the national oil and energy behemoth Orlen, play a pivotal role in sports sponsorship. This enables the state to support and promote Polish sports domestically and internationally, while also leveraging these opportunities for brand enhancement.

### 4.4 Recent Deals/Trends

Orlen has been notable for supporting Polish sports, including facilitating Robert Kubica's remarkable comeback to Formula 1 in 2019 with Williams Racing, a partnership valued at EUR10 million. Despite Kubica's subsequent departure from Formula 1, Orlen continues its engagement in the sport, including a 2024 sponsorship deal



with the Visa Cash App RB team, showcasing the Orlen logo on the cars and race suits.

In 2023, PZPN landed a record-breaking PLN170 million (about EUR40 million) four-year contract deal with Orlen. The year before, private logistics company InPost set a precedent for private company sponsorships with a PLN10 million (EUR2.3 million) per annum deal with PZPN.

Recently, Polish apparel company F4 secured an unprecedented agreement with the Polish Basketball Association to provide outfits for all top league and national teams, a rare instance of a league-wide clothing deal.

Additionally, financial services company Cinkciarz.pl entered into a significant seven-year partnership with the Chicago Bulls as the team's official currency exchange provider, marking a notable Polish presence in an American sports franchise.

## 5. Intellectual Property, Data and Data Protection

### 5.1 Trade Marks

Trade mark rights and licences are among sports clubs' and organisations' most valuable assets.

#### Trade Mark Regulations

In Poland, trade mark issues are governed by the Industrial Property Law. Trade marks can be obtained by registering with the Polish Patent Office or by securing a European trade mark that guarantees EU-wide protection. Once successfully registered, the patent holder has the exclusive right to use the trade mark for commercial and professional purposes within the registration territory for ten years, and this may be renewed for subsequent ten-year periods.

Trade mark eligibility extends to commonly used descriptive or non-descriptive elements, provided they meet the registration criteria and help distinguish one entrepreneur's goods or services from those of another.

#### Trade Marks in Polish Sports

In sports, trade marks often include clubs', associations' and sports federations' names and logos, as well as those of organised competitions. These entities may profit by licensing their trade marks' use. The licensees use such trade marks by placing the sports institutions' logos on their merchandise, often aimed at a particular team's fans, and by using them in various forms of advertising campaigns. Notably, Krzysztof Piątek, a Polish footballer, is the first, and to date the only, Pole to have trademarked his goal celebration.

Popular trade marks include sports clubs' names registered as world trade marks, eg, "Legia" and "Pogoń" and word-figurative marks such as "Irena Szewińska", "Widzew RTS" and "ePuchar Polski". Graphic marks such as club crests, for instance that of KKS Lech Poznań, are also not uncommon. Slogans can be trademarked as well, for example the PZPN motto "Łączy nas piłka" (in English: "Football brings us together").

### 5.2 Copyright/Database Rights

Under Polish law, the sports industry navigates a complex landscape of copyright and database rights, particularly evident in the context of sports data and its commercial use. This regulatory framework significantly impacts various stakeholders, including sports federations, betting companies and other sports-related organisations.

#### Copyrights

Copyrights in Poland are regulated in the Copyright and Related Rights Act. They protect crea-

tive works related to sports, such as broadcast content, commentaries and even sports performance choreographies. These protections ensure that creators and rights holders can control the use of their work, requiring others to obtain permission or licences to lawfully use such content.

## Databases

Parallel to the copyright laws, Polish and EU law has introduced an important legal concept referred to as “sui generis” rights to databases. This specific protection is enjoyed by database creators, allowing them to manage the extraction and subsequent use of substantial parts of their databases. In the sports context, this often applies to statistics, match results and player performance data – valuable for analysis, broadcasting and betting purposes.

## Commercial Opportunities

An interesting example of the commercial opportunity arising from the above is Polish Sports Federations’ common practice of charging betting companies a fixed fee for using sports results and data. For instance, for the right to use the results of the matches organised by PZPN, betting companies used to have to pay it 0.5% of their total revenue. This came under the scrutiny of the Polish competition authority, which led to a reduction of the fee paid by the betting companies, which now is calculated only against the revenue generated from such matches.

Overall, copyrights and database rights under Polish law play a critical role in sports, influencing how sports data is collected, used and monetised. The legal requirements for betting companies to pay federations for data usage highlight the economic value of sports data and the intricate legal frameworks governing its exploitation.

## 5.3 Image Rights and Other IP Image Protection

Currently, athletes’ images are protected against unlawful distribution by the Polish Civil Code and the Copyright and Related Rights Act. Exploiting and disseminating athletes’ images usually requires their written consent in the form of an agreement or a statement (with the notable exception of their images in national team uniform, as noted in **2.1 Available Sports-Related Rights**).

Disseminating images of athletes participating in specific sports events and discharging their professional duties may be an exception from the above rule. Another exception is the exploitation of their images by certain national sports federations or by the Polish Olympic Committee. National squad members are forced by law to give exclusive rights to their images while wearing the official national team’s attire or the official national Olympic kits. Such federations or Olympic committees will be exclusively entitled to exploit athletes’ images for their own economic purposes to an extent specified by such federations’ or committees’ internal regulations. Athletes are supposed to consent to the dissemination of their images when wearing the national team’s attire even before they officially qualify for the national squad or the national Olympic team.

## Protection Against Infringement

Both the Polish Civil Code and the Copyrights and Related Rights Act offer a variety of claims that athletes can lodge if affected by image protection infringements. Illegal use of their protected likeness allows them to seek a cease and desist order against the infringing party or monetary compensation for any damage sustained.

## 5.4 Licensing Exploiting IP Through Licensing

In Poland, sports bodies and athletes exploit their intellectual property rights through licensing to generate revenue and enhance their brand. They grant third parties permissions to use logos, trade marks or images, in return for royalties or fees. This approach is evident in merchandising, endorsements and video game appearances. For instance, PZPN licenses its team kits and logos for merchandising, while athletes such as Robert Lewandowski enter into endorsement deals that utilise their likeness rights.

### Restrictions on Assigning IP Rights

In Poland, the IP rights assignment regulations ensure transparency and protection for all parties by requiring that such agreements be documented in writing. When the assignment concerns personal rights, such as athletes' likenesses, the law mandates explicit consent that specifies the terms of use, including its scope and duration. This is in line with the EU regulations, underscoring the importance of safeguarding brand value and integrity during licensing or assigning IP rights. Moreover, moral rights, notably an author's right to be recognised as a work's creator, are non-transferrable under Polish law. This provision ensures that creators maintain a permanent, personal connection with their creations, further protecting their interests and contributions.

Under Article 14 of the Polish Sports Act, athletes agree to their likeness being used in national or Olympic attire, granting exclusive rights to sports associations or the Olympic Committee. A 2009 Supreme Court ruling prohibits athletes from allowing third-party image use in team attire without association consent. The law enables sports bodies to use images of national team athletes in official attire without separate permis-

sion, adhering to specific conditions set by the Polish Sports Act.

## 5.5 Sports Data

In Poland, sports data covering both athlete performance and spectator preferences significantly influences the strategies and operations of sports organisations and stakeholders. Such data is harnessed for multiple purposes, such as improving team performance through detailed analysis of athletes' physical and tactical metrics.

### Sports Data Usage

Athlete data is crucial for evaluating and enhancing performance. Sports organisations employ technology, such as wearable devices and video analysis software, to optimise training, prevent injuries and improve team strategies.

Additionally, data regarding spectators, including their demographics and behaviour, allows for a more personalised approach to fan engagement. By understanding the preferences and habits of their audience, sports entities can customise marketing efforts, promotional activities and even the event day experience, ensuring fans feel more connected and valued.

### Commercial Opportunities

The commercial potential of sports data allows for targeted advertising and sponsorship opportunities, enabling brands to reach specific segments of the sports audience with precision. This targeted approach not only increases the effectiveness of marketing campaigns, but also boosts the return on investment for sponsors and advertisers.

The Ekstraklasa, the top professional football league in Poland, partners with data analytics firms to enhance fan engagement and match

day experiences. Through detailed analysis of spectator data, clubs can personalise communication and offer tailored content, merchandise and ticketing options to their fans. This approach not only strengthens the bond with the existing fan base but also attracts new followers.

Notable commercial opportunities arise from the partnership of the Ekstraklasa, Orlen Basket Liga and Plus Liga, as well as other professional sports leagues in Poland, with sports betting companies. The provision of real-time, detailed match data feeds the betting industry, allowing for a wide range of betting options and enhancing the engagement of fans and bettors alike. This collaboration generates significant revenue streams for the league and its clubs through sponsorship deals and betting rights agreements.

Additionally, the growth of fantasy sports in Poland exemplifies the commercialisation of sports data. Platforms such as Fantasy Ekstraklasa and Manager Orlen Basket Liga leverage player performance data to offer fans an interactive and engaging way to follow the league, creating a new revenue stream through participation fees and advertising.

## 5.6 Data Protection

The Polish sports sector strictly adheres to data protection laws, notably the EU General Data Protection Regulation (GDPR) and the Polish Data Protection Act. These laws not only impact individual rights but also establish a far-reaching data privacy framework affecting sports organisations, athletes and fans alike.

GDPR, alongside the Polish Data Protection Act, sets clear data handling responsibilities for sports entities, emphasising transparency, data portability and the need for express data processing consent. This ensures that both athletes

and fans can easily manage their data across services, bolstering trust and flexibility in the sports ecosystem.

The key GDPR principles include accurate data management and swift breach notification, critical for maintaining the sports community's trust. Consent is required for any data collection, especially for marketing, health data or fan engagement, and there must be a clear withdrawal mechanism.

GDPR also requires a lawful basis for processing data without consent, crucial for compliance with legal obligations such as complying with anti-doping rules or ensuring event safety.

A notable incident underscoring the critical nature of data protection within Polish sports involved the Lower Silesian Football Association's accidental disclosure of the particulars of 585 referees. This breach included sensitive information such as names, exact addresses and Polish Resident Identification Numbers (PESEL), leading to a PLN56,000 (approximately EUR12,000) fine.

GDPR notably impacts how sports organisations handle images and footage of events, ensuring a balance is struck between the public interest and privacy rights. This also requires a careful approach to sharing information about player injuries and absences, requiring compliance with legal standards for protecting individuals' privacy.

In ticketing, GDPR mandates strict protocols for the handling of personal data, ensuring security, clear communication about data use, and respect for purchasers' rights.

Overall, GDPR has reshaped data protection in the Polish sports sector, requiring organisations

to adopt thorough privacy and security measures. Not only does this framework protect personal data, but it also boosts sports entities' credibility and transparency, creating a safer, more open environment for all involved in sports.

## 6. Dispute Resolution

### 6.1 National Court System

Sports-related disputes can be pursued in various dispute resolution fora, depending on the particular type of dispute. Civil and commercial disputes are usually pursued before Polish state courts, while disciplinary disputes are reserved to sports bodies and tribunals.

#### Sports Disciplinary Disputes

Under the Polish Sports Act, disciplinary disputes are the only contentious matters that in principle automatically fall outside the state courts' jurisdiction. With few exceptions, responsibility for addressing sports disciplinary disputes has been delegated to sports associations. Within Polish Sports Federations, disciplinary proceedings should adhere to the guidelines set in a given federation's disciplinary regulations. Such disputes must be resolved following the principles of the right to defence and availability of appeal.

Sports federations prefer to address their disputes internally. To this end, most Polish sports governing bodies have established internal quasi-judicial systems to ensure proper enforcement of their rules. Furthermore, most of them favour arbitration as a way of settling sports-related disputes. This is with the view to guaranteeing fair treatment of all athletes, players, clubs, etc, while also preventing state authorities, often lacking the required specialist sports knowledge, from adjudicating a sports issue.

### 6.2 ADR (Including Arbitration)

As outlined in 6.1 National Court System, most Polish sports governing bodies have implemented their own internal quasi-judicial systems and incorporated arbitration clauses into their internal regulations.

As indicated in the justification of the draft Polish Sports Act, "international sports federations' statutes rule out the possibility of referring the cases in question to state courts". Since this is the case, a host of instruments have been developed to have disputes related to playing and organising sports appear before common courts only on very rare occasions. The fundamental instrument is the actual obligation on the part of the interested parties to use sports-dedicated arbitration.

In this respect, the Polish solutions should be considered innovative on a global scale. This is because the Polish Parliament has adopted a regulation obliging sports actors to refer their disputes to arbitration rather than common courts. In the majority of Polish disciplinary-related disputes, the interested parties have been directed to arbitration by law.

This strategy, implemented by the Polish legislature, has laid the foundations for a specialised entity, the Polish Arbitration Tribunal for Sports of the Polish Olympic Committee. The task of this permanent arbitration court is to resolve disputes involving, to name but a few, clubs, athletes and sports associations. It also hears appeals brought against Polish Sports Federations' final disciplinary rulings.

In many respects, the benefits of arbitration outweigh those of state courts. The key advantages of arbitration, with particular emphasis on organised sport, are expeditious and confiden-

tial proceedings, expert and competent panels, lower costs, and better connection between the parties and the adjudicators. Obviously, of these advantages, “expeditious proceedings” is by far the most important. This is absolutely fundamental in sports. In practice, an athlete’s career is short, it being understood that benching or disqualifying them for a certain period, if not promptly confirmed or overruled, can ruin their career. At the same time, sports arbitration proceedings are so efficient that they command utmost respect.

### 6.3 Challenging Sports Governing Bodies

Polish sports governing bodies have set up internal disciplinary regulations and quasi-judicial systems to enforce these rules and maintain adherence among their members. Under the Polish Sports Act, disciplinary proceedings can result in various financial and sporting penalties, including the issuance of warnings, reprimands, suspensions and temporary or lifetime bans, the imposition of fines, the demotion of teams to lower leagues, and their expulsion or removal from sports associations.

The option to appeal a final decision rendered by a sports federation’s internal quasi-judicial system, after all internal avenues have been exhausted, usually stems from the federation’s internal regulations. The Polish Sports Federations’ rules may permit appeals against their decisions to be brought to the Polish Arbitration Tribunal for Sports of the Polish Olympic Committee, to CAS, to other arbitration tribunals or to common courts. Nonetheless, there are certain federations whose regulations do not offer the option to challenge their decisions. This of course differs in case of doping, where the right to appeal is guaranteed.

## 7. Employment

### 7.1 Sports-Related Contracts of Employment

#### Overview

Before 1989, most Polish sports clubs pretended – for political reasons – to be fully amateur. It was common for athletes to have regular employment contract with state-controlled institutions, such as the police or military, or state-controlled companies, such as coal mines. Although athletes were – on paper – performing non-sports-related jobs, they were in fact training and participating in sports events full time. With the political changes in 1989, the situation returned to normal with athletes being able to sign regular contracts, either those provided for in the Polish Labour Code or in the civil law. As sports evolved and became increasingly commercialised, a shift occurred towards civil law contracts, and a departure from traditional employment agreements was observed. Today, the prevalent method of engaging athletes is through services contracts, governed by the Polish Civil Code. These are commonly referred to as “professional sports contracts”.

#### Type of Agreement

Typically, a professional sports contract is not a commitment to achieve specific outcomes but rather to use one’s best efforts. This distinction is crucial, because for obvious reasons numerous internal and external factors can influence an athlete’s performance, making it impractical to guarantee any specific results. The sports autonomy and the minimum state interference principle facilitates the freedom to establish professional relationships between clubs and sportspersons, reflecting sports’ self-regulatory and community-based ethos. Employment forms within clubs are often dictated by the internal rules adopted by specific sports associations,

which can set contract standards for professional athletes. For instance, PZPN has established minimum contract requirements for professional footballers, invalidating any contract provisions that contravene these standards or the sport's principles. While referencing association rules is common, athletes may also engage as sole proprietors, altering the contract's nature primarily in terms of tax and social security considerations.

## Licence

Polish Sports Federations issue licences that delineate athletes' rights within the national legal framework. Such a licence acts as a vital credential, enabling athletes to compete in major competitions, including the Polish championships. Without it, athletes would be ineligible for these critical events.

## 7.2 Employer/Employee Rights

The relationship between an athlete and their club is usually governed by a civil contract for provision of services, alongside internal club and federation regulations. As a rule, athletes are not engaged under employment contracts. As mentioned above, these internal regulations often vary across different sports federations. In Poland, the rights of an athlete employed under a civil law contract are primarily derived from the contract itself, but also from their statutory rights and freedoms. Players contracted by clubs are typically required to make every possible effort to achieve the best conceivable results. Sports contracts outline a host of obligations, on the part of both the athlete and the club, varying depending on the association. For an athlete, these might include commitments to train, compete, maintain a healthy lifestyle, undergo regular medical examinations and adhere to coaching directives. Importantly, compliance with coaching or club directives does not imply

employee subordination, nor does it alter the contract's non-employment nature. On the other hand, clubs are obligated to pay the agreed salary and bonuses, as well as to provide a safe environment conducive to sports performance. There are no specific statutory provisions that unequivocally define the rights and obligations under such contracts, so they may vary depending on the particular athlete or association.

## 7.3 Free Movement of Athletes

Even though EU laws do not directly regulate the free movement of athletes, the Court of Justice of the European Union has provided jurisprudence clarifying this matter. Based on the Poland-EU treaties, European citizenship affords individuals the right to choose their place of residence and employment within the EU. Consequently, any form of nationality-based discrimination is strictly prohibited within the EU.

Freedom of movement applies to professional athletes practising sports under the EU law. Hence, no athlete may face nationality-based discrimination, and their freedom of movement is protected if they are EU or EEA nationals and wish to pursue sports as their source of income. This freedom of movement applies to any employment type, regardless of the specific nature of the legal relationship between the parties. The non-discrimination principle extends to all aspects of work and services, not just those governed by the labour laws. Freedom of movement benefits any athlete whose sports-related activities are for financial or economic gain.

Limiting the number of foreign sports professionals could directly violate these treaties. Such limitations are only permissible for non-European citizens under very specific circumstances. According to the EU principles, indirect discriminatory restrictions on freedom of movement are

only allowed if they serve a legitimate objective and are proportionate. This freedom extends beyond athletes to include coaches, instructors and trainers.

## 8. Esports

### 8.1 Esports Overview

Poland has emerged as a notable force in the esports domain, transforming from an under-the-radar participant into a central figure in the competitive gaming world. This rise to prominence is attributed to its pioneering efforts in hosting large-scale esports events and fostering a culture deeply committed to the growth and development of esports.

#### Esports Scene in Poland

At the heart of Poland's esports success is IEM Katowice, an iconic event that has placed Poland on the global esports map. Poland's general gaming culture is strong, with the government incorporating video games into educational curriculums and Polish game developers such as CD Projekt Red achieving worldwide fame.

The country's engagement with esports extends to producing talents in CS:GO and Dota 2, such as Jarosław 'Pasha' Jarząbkowski and Michał 'Nisha' Jankowski. The domestic League of Legends league, Ultraliga, and achievements such as the victory of Polish esports organisation AGO ROGUE in the EU Masters in 2020, illustrate the strength of the Polish esports scene.

#### Esports Regulations in Poland

Poland's approach to esports regulation highlights its recognition of and support for the sector. The 2017 amendment of the Polish Sports Act, declaring esports as a form of sport based on intellectual activity, marked a significant step

towards integrating esports within the formal sports framework. This recognition facilitates opportunities similar to those in traditional sports, including funding and tax exemptions for esports entities. The involvement of the Polish Esports Association with the Polish Olympic Committee in 2023 has further cemented esports' legitimate status in the country's sports landscape.

Poland's commitment to the esports industry is also evident in educational initiatives, fostering future talent through programmes such as the first Bachelor's degree in Esports and training camps for young enthusiasts. The operational landscape, buoyed by nearly 500 companies generating significant revenue in the gaming sector, underscores the comprehensive growth and dynamic nature of Poland's engagement with esports.

## 9. Women's Sport

### 9.1 Women's Sport Overview

Poland has faced certain challenges when it comes to female participation in sports, being faced with discrimination and under-representation allegations. For example, in 2023, only two women were listed among the 30 top-earning athletes in Poland. During the 2021 Super Cup organised by the Polish Volleyball Association, the fact that the women's team was paid 50% less for winning than the men's team garnered significant media attention.

Despite these obstacles, various governmental bodies' efforts have led to increased female representation year-on-year. A significant shift is under way regarding women's roles in sports. For over two decades, the Polish Olympic Committee has been advancing and refining its equality



policies, largely through initiatives spearheaded by the Women's Sports Committee. It aims to bolster the status of women's sports in Poland, advocating for international collaboration and striving to enhance women's participation in decision-making at all levels. In 2020, it established two expert working groups focusing on policies to improve women's roles in sports and on promotion and media strategies. The key initiative is the "Coach of the Year" competition, which celebrates women's achievements in coaching. The competition's main goal is to popularise women's sports in Poland and recognise exceptional talent. Significant reforms of Poland's sports law are under consideration, which could further benefit female representation. Recent proposals by the Sports Ministry are encouraging for enhancing women's status and safety in sports. The contemplated amendments aim to strengthen anti-violence, anti-discrimination and anti-harassment measures, increase female decision-making presence and offer more support for pregnancy.

## 10. Non-fungible Tokens (NFTs)

### 10.1 Non-fungible Tokens (NFTs)

In recent years, the global sports industry has increasingly embraced non-fungible tokens (NFTs), with organisations either developing their own platforms, such as NBA Top Shot, or collaborating with external platforms such as Socios, Tezos and Sorare.

In Poland, an initiative named Zetly sought to establish a fan engagement platform using NFTs, similar to Socios. Despite partnering with entities including the Polish Basketball Federation, Zetly has not significantly impacted the Polish sports scene.

Poland has yet to witness an NFT initiative on a scale comparable to NBA Top Shot. However, individual Polish athletes have explored NFTs:

- UFC champion Joanna Jędrzejczyk has released her own NFT collection in collaboration with the Fanadise platform; and
- MMA fighter Jan Błachowicz has offered his gloves as both a tangible product and an NFT through a collaboration with Uniqly, in addition to being featured in a series of Panini cards as NFTs.

Furthermore, the Poland Business Run, a charity event for corporate teams, became the first of its kind to present NFT medals to its participants.

While there are more examples, the use of NFTs in Polish sports remains relatively negligible.

## 11. Regional Issues

### 11.1 Regional Issues Overview

Poland has officially expressed disappointment over the International Olympic Committee's decision to allow Russian and Belarusian athletes to compete under a neutral flag in the 2024 Paris Olympics. Since the outbreak of the war in Ukraine in February 2022, Poland has consistently argued against their participation in international competitions, including the Olympics, until the conflict ends.

The evolution of parasport events, including celebrity fights, alcohol consumption contests and more, streamed online and aimed at youth, presents notable legal hurdles. In recent years, these events have drawn millions of viewers via pay-per-view. Notably, a large portion of these viewers are underage, exposing them to explicit and potentially harmful content. While there are

demands to limit youth access to such events, it is proving challenging due to the lack of formal recognition of their harmful nature.

Following the onset of the Ukrainian conflict, certain Polish Sports Federations deliberated rule amendments to permit Ukrainian teams' participation in their leagues. Barkom Kazany Lviv's inclusion in the Plus Liga serves as a notable example.

## 12. Artificial Intelligence (AI)

### 12.1 AI Overview

Poland's AI landscape is slowly impacting the sports world, fuelled by the European Parliament's Artificial Intelligence Act adopted on 13 March 2024. This legislation ensures AI's development balances human rights with technological innovation, setting standards for legal, ethical and technical resilience. Polish sports entities are embracing AI to revolutionise training, performance analysis and fan experiences, utilising data for strategic gains. Yet, challenges such as ethical concerns and data privacy persist. In practice, AI has shown its power and limitations; for instance, while AI-generated match highlights have been explored, AI-generated VAR highlights failed the tests conducted by Ekstraklasa Live Park, which produces footage from Polish football games. On the other hand, the unofficial application of AI in the monitoring of offside calls by Polish football referees has demonstrated a strong potential.

## 13. The Metaverse

### 13.1 Metaverse Overview

In Poland, the metaverse is largely unexplored territory within the sports sector, with sports federations, clubs and brands yet to fully embrace its potential. The concept of integrating virtual environments for fan engagement, athlete training or brand activations in sports remains more theoretical than practical. However, one interesting initiative venturing into this space is Polish startup Zetly's "SPORT METAVERSE" pilot programme. It seeks to create a digital bridge to the sports industry, leveraging blockchain technology to engage fans and monetise interactions in innovative ways, such as through virtual NFT Fan Stores and Play2Earn games.

Despite these early experiments, the broader adoption of the metaverse by Polish sports entities is tentative. The opportunities it presents, such as immersive fan experiences and new revenue streams, are matched by challenges including technical infrastructure requirements and concerns over user data privacy.

# PORTUGAL



## Law and Practice

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**Abreu Advogados** is an independent law firm with over 28 years of experience in the Portuguese market and a presence in ten locations. As a full-service law firm, Abreu is one of the largest law firms in Portugal, working with the most prestigious law firms in the world on cross-border projects. Abreu Advogados has a leading and highly regarded sports law practice, with an integrated and cross-cutting approach, acting for football clubs, investors, athletes,

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# PORTUGAL LAW AND PRACTICE

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## 1. Regulatory

### 1.1 Anti-doping

Trafficking of any prohibited substances or use of any prohibited methods is a crime, which can result in a penalty of one to five years in prison. The penalty is increased by a third when the agent intentionally breaches the anti-doping rules. The law also classifies as a crime the administration of prohibited methods and substances, which can result in a penalty of six months to three years in prison. The penalty is increased when the victim is particularly vulnerable, by reason of age, handicap or illness, when deceit or intimidation has been used, or when the offender has taken advantage of a hierarchical, financial, employment or occupational relationship.

Additionally, the law typifies the crime of “criminal association”, meaning that whoever promotes, founds, participates in or supports a group, organisation or association whose purpose or activity is directed towards the practice of one or more of the crimes provided in the Doping Law, shall be punished with a prison sentence of six months to five years.

#### ADoP

The Portuguese anti-doping organisation is the *Autoridade Nacional Antidopagem* (ADoP). It is a direct administration of the State, endowed with administrative autonomy, under the authority of the member of the government responsible for the area of sport. It has responsibility for controlling and fighting against doping in sport, as the entity responsible for the doping control procedures, being responsible, in particular, for the implementation of the following anti-doping activities:

- education and information;
- the National Anti-doping Plan;

- maintenance of the registry of the target group of sports practitioners;
- management of the biological passports of sports practitioners;
- performance of doping controls;
- organisation of the analysis of samples collected;
- collecting information and conducting inquiry procedures;
- receiving, reviewing and approving requests for therapeutic use exemptions;
- results management;
- monitoring and verifying compliance with any sanction or measure imposed; and
- any and all other anti-doping-related activity undertaken by AdoP under the World Anti-Doping Code or any other international standard.

#### Cases

There are not many relevant doping cases in Portugal. Kickboxing is normally the sport with the most cases.

### 1.2 Integrity

In 2007, the Legal Framework Governing Criminal Liability for Anti-sporting Conduct that is Contrary to the Values of Truth, Honesty and Rectitude and is Likely to Fraudulently Alter Competition Results was adopted.

This law (Law No 50/2007 of 31 August) made significant amendments concerning the fight against corruption in sport initiated by earlier legislation, and the crimes of graft and criminal association associated with sports have been introduced. Another relevant provision was the introduction of criminal liability for corporations and equivalent organisations, within the ambit of sport. Under the previous legislation only natural persons could be punished, so this innovation resolved an important lacuna. A provision was also introduced to reduce the penalty if

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the offender provides specific assistance in the gathering of decisive evidence for the identification or arrest of other offenders. The penalties were revised and increased by the new law to be in line with those in the Penal Code. The crime of passive corruption, which was previously punishable with a maximum term of imprisonment of two years, is now punishable by a maximum term of five years. The new legislation also provides for the imposition of fines, unlike the previous legislation.

This law was revised in 2017, introducing and criminalising the offering or receiving of undue advantage and unsportsmanlike betting. Innovation in terms of coercive measures was also relevant. Prevention is also pursued through educational programmes on sports ethics, which are mandatory for sports federations that receive public funding.

### 1.3 Betting

Betting is not illegal, and it is regulated in Portugal. Decree-Law 422/89 of 2 December 1989 (Gaming Law) established the legal framework for games of chance and other provisions concerning the operation and engagement of skill games in Portugal.

Decree-Law 66/2015 of 29 April 2015 (Online Gambling and Betting Legal Regime) granted a monopoly on online gambling and betting to the State and regulated the conditions for operation of online gambling and betting by private entities. It also defined the sanctions for the illegal operation and offering of online gambling and betting.

Decree-Law 67/2015 of 29 April 2015 attributed the monopoly on land-based sports betting to “*Santa Casa da Misericórdia*” and established the sanctions for the illegal operation and offering of land-based betting.

Sports governing bodies share information with sports betting operators and criminal investigation authorities. There have been cases of football matches where betting operators communicated to the sports authorities strange betting patterns that increased the odds of a specific match and these revelations have led to the cancellation of the event.

The disciplinary regulations of a number of sports also contain details of betting-related offences for relevant individuals.

There have been a few cases of match fixing for betting purposes which have led to civil and criminal prosecutions of individuals (football players and directors) and clubs. There are specific criminal provisions concerning match fixing.

### 1.4 Disciplinary Proceedings

Sports governing bodies, the National Olympic Committee and the National Paralympic Committee have autonomy to define their disciplinary proceedings. A disciplinary proceeding is a prerequisite for sports federations, which hold public powers, when they intend to impose more serious offences and, in any case, when the penalty to be imposed involves a suspension of more than one month, which occurs in relation to doping/integrity/betting offences. In those situations, the federations must:

- comply with the principles of equality, non-retroactivity and proportionality in the imposition of penalties;
- exclude the penalties of permanent disqualification or of disqualification of indefinite duration;
- enumerate the grounds or circumstances, which eliminate, attenuate or aggravate the offender’s liability, and the requirements for the extinction thereof;



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- include guarantees of the accused's rights of defence; ie, that the charge be sufficiently clear with regard to the facts that gave rise to the exercise of disciplinary powers and the requirement that the accused be heard in those cases where the commencement of disciplinary proceedings is necessary; and
- ensure that there is a right of appeal – which is directly to TAD (*Tribunal Arbitral do Desporto*) – the Portuguese Court of Arbitration for Sport.

## 2. Commercial Rights

### 2.1 Available Sports-Related Rights

Aside from sponsorship and broadcasting rights (see 2.2 Sponsorship and 2.3 Broadcasting for further detail) and exploitation of data rights (see 5.5 Sports Data), all modern types of sport-related rights, including merchandising, ticketing and hospitality and “official supplier” rights, exist in Portugal.

#### Ticketing

In professional sports competitions the sale of tickets is usually controlled by the relevant league and the clubs must follow very tight rules on distribution of tickets and tax-related issues.

Hospitality and sponsor activities are very common at sports events.

### 2.2 Sponsorship

In Portugal, sponsors often use sport to enhance and promote their brand. Access to sports rights-holders' data must respect data protection regulations, which are very strict.

The key contractual terms of a standard contract between sponsors and sport rights-holders often include:

- exclusivity;
- non-compete provisions;
- right of first refusal;
- termination clauses (behaviour, insolvency, defamation, relegation, doping, disciplinary sanctions, match fixing, etc);
- arbitration clauses and penalty clauses;
- clauses relating to IP rights;
- prohibition of athletes from using competing products or brands in public events;
- prohibition of disclosure of opinions or information that may be harmful to the club or the sponsor;
- prohibition of participation in sporting events linked to competing clubs or sponsored by competing sponsors;
- reservation of the use of the image, name, voice and autograph, etc;
- mandatory presence in sponsors' campaigns or events; and
- use of sponsors' brands or products.

### 2.3 Broadcasting

In Portugal, broadcasters exploit available broadcasting rights through advertising and subscription services.

Concerning football, Portugal has one of the few leagues where the sale of rights is not centralised and clubs sell their broadcasting rights individually on an exclusive basis. Intellectual property rights in the broadcast are usually assigned to the broadcaster together with the broadcasting rights.

Through Decree-Law No 22-B/2021 of 22 March, the State has established that for professional football competitions (first and second leagues) the sale of the TV rights will be centralised by the 2027–28 season at the latest.

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## 3. Sports Events

### 3.1 Relationships

Sporting venues are, as a rule, the property of the entity that operates them. For example, a football club's stadium is, as a rule, owned by that club. However, in several cases the stadium belongs to the state or the municipality.

In the statutes and regulations of the sports federations and of the single existing professional league (football), ownership of the media broadcasting rights is stipulated. Most of the time, the marketing of those rights is individualised.

Regarding consumer protection, the only legal regime is the following: at the beginning of each season, sports event organisers are required, in advance, to establish the characteristics of the tickets and the maximum and minimum price limits.

### 3.2 Liability

The new legal framework governing the fight against violence, racism, xenophobia and intolerance at sports events, approved by Law 39/2009 of 30 July 2009, provides preventive and repressive measures to be adopted by the event organisers.

Simultaneously, the State is responsible for the policing of areas outside enclosed sports locations, but in some cases the event organisers are obliged to request policing as a duty of care, in accordance with the legal framework governing policing within enclosed sports locations, which is found in Decree-Law 216/2012 of 9 October 2012.

The use of private security by event organisers is mainly regulated by Decree-Law 94/2002 of 12 April 2002 which introduced the concept in the context of private security activity and requires

that private security be adopted for certain events in enclosed sports locations, in accordance with statutory instrument 1522-C/2002 of 20 December 2002. Statutory Instrument 1522-B/2002 of 20 December defines the specific role of stewards and establishes the circumstances in which they must be used.

No liability can be excluded. Even the promoters of a sports event are objectively liable (irrespective of their fault) for the behaviour of spectators.

Athletes can be liable to spectators for any negligent or intentional conduct.

Among other compulsory measures provided in the law, the following can contribute to keeping events safe from violence and disorder:

- physical separation of supporters in separate areas set aside for them, in both professional and non-professional competitions considered to be high-risk;
- in professional competitions and non-professional competitions deemed to be high-risk, control of ticket sales through mechanical, electronic or electro-mechanical means in order to control the entry flow of spectators, preventing the reuse of tickets and permitting the detection of forged tickets;
- surveillance and control in order to prevent the over-occupation of any part of the enclosed location and to ensure that access is not obstructed;
- prohibition of the sale, consumption and distribution of alcoholic drinks, drugs and psychotropic substances within the inner security perimeter and the adoption of a system to monitor intoxication with alcohol, drugs and psychotropic substances; and
- surveillance of groups of supporters, namely during travel to professional sports competitions, or non-professional sports competitions

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deemed to be high-risk, which take place other than at the enclosed sports location of the sports event promoter.

## 4. Corporate

### 4.1 Legal Sporting Structures

In Portugal, sporting bodies are non-profit associations incorporated under the provisions contained in the Portuguese civil code. These associations are controlled by their members according to their own by-laws and to the relevant provisions of the legal regime applicable to sports federations.

The Portuguese Football League is structured in an association model, financially independent with self-management.

According to the applicable law, all professional football teams taking part in professional sports competitions must be incorporated as sports limited liability companies with a minimum share capital defined by law according to the level of the competition.

### 4.2 Corporate Governance

In terms of sports legislation, in Portugal there is no sport-specific corporate governance code. There are general rules regarding incompatibilities, conflicts of interest and compliance rules.

Concerning specific penalties for the insolvency of sports organisations, such as points deductions, such rules are usually included in the disciplinary regulations of the relevant competition/sport.

### 4.3 Funding of Sport

In Portugal, sport is mainly funded from central government resources by means of “programme

agreements” negotiated and signed with each sports federation.

It is possible for sports organisations to have other revenue streams such as sponsors and patronage but in limited terms as defined in the Tax Incentives Statute. In accordance with the provisions included in the Tax Incentives Statute for sports patronage, companies and individuals that make a donation to a sports entity may benefit from an increase added to the value of that donation, which is deducted from their tax base for personal or corporate income tax, leading to a reduction in the tax payable to the State.

### 4.4 Recent Deals/Trends

Recent trends in the corporate sports space in Portugal are related to the acquisition of football clubs by foreign funds or groups dedicated to multi-club ownership.

## 5. Intellectual Property, Data and Data Protection

### 5.1 Trade Marks

Pursuant to the Portuguese Industrial Property Code, a trade mark may consist of any signs, in particular, words (including names) or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of:

- distinguishing the goods or services of one undertaking from those of other undertakings; and
- being represented on the register in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.

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The Industrial Property Code also defines collective marks that, in some cases, may be applicable in the field of sports.

A collective mark is described as a mark which is capable of distinguishing the goods or services of the members of an association from the goods or services of other undertakings.

Any signs displayed, for instance, on the playing field, on a track, or in stadiums or any other sporting venues owned by companies or associations that fall within the scope of these two definitions should be registered in order to be protected and to allow for exclusive commercial exploitation by the respective holders.

### Registering a Trade Mark

Any trade mark related to sporting activity can be registered with National Institute of Industrial Property (INPI), as long as the requirements mentioned above are met.

The registration of any trade mark may be refused under the following circumstances.

- The signs are devoid of any distinctive character.
- The trade marks consist exclusively of signs or indications that have become customary in the current language.
- The sign consists exclusively of:
  - (a) the shape, or another characteristic, which results from the nature of the goods themselves;
  - (b) the shape, or another characteristic, of goods, which is necessary to obtain a technical result; or
  - (c) the shape, or another characteristic, which gives substantial value to the goods.

- Signs consisting exclusively of indications that may serve in commerce to designate the type, quality, quantity, destination, value, geographical origin, time or means of production of the product or the provision of the service, or other characteristics of the same products and services.

### *Advantages of registering a trade mark*

Pursuant to the Portuguese Industrial Property Code, the registration of a trade mark grants the property right and its exclusive use for the products and services related to it for ten years (renewable for equal periods). In other words, it allows the products and services to be distinguished from others available on the market and protects them from any unauthorised use by third parties.

In addition, it allows the owner of the trade mark to license its use to third parties. Thus, it makes it possible for the owner to profit from the licensing (exclusively or non-exclusively) of the trade mark.

Lastly, it allows the owner of the trade mark to easily enforce its rights against any third party that intends to use the registered trade mark.

### *Notable sports trade marks*

In Portugal, it is common for the stakeholders (football clubs, TV broadcasting companies, federations, etc) to register their trade marks.

Sporting Clube de Portugal registered the trade mark EU SOU CAMPEÃO 2020/2021 SCP SPORTING (“I am the Champion 2020/2021 SCP SPORTING”). This trade mark is a good example of the importance of trade mark registration, as it allows the club to control the use of an expression that marks an important date for

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the club and fans, and profit from the manufacture of merchandise, or licensing to third parties.

The sports channel SPORT-TV has, in Portugal, several trade marks, namely Sport Tv 1, Sport Tv 2, Sport Tv Gaming News, Sport Tv Hd, Sport Tv International, among others.

The sports federations also register trade marks, the oldest registered mark being FPF – *Federação Portuguesa de Futebol* (“Portuguese Football Federation”) and the most recent one being the *Federação Portuguesa de Lohan Tao Kempo* (“Portuguese Lohan Tao Kempo Federation”).

## 5.2 Copyright/Database Rights

### Code of Copyrights and Related Rights

In Portugal, there is a Code of Copyrights and Related Rights (or authorship and neighbouring rights, as defined in Portuguese law) which regulates and protects any intellectual creations in the literary, scientific and artistic domains, regardless of their physical support, and the rights of their authors.

Copyright (or authorship right as defined in Portuguese law) is acknowledged, regardless of registration, deposit or any other formality, as of the moment it is created and made concrete.

However, one can register any work to declare and claim the existence of the right with a public office (*Inspecção Geral das Atividades Culturais*, or IAGC). In the case of any legal proceedings, this registration may be valuable as evidence of the date of creation and ownership by the party that has registered it.

This may be of particular relevance for advertisers or broadcasters of sports competitions.

Although the games and sports events are not considered intellectual creations, and thus are not granted copyright protection, TV broadcasting rights are legally protected as a related right under the Code of Copyrights and related rights. Please refer to **5.4 Licensing**.

### Database Rights

The legal database right is regulated by Decree-law 122/2000 of 4 July. Pursuant to this law, a database is a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means and it is protected by copyright law.

Databases regarding spectator data or data related to sports clubs’ associates or federations’ members are important for statistical studies and the payment or selection of players.

The content of a database is not subject to any legal database right; only the way the database is organised and displayed may be protected by the above-referenced law. The content itself may be regulated by trade secrets law (as defined in the Industrial Property Code) and also by data protection laws, namely the General Data Protection Regulation (GDPR). Please refer to section **5.6 Data Protection**.

## 5.3 Image Rights and Other IP

In Portugal, image rights are a fundamental personality right, protected by the Portuguese Constitution. As a general rule, it is a personal right and not a patrimonial one.

According to the Portuguese Civil Code, a portrait of a person may not be displayed, reproduced or commercially exploited without their consent. The consent of the person portrayed is not necessary when this is justified by:

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- their notoriety;
- the position they hold;
- necessity for police or legal purposes;
- scientific, educational or cultural purposes;
- the reproduction of the image being framed in public places; or
- the public interest.

Furthermore, according to Law 54/2017 of 14 July, which is the law that governs the employment agreements of athletes, they have the right to use their public image linked to the practice of sport and to oppose others using it for commercial exploitation or other economic purposes (without prejudice to the possibility of contractual transfer of the respective commercial exploitation).

In other words, an athlete's image is widely recognised in Portuguese law, and therefore any athlete may oppose third parties using it, or freely transfer the right to commercially exploit their image. With this in mind, it is common for employment contracts concluded with athletes to cover the transfer of the right to commercially exploit the athlete's image to their employer.

Notwithstanding this, Law 54/2017 allows for an athlete's employer to use a collective image including that athlete (eg, a team photo).

## 5.4 Licensing

Trade marks may be subject to commercial exploitation licences, which may contain certain limits in respect of time, place or other conditions. The licence agreement must be executed in writing and is presumed to be non-exclusive, unless otherwise agreed upon by the parties.

Accordingly, it is common for clubs to grant licences to third parties for the use of the club's brand in order to promote products or services

on these terms, and thus granting not only a form of income but also recognition for the clubs.

## TV Broadcasting Rights

Among the main sources of income for sports clubs, especially football clubs, are the contracts that fall under television broadcasting rights. These rights stem from the protection granted by the Code of Copyrights and related rights.

Decree-Law 22-B/2021 introduced new rules regarding the marketing of broadcasting rights for the First and Second Football Leagues. It was determined that:

- television and multimedia broadcasting rights for the seasons following the 2027–28 season will be the object of centralised marketing; and
- the entering into contracts for the assignment of such rights whose duration extends beyond that sports season will not be allowed, in spite of the full effect of the contracts currently in force.

Until now, each football club has been free to assign television rights licences for its matches, without any time limitations. This change results from a recommendation by the Portuguese Competition Authority (*Autoridade da Concorrência*) and aims to promote competition in the markets for the commercialisation, exploitation and distribution of these rights.

## 5.5 Sports Data

Under the GDPR, athletes' data can be used to manage the contractual relationship that binds the parties or the contracted services, to manage possible recruitment processes and even to comply with legal obligations.

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On the other hand, spectator data is commonly used for statistical and security purposes, to send communications and even to provide products and services (please refer to **5.6 Data Protection**).

Spectator data can also be collected for the purpose of ensuring safety at sporting events. A relevant case in Portugal was the controversial creation of the Fan Card (*Cartão do Adepto*). In 2020, following the implementation of Law 39/2009, which establishes the legal framework to combat violence, racism, xenophobia and intolerance at sports events, the Fan Card was created. This card, issued by the Authority for the Prevention and Combating of Violence in Sport (*Autoridade para a Prevenção e o Combate à Violência no Desporto*, or APCVD), aimed to restrict access to areas with special conditions of access, to card holders. Thus, staying in these areas, which are usually reserved by clubs for groups of organised supporters (*cliques*), would be dependent on the presentation of a Fan Card.

To obtain this card, a supporter would be required to fill out information containing personal data such as their name and age.

However, after much criticism from football fans and clubs, in 2022 this card was no longer deemed mandatory, and access to these areas is now allowed upon presentation of a photo ID and proof of purchase of a ticket with the name of the holder of the identification document.

In terms of commercial opportunities, sports data, especially data on the number of spectators per game, can be useful for advertising licensees. In this sense, data on the number of fans, their ages and their gender can impact decisions by brands to advertise certain goods

or services in the venues where a particular club plays.

## 5.6 Data Protection

In Portugal, Law 58/2019 ensures the execution of the GDPR on the protection of natural persons with regard to the processing of personal data and the free movement of such data.

As there is no specific law for the protection of sports-related data, the general rules apply.

### Athletes Data

Clubs and/or national federations collect data from athletes. In the context of the contractual relationship established between the athlete and the club/federation, the personal data is necessary for the execution of a contract to which the data subject is a party.

When data pertaining to special categories is processed, for example, data concerning health or biometric information, this is usually done with the explicit consent of the data subjects, for the fulfilment of legal obligations, for medical purposes, or to evaluate an athlete's physical capacity.

### Supporter Data

Clubs can have a membership system, in which a supporter becomes a member of the club and can participate in decision-making within the club and receive certain benefits.

The club may need to process the member's personal data for various purposes, including managing the member's account, advertising services and products or matches/events. Even if not a member, a person may purchase products or services from a club often after giving consent to receiving direct marketing communications.

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In Portugal, unsolicited direct marketing communications are regulated by Law 41/2004, which establishes the existence of two grounds for lawfulness that may legitimise the sending of such communications. In 2022, the National Commission for Data Protection published Guidance No 2022/1 on direct marketing electronic communications, in which it clarified that these grounds are the legitimate interest of the controller in promoting its products and services or the consent of the data subjects.

Where there is already an established customer relationship, the controller acts within its legitimate interest if the marketing concerns products or services similar to those previously purchased by the customer. If the marketing concerns products or services other than those previously purchased, or if there is no customer relationship between the data subject and the controller, it is necessary to collect the data subject's prior and express consent to the sending of such communications.

## 6. Dispute Resolution

### 6.1 National Court System

The judicial national courts currently have a residual role in the resolution of sports disputes in Portugal. Such role can be summarised in the determination of disputes that are connected to labour issues or other disputes that the parties could have submitted to voluntary arbitration, but have opted to use the judicial courts instead.

Indeed, TAD, established in 2015 and modelled along the lines of the Lausanne Court of Arbitration for Sport (CAS), has specific jurisdiction to determine disputes arising out of the sports legal framework or connected with the practice of sports. This concerns both mandatory arbitra-

tion (ie, disputes arising out of acts and omissions of sports federations, professional leagues and/or other sports entities within the scope of their corresponding powers of regulation, organisation, direction and discipline) and voluntary arbitration (which may be used by the parties in order to solve any disputes directly or indirectly connected with the practice of sports that do not fall within the mandatory arbitration framework and that may be subject to arbitration according to the Portuguese Voluntary Arbitration Law).

As a rule, within mandatory arbitration, the parties can only resort to TAD in order to request the determination of appeals of decisions previously issued by the disciplinary or judicial bodies of sports federations. Final decisions issued by other sports entities, such as professional leagues, may also be subject to TAD scrutiny. Therefore, these procedures need to be exhausted before a party can resort to TAD. On the other hand, within voluntary arbitration, the parties do not necessarily need to exhaust the governing bodies' dispute resolution mechanisms.

### 6.2 ADR (Including Arbitration)

As stated in **6.1 National Court System**, TAD has specific jurisdiction to determine disputes arising out of the sports legal framework or connected with the practice of sports. This concerns both mandatory arbitration and voluntary arbitration.

TAD procedures are regulated by Law 74/2013 of 6 September 2013 and on a subsidiary basis by the Code of Procedure of the Administrative Courts and by the Code of Civil Procedure.

### 6.3 Challenging Sports Governing Bodies

The Portuguese sports governing bodies (eg, federations, professional leagues and other sports entities) have disciplinary and regulatory



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powers and other powers of a public nature determined by the Legal Regime of Sports Federations (Decree-Law 248-B/2008 of 31 December).

The parties may appeal to TAD against the sanctions that such sporting bodies apply.

## 7. Employment

### 7.1 Sports-Related Contracts of Employment

Professional players' employment contracts are concluded with sports companies (eg, clubs).

A salary cap for professional players does not exist although, regarding football, Portuguese football clubs are obliged to honour the UEFA financial fair play rules, which impact remuneration.

The salary of professional football players who have signed employment contracts must comply with the minimum amounts stipulated in the Collective Bargaining Agreement signed between the Portuguese Professional Football League and the Professional Football Players Union.

Such minimum amounts are regularly updated through an amendment to the Collective Bargaining Agreement, published in the Ministry's Employment and Labour Bulletins.

Also, in Portugal all employees are guaranteed a minimum monthly wage, the amount of which shall be established yearly by special legislation. As of 1 January 2023, the minimum monthly wage for the continental part of Portugal is EUR760.

### 7.2 Employer/Employee Rights

Sports employment contracts are governed by Law No 54/2017 of 14 July 2017 (Law 54/2017), which stipulates the legal rules governing employment relationships between clubs and employed athletes.

According to such rules, the sports employment contract is a fixed-term contract whose duration varies, as a rule, between a minimum of one and a maximum of five sporting seasons.

Law 54/2017 stipulates that the athlete's participation in the competitions of a sports federation depends on the prior registration of the employment contract with that sports federation.

Sports employment contracts may only be terminated upon expiry, by agreement between the parties, upon dismissal with cause at the employer's initiative, termination with cause by the athlete, termination of a trial period and termination by the athlete if contractually agreed.

The parties to the sports employment contract may stipulate the athletes' right to terminate the sports employment contract in force unilaterally and without just cause, upon payment to the employer of an indemnity for this purpose.

The Portuguese Labour Code (approved by Law 7/2009 of 12 February, subsequently amended), is subsidiarily applicable to sports employment contracts.

Disputes regarding the discussion of the existence of just cause for termination by the employer of a sports employment contract or by the athlete to terminate the same often arise.

In January 2022, the Lisbon Appeal Court (*Tribunal da Relação de Lisboa*) confirmed the deci-

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sion of TAD that sentenced a former player of Sporting Clube Portugal SAD, Rafael Leão, to pay an indemnity of EUR16 million to Sporting Clube Portugal SAD due to his having terminated his sports employment contract alleging the existence of just cause following an attack of the fans of Sporting Clube Portugal SAD on its training academy. TAD did not confirm the existence of such just cause and for that reason sentenced the former player to indemnify Sporting Clube Portugal SAD.

### 7.3 Free Movement of Athletes

Presently, there are no limits regarding foreign players in clubs competing in the First and Second Football Leagues.

However, Portuguese professional football clubs are subject to the regulations of the Portuguese Football Federation, which stipulate that clubs must include at least eight locally trained players. In the case of clubs with B teams, the minimum number of locally trained players is ten. A locally trained player is considered to be one who is registered with the Portuguese Football Federation for a period corresponding to three sports seasons between the ages of 15 and 21, inclusive.

Nationals of the European Economic Area (EEA) are entitled to enter, live and work in Portugal without any special requirement or formality other than having a valid identity card or passport since there is a principle of equal treatment between Portuguese employees and EEA national employees.

Citizens from a third state (ie, not EEA nationals) must hold a residence visa to perform any dependent or independent activity in Portugal. The application for a residence visa must be filed with the Portuguese Consulate where the appli-

cant resides and must be approved prior to the applicant's entry into Portugal.

## 8. Esports

### 8.1 Esports Overview

It is early days for esports in Portugal. Whilst the industry is growing and there are two projects for new esports federations in Portugal, there are not many organised competitions yet, nor are there official national competitions.

The government and sports bodies are studying the matter, but Portugal has not yet recognised esports as a sport as there is still some resistance.

Since esports are not formally recognised as a sport in Portugal, this means that sports legislation and its specific regulations do not apply to esports.

Specific sports legislation in areas such as federations, national teams and national titles; infrastructure and sports events; professional players; sports ethics legislation (including doping, violence, corruption and match fixing); and sports-related litigation, do not apply to esports. This means that general law provisions must be applied and interpreted with regard to the specifics of esports.

## 9. Women's Sport

### 9.1 Women's Sport Overview

Women's sport has developed and grown over recent years in Portugal.

Specifically in football, according to the first study, dated March 2021, developed by the

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recently created *Observatório de Futebol de Portugal* of the Portuguese Football Federation, women's football is growing strongly with an increase of 181% in federated players in the last ten seasons (ie, season 2010–11 had 3,437 women football players and season 2019–20 had 9,662 women football players).

The *Associação Portuguesa Mulheres e Desporto* is a women's rights organisation that was registered in 1998 and aims to promote the equality and participation of women at all levels and in all functions and spheres of competence in Portugal.

## 10. Non-fungible Tokens (NFTs)

### 10.1 Non-fungible Tokens (NFTs)

2021 was marked by the appearance in Portugal of some pioneering and emblematic projects in the “Web3” context, such as the NFT marketplace of *Santa Casa de Misericórdia de Lisboa*, a centenary entity of the public utility Artentik, which only accepts payment in crypto-assets.

In the sports industry, it is worth mentioning:

- the partnership between the start-up Realfevr, the Portuguese Football Federation and the Portuguese League, allowing football fans to buy, collect and trade NFTs linked to videos of memorable football moments; and
- the partnership between Porto Football Club (FC Porto) and Binance which provides for the sale of NFT mystery boxes to FC Porto token fans.

The regulatory framework applicable to NFTs is gradually being clarified, with regulators and supervisors (both on the possible application of financial legislation and the existence and extent of KYC duties imposed by AML legislation)

allowing a relevant framework of legal certainty to be applicable to the sector. A case-by-case analysis on the qualification of NFTs to be distributed to the public is nonetheless required.

New markets for NFTs are expected to emerge in collectables and digital artworks, with new and innovative specific features. NFTs also have other possible applications, from investment in physical assets to identity management and sovereign identity, from which the sports industry might benefit in the near future.

## 11. Regional Issues

### 11.1 Regional Issues Overview

The impact of Brexit has not been felt much in terms of mutual recognition of diplomas, the limitation of the number of foreign athletes (non-EU citizens) in teams, or in terms of international transfers and homegrown rules. Since in individual sports the law only allows Portuguese citizens to be national champions, the consequences are null. Also, in terms of sports equipment sponsorship or company activity, no effect has been felt.

## 12. Artificial Intelligence (AI)

### 12.1 AI Overview

AI has been gradually implemented in the Portuguese Sports industry, mainly in connection with performance analysis and optimisation strategies. This dynamic has been complemented by the development of local companies and products that connect AI and sports. Just recently, Full Venue, which presents itself as an innovative AI company in the sports and events technology sector and is based in Lisbon has announced the successful closing of its seed round, securing EUR2,000,000 in funding. Many sports organi-

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sations have also been seeking to implement AI tools also as ways to increase sales and improve profitability as a fundamental component of their business model. No specific legislation has been adopted so far, but key actors expect that the European AI Act will change the sector.

## 13. The Metaverse

### 13.1 Metaverse Overview

The application of the Metaverse to sports is still largely unexplored in Portugal. There have been occasional partnerships between sports organisations and companies in that sector, notably between Futebol Clube do Porto and Upland, but the consensus is that the potential of the technology has not yet been reached. After a slower year for Metaverse-related activities in 2023, some expect a stronger global market in 2024 following legislative developments at the European level.

## Trends and Developments

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**Sérvulo & Associados** is a leading Portuguese full-service law firm founded 25 years ago. Recognised for the quality of its legal services in all key areas of law and strategic sectors, Sérvulo has a highly competent multidisciplinary team of more than 100 lawyers, driven by a single purpose: to use the latest legal research and its accumulated knowledge to deliver the best legal solutions to its clients. Sérvulo enjoys the

trust of a large number of key public and private entities, both domestic and international, within Portuguese-speaking legal markets, and in all significant economic sectors. The firm boasts a team of lawyers equipped with comprehensive expertise, ensuring they are prepared to tackle any challenges that may emerge in any area of law.

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# PORTUGAL TRENDS AND DEVELOPMENTS

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## The Latest Trends in Portuguese Sports Law

The most visible trends and developments involving the sports market in Portugal concern the organisation of sports clubs, commercialisation of sports events, combating violence and discrimination in sports, sports integrity, career support for athletes, women's sports, esports and the activities of football agents.

### *Organisation of sports clubs: a new legal regime for sports companies*

The Portuguese government has overhauled the legal framework for sports companies in response to a wave of insolvencies and dissolutions that impacted roughly 20% of established companies and even led to the demise of historic clubs. This new regime aims to strengthen regulations and make the sector more appealing to investors.

In this context, Law No 39/2023 was published on 4 August 2023, establishing the new legal regime for sports companies and repealing the regime previously in force (Decree-Law No 10/2013 of 25 January). The main changes resulting from the new law are as follows:

- the possibility of sports companies to adopt the legal form of limited liability companies, in which the founding club may have a majority stake and more than one private partner;
- the prohibition of mergers of sports companies with different founding clubs unless there is a merger between said clubs;
- the reinforcement of the provisions concerning independence and conflict of interest policies for directors and managers of sports companies;
- the recognition that sporting achievements and trophies won by the sports company are awarded to the founding sports club, if it retains this status on the date of the dissolution or insolvency of the sports company;

- the introduction of gender quotas in management and supervisory bodies;
- the application to all sports companies of the measures to combat money laundering and the financing of terrorism, provided for in Law 83/2017;
- the introduction of new publicity principles, such as the obligation of the sports companies to publish on their website the articles of association and accounts for the last three years;
- the creation of a regime of administrative offences for non-compliance with the duties and obligations enshrined; and
- the obligation of the sports companies to create a whistleblowing channel.

The changes imposed by the new legal framework for sports companies are largely aimed at promoting a balance between the founding club and the qualified investors in sports companies, imposing transparent conduct on them and thus making the latter more credible.

### *Commercialisation of sports events*

Like other members of the European Union and the World Trade Organization, the Portuguese jurisdiction allows for the exploitation of patents, trade marks, merchandising, copyrights, broadcasting rights, sponsorship and image rights.

The owner of the above-mentioned rights varies depending on the type of sport in question. For example, in futsal and hockey, the respective sports federations are the exclusive owners of the merchandising, copyrights, broadcasting rights, sponsorship and image rights of all matches played in the various competitions. Therefore, the commercialisation of these rights is undertaken by the sports federations, which can transfer or license the rights through written agreements.

Conversely, in football, the ownership of television and multimedia broadcasting rights for matches in the first and second national leagues for men's football belongs to the sports clubs or sports companies who participate in these competitions. Although currently Portuguese sports clubs in professional competitions sell these rights individually, as of the 2028/2029 sports season, such rights will have to be jointly sold in terms to be defined by the Portuguese Football Federation by the end of the 2025/2026 sports season, subject to approval by the Portuguese Competition Authority, as set out in Decree-Law No 22-B/2021 of 22 March.

Following the entry into force of Decree-Law No 22-B/2021, the Portuguese League created *Liga Centralização*, an entity whose main purpose is to analyse and define a proposal for a future model involving the centralised sale of television and media rights.

The option for a centralised marketing model for television and media rights is justified by the fact that the individualised marketing model currently adopted in Portugal allegedly promotes greater discrepancy between the various clubs in the League, insofar as it channels the majority of revenue to larger clubs which, due to their larger fanbase, receive larger bids for the marketing of their rights, to the disadvantage of smaller clubs.

The shift towards a centralised marketing model for TV and media rights, while potentially less appealing to larger clubs, aligns with the practices of major European leagues and is anticipated to financially benefit clubs across the first and second leagues, regardless of their size. This model promotes a more equitable distribution of TV revenue, enabling smaller clubs to enhance their investment in team development. This increased financial capability is expected

to foster greater internal competitiveness within the league, thereby making the competition more enthralling and potentially boosting other revenue streams.

Based on the experiences in other countries, this transition to a centralised marketing model is expected to also benefit sports channels and fans as it will enable a wider range of sports content to be made available more regularly, in line with consumer preferences.

### *Combating violence and discrimination in sports*

Violence in sports is a phenomenon that cuts across the various sports and the various levels of competition and can affect not only the physical integrity of athletes and fans, but also the role of sport as a vehicle for social inclusion. For this reason, preventing and combating violence in sport has been defined as a national priority.

In this context, Law No 40/2023 was published on 10 August 2023, reinforcing the mechanisms for combating violence in sport, amending the regime provided for in Law No 39/2009 of 30 July. The most important changes introduced by the new legal framework are as follows:

- a simplification of the requirements regarding the adoption of safety regulations and the use of public spaces, maintaining the obligation to adopt these regulations only for sports facilities with greater capacity and consequently greater risk;
- modification of the role of the security manager, providing for specific requirements that the security manager must meet, such as having completed mandatory education;
- more detailed rules on support from promoters of sporting events to organised groups of fans, requiring promoters of sporting events



- to register organised groups of fans with the competent authority;
- criminalisation of support for organised supporters' groups not registered with the competent authority and the granting of support not declared in the protocols sent to the competent authority;
- the introduction of mandatory provisions for accommodating people with disabilities at sporting venues;
- an obligation for sports promoters to ensure that data from their video surveillance systems is available in optimal condition;
- strengthening the powers of security forces at sporting events; and
- a new provision holding clubs accountable for the behaviour of their visiting fans.

Law No 40/2023 of 10 August introduces several important changes to the legal framework for combating violence, racism, xenophobia and intolerance at sporting events, but it is not without its critics, namely because of its limited focus on effectively holding the perpetrators of violence in sport to account, instead focusing its action almost exclusively on clubs, sports companies, promoters and organisers of sports event.

### *Sports integrity*

Manipulation of sports results is a growing concern worldwide, especially as the turnover of land-based and online sports betting grows. In Portugal, this turnover has been around EUR200 million euros in each of the last two years, becoming a growing threat to the integrity of sports competitions.

With this in mind, 2024 began with the publication of Law No 14/2024 of 19 January, which establishes the legal framework for the integrity of sports and the fight against anti-sporting conduct.

Regarding match fixing and the manipulation of sports results, Law No 14/2024 of 19 January establishes that the use of means that aim to artificially alter the results of sports events is considered a criminal offence punishable by imprisonment for up to eight years.

Match fixing may also lead to the application of ancillary penalties, such as suspension from sports competitions for up to three years, privation of the right to receive public grants and a prohibition on performing sporting duties for up to five years.

Mandatory reporting is also imposed whenever sports agents become aware of or suspect anti-sporting conduct contrary to the values of truth, fairness and correctness and are likely to fraudulently alter a sports competition or its result. They must immediately report such conduct to the Public Prosecutor's Office.

Law No 14/2024 of 19 January also stipulates the creation of a platform to monitor the manipulation of evidence, with experts appointed by the Attorney General's Office, the Judiciary Police, the Portuguese Olympic Committee and the Portuguese Football Federation, among others, handing over co-ordination to the director anti-corruption unit of the Judiciary Police.

### *Career support for athletes*

The activity of professional athletes has specific characteristics compared to the common employment relationship. Recognising these characteristics, Portugal has approved two important laws concerning (i) accidents at work; and (ii) post-career support.

### *Accidents at work*

Professional athletes face uniquely demanding careers. The physical toll they endure often leads to shorter average durations compared to oth-

er professions. In recognition of these specific circumstances, Law No 48/2023 of 22 August, established a distinct legal framework. This framework specifically addresses work-related accidents for professional athletes, and the most relevant provisions are as follows:

- an obligation for athletes to explicitly consent at the time of contracting to the provision of all medical examinations, relevant to risk assessment, carried out by the employer's medical services to the insurer's medical services;
- the establishment of upper limits for compensation in cases of temporary partial incapacity;
- a detailed distinction of annual pension ceilings, which vary according to the degree of disability and the athlete's age;
- the introduction of a new bracket for death pensions; and
- a provision for athletes to request a review of their incapacity within a decade following their clinical discharge.

These provisions reflect a significant shift towards recognising the distinct nature of athletic careers and the need for specialised legal protection in this field. The changes aim to balance the recognition of the increasing career length of athletes with the inherent physical demands and risks of their profession, ensuring more robust and responsive support structures.

### *Post-career support*

On 19 January 2024, Portugal approved Law No 13/2024, which establishes support measures for Olympic, Paralympic, Deaflympic and high-performance athletes after the end of their careers, such as:

- creation of a public employment quota system in central, regional and local administration services and bodies;
- creation of a temporary reintegration grant, to be awarded for a maximum period of 36 months;
- the employment agreements of athletes who have been part of the high-performance system for at least eight years, consecutively or intermittently, will be treated on a par with employment agreements entered into with young people starting their first job (which have benefits in terms of social security contributions);
- the creation of a special access system to higher education for high-performance athletes within three years of retiring from their sports careers.

These measures collectively reflect a growing awareness and response from the Portuguese legislator to the challenges athletes face at the end of their sports careers. By providing structured support in employment, education, and financial assistance, the law aims to ensure a smoother and more secure transition for athletes into their post-sports lives.

### *Women's sports*

Women's sports have developed and grown over recent years in Portugal, especially volleyball, futsal and football.

Regarding football, the Portuguese national team has qualified for the women's World Cup for the first time in 2023. This reflects not only the growing quality of athletes, but also the growing investment of the Portuguese sports federation and of sports companies.

In a significant move, Portuguese legislation now permits sports clubs to establish or own share

capital in more than one sports company when these companies are dedicated to the same sport but differ in gender. Typically, a sports club is restricted from setting up or holding share capital in multiple sports companies with the same sporting focus. This change serves as an incentive for investment in women's teams.

Another critical measure is the introduction of gender quotas, mandating that sports companies ensure a minimum representation of 33.3% for each gender in their management and supervisory bodies. While these quotas do not apply to current mandates, they will be enforced for future renewals and replacements.

## Esports

The esports landscape in Portugal has seen remarkable growth in recent years, marked by the emergence of numerous players, clubs, coaches, event organisers, specialised media, several enthusiast communities, and several national and international competitions and events. In fact, Portuguese players are ranked 22nd in terms of esports earnings.

Portugal was one of the first countries to have a football federation to embrace an esports section in 2017. The esports section of the Portuguese Football Federation includes teams licensed for online competitions and clubs specifically created for such competitions.

In 2018, one of the first esports associations in Portugal, the Portuguese Federation of Electronic Sports (*Federação Portuguesa de Desportos Eletrónicos*, or FPDE), was created.

Entities such as EGN esports and LPLOL – which are promoters of competitions and games – have been instrumental in aggregating players and promoting esports. EGN is a club that

promotes competitions based on several games (LoL, Counter Strike, FIFA). It promotes the participation of teams in tournaments and the training of players. LPLOL is the Portuguese League of League of Legends and it promotes competitions of this specific game and exercises sporting jurisdiction over the participating teams.

Although the economy of esports has been exponentially developing in Portugal, it is still a severely underregulated sector of the sports industry.

## Activities of football agents

On 1 October 2023, the new FIFA Football Agent Regulations (FFAR) became fully effective worldwide. In compliance with the obligation to adapt its national regulation accordingly, the Portuguese Football Federation has approved new domestic Football Agent Regulations, that essentially transpose the measures imposed by the FFAR to domestic transactions.

The FFAR attracted much criticism from football agents worldwide, namely related to the limitations concerning dual representation, service fee caps, reporting obligations and mandatory license requirements to practise agent activities.

This criticism has led to legal action against FIFA to suspend the application of the FFAR in several European countries, such as Germany and Spain.

To comply with the German injunction, FIFA would have to suspend the implementation of the FFAR for any transfer which had a link to the European Union. Recognising that this would create a situation of unequal legal standards within the international transfer system, in particular between Europe and the rest of the world, FIFA decided on the worldwide temporary sus-

pension of the FFAR rules affected by the German court decision, until the European Court of Justice renders a final decision on the pending procedures concerning the FFAR.

Therefore, currently the following provisions of the FFAR are suspended worldwide:

- the service fee cap (Article 15, paragraphs 1-4);
- the rules concerning service fee payments (Article 14, paragraphs 6, 8 and 11);
- the client pays rule (Article 14, paragraphs 2 and 10);
- the rules regarding the timing of service fee payments (Article 14, paragraphs 7 and 12);
- the prohibition of double representation (Article 12, paragraphs 8-10);

- the reporting obligations (Article 16, paragraphs 2 h), j), k) and 4);
- the rules regarding disclosure and publication (Article 19);
- the submission rule (Article 4, paragraph 2; Article 16, paragraph 2 b); Article 3, paragraphs 2 c) and d); Article 20; and Article 21); and
- the rule that service fee payments must be made via the FIFA Clearing House (Article 14, paragraph 13).

Following FIFA's decision to partially suspend the application of the FFAR, the Portuguese Football Federation has also decided to suspend the application of the provisions of its internal Regulations that are affected by the German injunction.

# SINGAPORE



## Law and Practice

### Contributed by:

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**Rajah & Tann Singapore LLP** is one of the largest full-service law firms in Singapore, and has offices in most countries in the South-East Asia region. It is one of the few firms in this region to have a dedicated sports law practice. The firm has worked with various domestic and international sports governing bodies and federations, professional football clubs, sports agencies, commercial rights-holders, sponsors, television broadcasters, cable operators, sports associations, sports bookmakers, and sports and media personalities. It has advised on a broad

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## RAJAH & TANN ASIA

### 1. Regulatory

#### 1.1 Anti-doping

The Misuse of Drugs Act prohibits the consumption (whether in Singapore or elsewhere) and possession of certain listed substances, such as cocaine, morphine and cannabis. If an athlete uses substances that are not in the prohibited list (eg, ephedrine), the athlete would not have committed a criminal offence. Conversely, if the athlete uses substances such as cannabis, an offence would be committed even though this is not prohibited by the World Anti-Doping Agency (WADA) during the off season.

Singapore takes a strong stance against sports doping. It has committed to implementing the World Anti-Doping Code (the "WADA Code"), and thus established Anti-Doping Singapore (ADS) to regulate sports doping through the Anti-Doping Policy of Singapore and the ADS Anti-Doping Rules, which have been formulated in accordance with the WADA Code and its International Standards.

ADS may impose sanctions (ranging from a reprimand to a lifetime ban) on athletes if they violate anti-doping rules, the severity of which would depend on various factors such as the degree of fault and type of substance used. ADS is required to publish information on Anti-Doping

Rules violation by athletes once a decision has been made by the relevant tribunal. For instance, in 2012, seven bodybuilding athletes were banned from participating in all sports for two years for doping at the 50th Singapore National Bodybuilding and Physique Sports Championship 2012. Their results, medals, points and prizes attained at the event were also forfeited.

#### 1.2 Integrity Misconduct/Cheating

There is no legislation specifically targeting athlete misconduct/cheating per se, although offences under the Penal Code (such as offences proscribing the voluntary causing of hurt and cheating) may be applicable.

Sports governing bodies may have disciplinary boards and panels that oversee such behaviour in accordance with their respective codes of conduct or ethics rules. For instance, the Football Association of Singapore's (FAS) Disciplinary Committee has sanctioned players for misconduct (eg, for using expletives and engaging in violent conduct) during FAS football tournaments. Sports leagues (eg, the Singapore Premier League) may also have provisions governing misconduct in tournament rules. In 2001, compulsory polygraph tests were introduced for players plying their trade in Singapore's professional football league.



There is also the Safe Sport Commission, which administers the Singapore Safe Sport Programme to manage sporting misconduct in Singapore, such as abuse and sexual harassment. It has developed the Safe Sport Unified Code (which has been adopted by the Singapore National Olympic Council (SNOC)), and contraventions are referred to and dealt with by the Safe Sport Disciplinary Panel.

### Match-Fixing

Match-fixing is dealt with under the Prevention of Corruption Act (PCA). In 1994, Singapore became the first country in the world to convict a FIFA referee, T Rajamanickam, for match-fixing. The referee was jailed for nine months. The following year, Abbas Saad, a foreign player who represented Singapore in the Malaysian Premier League, was convicted of match-fixing after having agreed to help a teammate win bets by scoring more goals for the team. Saad was convicted and fined SGD50,000; while his teammate Michal Vana jumped bail and left the country. Recently, two Singaporean e-sports athletes were charged with and convicted of corruption for match-fixing after throwing a match and betting against their own team at the Epulze Royal SEA Cup tournament. One was jailed for four months, while the other was ordered to undergo reformatory training for at least six months.

Sports governing bodies may additionally impose sanctions on top of the criminal sentences meted out by the courts. For instance, former national football players Mizan Ulot, Abdul Malek and Manap Hamat were first convicted by the court for match-fixing and handed custodial sentences and fines. The FAS additionally imposed lifetime bans on the players, and only recently lifted the bans (in 2023).

### 1.3 Betting

The conducting of and engagement in betting activities is prohibited by the Gambling Control Act (GCA), unless the service is offered by a licensed operator. In Singapore, legalised sports betting is limited to horse racing, football matches and Formula 1 races, and is offered exclusively by Singapore Pools as the sole licensed sports-betting operator.

In addition to the GCA, sports governing bodies may also impose restrictions on athletes. The SNOC prohibits national athletes from betting on one's own sport and at the Olympic games. Singapore Pools' sports-betting game rules also prohibit players, officials and volunteers of the Singapore Premier League and Singapore Cup from placing bets on these competitions, while Singapore Premier League's Players' Code of Conduct also prohibits players and officials from taking part in any form of betting-related activities on local football matches.

### 1.4 Disciplinary Proceedings

There is no prescribed or mandatory procedure for disciplinary proceedings against athletes in respect of doping/integrity/betting offences.

Generally, a disciplinary committee (DC) will be convened by the relevant sports governing body. The DC may:

- conduct investigations;
- conduct disciplinary hearings; and
- reach a formal decision.

Such decision may potentially be appealable to bodies such as the Court of Arbitration for Sport, or be subject to review by the Singapore courts.

In 2003, then national footballer Noor Ali was charged by an FAS DC with placing bets on

S-League games, and was banned from football for a year. In 2020, the SNOC convened a DC to look into a report that nine footballers had broken curfew at the 2019 South East Asia (SEA) Games and had left the team hotel to visit a casino or other entertainment spots. A hearing was convened where the players were provided with the opportunity to be heard. The players admitted that they had breached the SNOC Code of Conduct, and the DC imposed fines of varying amounts on each player.

## 2. Commercial Rights

### 2.1 Available Sports-Related Rights

Sports-related commercial rights are generally governed by contracts entered into between the relevant parties. Apart from sponsorships and broadcasting, sports-related rights that have been commercially exploited include:

- branding;
- licensing;
- merchandising;
- naming;
- ticketing; and
- hospitality rights.

Regarding ticketing, it is not illegal to resell tickets (also known as “ticket scalping”). However, event organisers may choose to prohibit ticket resales via contractual prohibitions, such as by granting ticketing rights to select partners only. For instance, Formula 1 Singapore Grand Prix only allows select entities to sell tickets for the Singapore Grand Prix pursuant to its ticketing terms and conditions of sale and entry. Resale of the tickets via unauthorised agents or via online consumer marketplaces would be a breach of such terms and conditions, and the relevant tickets are liable to be cancelled without compensation.

### 2.2 Sponsorship

In return for their funding of sporting events, sponsors are typically granted the rights to market and associate themselves with the events. Additionally, to enhance and promote their brand, sponsors regularly engage athletes in endorsement deals. For example, international luxury fashion brand Hugo Boss has sponsored and appointed Singapore’s Olympic gold medal-winning swimmer Joseph Schooling as its brand ambassador.

Furthermore, sports equipment manufacturer Li-Ning sponsors Singapore badminton player Loh Kean Yew, with Li-Ning’s rackets and apparel. Australian sports apparel brand 2XU used to sponsor Singapore Athletics by providing the attire for the national track and field athletes, although the deal was reportedly terminated owing to an incident involving marathon runner Soh Rui Yong’s cutting of holes in his sponsored singlet during the SEA Games 2017.

Sports rights-holders may also seek to attract sponsor investment by offering naming rights. For example, the Young Lions (a developmental team of the FAS) was renamed Garena Young Lions after e-commerce company Garena had agreed to contribute SGD4 million to the club. The Singapore Premier League was also renamed the AIA Singapore Premier League pursuant to a sponsorship deal with insurance company AIA Singapore.

Key terms of sponsorship agreements typically include:

- the rights and entitlements accorded to each party;
- the duration of the sponsorship;
- the financial aspects of the sponsorship;
- provisions relating to ownership and exploitation of intellectual property (IP) rights; and

- provisions on the term, termination and renewal of the sponsorship.

## 2.3 Broadcasting Broadcasting Rights

Broadcasting rights are protected under the Singapore Copyright Act. This gives the owner/licensee of the broadcasting rights the right to (inter alia) broadcast and make a copy of the broadcast to the exclusion of others.

Broadcasters who have obtained rights to broadcast events profit by providing subscription services that allow users to stream the broadcasts. For example, Starhub, which won the exclusive broadcast rights for the English Premier League (EPL), has various subscription plans for its users to allow them to stream games live, and which may be bundled with other services.

However, exclusive content in Singapore is subject to the cross-carriage rule. This requires the exclusive licensee of broadcast rights to provide the content to the customers of their rival broadcasters. This measure allows one broadcaster to leverage on another broadcaster's platform to widen the distribution of the former's channels. For example, if Starhub were to win the bid for EPL broadcast rights, it would have to allow customers of its rival pay-television operator Singtel to stream the EPL broadcasts to Singtel's customers via Singtel's pay-television platform. However, the content would continue to be branded in its original form featuring StarHub's branding and commercials, and the subscriber relationship between Starhub and the consumers would remain. There is hence no question of the IP rights of content owners being disregarded.

## Venue Viewing Licences

Licences to access venues for the purpose of viewing broadcasts are mainly governed by contractual agreements between the retailer and consumer. However, the conditions of the licence may also be affected by arrangements between the owner of the broadcast rights and the retailer.

For example, commercial retailers (such as restaurants) who broadcast FIFA events under the FIFA Public Viewing licence are required to follow the conditions therein, such as obtaining written approval from FIFA before charging direct or indirect admission fees.

## 3. Sports Events

### 3.1 Relationships

Singapore does not recognise any proprietary rights in sports events. Sports events organisers generally control sporting event rights and participation in sporting events through contractual mechanisms, such as by:

- providing access to ticketholders only;
- imposing conditions of entry on spectators in the ticketing contract (eg, limitations on photographic equipment); and
- livestreaming of the event on social media platforms.

Event organisers generally hold the rights to the content and footage of the sporting events, including live broadcasts, recordings and other event-related content created during the sporting events. Apart from the abovementioned contractual agreements, these rights are also protected under Singapore copyright laws.

Event organisers may also protect themselves from ambush-marketing activities by undertaking brand protection measures, such as by:

- enforcement of their trade mark(s) under the Trade Marks Act or of copyright under the Copyright Act; or
- seeking relief under the common law tort of passing off.

Regarding consumer protection rights, event organisers are subject to the Consumer Protection (Fair Trading) Act 2003 and the Unfair Contract Terms Act 1977 (UCTA), which prevent event organisers from engaging in unfair practices or from imposing unreasonable limitations/exemptions of liability or indemnity clauses on consumers.

## 3.2 Liability

### Duty of Care

Sports events organisers, as occupiers of the event space, generally owe a duty of care to athletes and spectators, including the provision of safe venues, security arrangements and medical assistance. However, such a duty of care may potentially be excluded by the terms of the contract between the sports events organisers and the athletes/spectators. The validity of such contract terms is subject to the provisions of the UCTA. Liability for death or personal injury resulting from negligence cannot be limited or excluded pursuant to Section 2 of the UCTA.

While it is unlikely that athletes would be found to owe a duty of care to spectators for unintentional harm caused during the event (in the absence of any express assumption of responsibility by the athletes), it is conceivable that athletes may be liable for harm caused as a result of intentional or reckless acts committed by the athletes – eg, a player physically attacking a spectator in the

stands in retaliation against provocative insults hurled at the player by the spectator.

### Prevention of Violence and Disorder

Many sporting events organisers will put in place measures to prevent and control violence and disorder at their events, such as:

- implementing screening procedures;
- conducting security inspections; and
- having security personnel patrol inside the event venue to spot potential crowd trouble zones.

The Penal Code and the Miscellaneous Offences (Public Order and Nuisance) Act 1906 criminalise acts of violence, disorder and riotous behaviour by spectators at sporting events. Offences arising from such behaviour would include:

- assault;
- use of criminal force against persons; and
- unlawful assembly.

## 4. Corporate

### 4.1 Legal Sporting Structures

In Singapore, most sports governing bodies and sports clubs are registered as societies. They are generally non-profit organisations. Such legal structures create greater legitimacy, since any earnings or funds raised cannot be distributed to their members. This gives donors confidence that their contributions will be used for the intended purposes.

Tax exemptions are also available to societies, with further exemptions available if these societies are registered as charities. All national sports associations (NSAs) have to be registered both as a society and as a charity under the Charities

Act to be eligible to receive funding from Sport Singapore (SportSG).

While sporting bodies in Singapore do not typically adopt a corporate structure, professional football club Lion City Sailors is an exception, being constituted as a private company limited by shares. The benefits of adopting a corporate structure include less stringent corporate governance requirements relative to societies and registered charities, and the relative ease in securing investments and providing shareholders with returns on their investments should profits be made. However, the drawbacks of adopting a corporate structure include the unavailability of funding and tax exemptions available to societies and registered charities.

## 4.2 Corporate Governance

Registered societies and charities are self-governing entities bound by their own constitutions. In carrying out their activities, societies and charities not only have to abide by the rules of their own respective constitutions, but also by the prevailing laws in Singapore. In particular, societies have to comply with the Societies Act, which imposes various obligations on societies, such as:

- to maintain proper accounts, and records of the society's transactions and affairs; and
- to submit audited statements of accounts.

Charities are regulated by the provisions of the Charities Act, which imposes strict obligations on the keeping of accounting records of the charity's transactions, and on the application of/dealing with the charity's property.

If a registered society or charity fails to comply with certain provisions in the Societies Act or the Charities Act, respectively, the relevant body(ies)

and/or officer(s) could be liable to a fine and/or imprisonment.

Both societies and charities are also subject to the Code of Governance for Registered Societies and the Code of Governance for Charities and Institutions of a Public Character, respectively. These Codes aim to ensure that societies and charities put in place the best practices for governance, and operate on the principle of "comply or explain". While compliance with the Codes is not mandatory, societies and charities are encouraged to adhere to these Codes or to review their governing instruments and policies where necessary for better governance.

Under Singapore law, there are no specific tests or duties imposed on officers of sports organisations and no specific penalties for insolvency/dissolution of sports organisations.

## 4.3 Funding of Sport

Sports funding in Singapore is primarily provided by:

- the government (Ministry of Culture, Community and Youth (MCCY));
- the Singapore Totalisator Board (the "Tote Board"); and
- private sponsors.

Funding from the government and the Tote Board is allocated to the various NSAs by SportSG (a body corporate established under the Singapore Sports Council Act 1973) for the promotion of sports in Singapore at all levels. The criteria adopted by SportSG for allocation of funding to NSAs are not publicly available.

SportSG also provides direct funding and support to athletes through the Sport Excellence Scholarship (spexScholarship) and the Athlete's

Inspire Fund. Moreover, SportSG's enhanced Enterprise Innovation and Capability Development Grant (InnoGrant 2.0) is available for sports and fitness businesses in specified categories and for enterprises in adjacent industries pursuing technology solutions that are sports-related or that have applicability to sport. InnoGrant 2.0 offers financial support of up to SGD180,000 per project.

Separately, NSAs may also obtain funding from other sources, such as revenue from subscriptions and competitions, and donations from the sports fraternity and other stakeholders (ie, private businesses). For instance, the Singapore Badminton Association recently received SGD1.1 million from two private sponsors for the benefit of Singapore badminton team national players.

Additionally, the One Team Singapore Fund, administered by the MCCY, provides dollar-to-dollar matching by the government for donations to Team Singapore athletes.

Finally, the Singapore Olympic Foundation offers funding to young and deserving sports talents from financially challenged backgrounds to help achieve their sporting goals, and supports young high-performing athletes under 18 years of age in pursuing sporting excellence in their chosen fields through the granting of scholarships.

#### 4.4 Recent Deals/Trends

One recent significant sports investment deal was the opening of an SGD10 million football training facility by the Lion City Sailors football club. The 28,000 square-metre facility contains five football fields and state-of-the-art facilities, including physiotherapy rooms, gyms, analysis rooms and study rooms.

The Lion City Sailors has also established the SJI-International-Lion City Sailors Elite Development Scholarship. It is granted to promising players in the Lion City Sailors Football Academy, enrolling them in a highly popular and well-regarded academic institution in St Joseph's Institution International, and covering all school fees incurred up to the completion of the International Baccalaureate diploma programme.

Another noteworthy deal is the investment of USD1 million by a Singapore e-sports private equity fund – FrontSight Capital, managed by Tembusu Partners – into Singapore-based gaming company RSG, which manages esports teams across Asia. The funding will be used for the hiring, marketing and development of new technology.

## 5. Intellectual Property, Data and Data Protection

### 5.1 Trade Marks

#### Benefits of Registering Trade Marks

Registering a trade mark provides the trade mark proprietor with the statutory protection accorded under the Trade Marks Act. The trade mark proprietor is vested with exclusive rights of use and commercial exploitation over the trade mark.

Examples of sports-related trade marks registered in Singapore include:

- the “CR7 Cristiano Ronaldo” logo registered by footballer Cristiano Ronaldo; and
- the “RF” logo registered by tennis player Roger Federer through his holding company, Tenro AG.

The CR7 trade mark has been exploited by allowing Nike to use it on their apparel and equip-

ment. Similarly, Roger Federer has signed deals with Uniqlo, allowing the fashion retailer to use the RF logo on various apparel and accessories.

The proprietor is able to take action against the infringing use by other persons or entities of marks that are identical or similar to the registered trade mark in respect of identical or similar goods or services. This protects the proprietor's market share, and prevents the dilution and tarnishing of their brand.

## Registration Process

Trade marks can be registered in Singapore by filing a trade mark registration application with the Intellectual Property Office of Singapore (IPOS), typically with the assistance of trade mark lawyers or agents. IPOS will examine the application to ensure that the registration requirements are met. If satisfied, IPOS will then publish the application for two months in order for parties to inspect and file any oppositions. If no oppositions are filed, IPOS will register the trade mark. This process takes about nine to 12 months for straightforward applications without substantive objections.

## Marks That Cannot Be Registered

Trade marks may be refused registration based on absolute or relative grounds.

### *Absolute grounds*

Marks cannot be registered if they are not signs capable of being represented graphically or of distinguishing the goods and services of one person from another.

The following trade marks cannot be registered unless they have acquired distinctiveness through their use prior to the date of application for registration:

- trade marks devoid of any distinctive character;
- trade marks that consist exclusively of signs or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, time of production of goods or of rendering of services, or other characteristics of goods or services; and
- trade marks that consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade.

Trade marks that are deceptive, contrary to public policy or morality, or prohibited by law also cannot be registered.

### *Relative grounds*

The following trade marks cannot be registered:

- trade marks identical with an earlier trade mark, and which are sought to be registered for goods and services that are identical with the earlier trade mark;
- trade marks identical with an earlier trade mark, and which are sought to be registered for goods and services that are similar to the goods and services registered for by the earlier trade mark, such that a likelihood of confusion is engendered;
- trade marks similar to an earlier trade mark and sought to be registered for goods and services which they are identical with or similar to the goods and services registered for by the earlier trade marks such that a likelihood of confusion is engendered;
- trade marks identical with or similar to an earlier trade mark which is well known to a relevant sector of the public in Singapore, and is sought to be registered for goods and services that would indicate a connection

with the goods and services of the proprietor of the earlier mark and is likely to damage the proprietor's interests; and

- trade marks that cannot be used without being prevented by other legal causes of action, such as the tort of passing off or the law of copyright.

## 5.2 Copyright/Database Rights

Copyright is governed by the Copyright Act 2021. There is no sui generis database right recognised in Singapore.

Copyright protects both authorial and non-authorial works. Copyright gives the owner of the copyright the exclusive right to perform acts comprised within the copyright, and thus allows them to exclude others from performing such acts without their permission, subject to certain exceptions. There are no formalities required for the registration of copyright or for the use of copyright notices in order for copyright to validly subsist.

There are several defences to copyright infringement. One key exception would be the general defence of fair use of the copyrighted work. Whether the impugned act constitutes fair use is a fact-specific question, with a non-exhaustive list of relevant factors prescribed by Section 191 of the Copyright Act.

Specific acts of fair use of copyrighted work are also recognised as defences against copyright infringement under the Copyright Act, including:

- use for the purpose of research or study;
- use for the purpose of criticism or review; and
- use for the purpose of reporting news.

Finally, the new computational data analysis defence allows for copies of works (including computer programs) to be made for purposes of

identifying, extracting and analysing information or data from the work, as well as for the purpose of training artificial intelligence (AI) programs.

## 5.3 Image Rights and Other IP

Singapore does not explicitly recognise image rights. However, the common law torts of passing off and defamation may be invoked in order to protect against unauthorised use of an athlete's image.

### Passing Off

Passing off has been used to protect the images of celebrities in the UK and Australia; and although there has been no reported case of this in Singapore, the tort of passing off could likely be put to similar use in Singapore.

Passing off does not protect an athlete's image rights per se. It protects their goodwill, which indirectly protects the athlete's image. The athlete would have to show that:

- they have significant goodwill;
- the defendant's application of the athlete's images to their goods/services misrepresents that the athlete endorsed or authorised the goods/services in question; and
- such misrepresentation engendered a likely or actual confusion on the part of the public – eg, the public was misled into purchasing the goods/services in the belief that the goods/services were endorsed by the athlete.

### Defamation

Alternatively, the tort of defamation could conceivably be invoked to secure protection of an individual's image rights in instances where the use of the individual's image is defamatory. While there have been no reported cases of defamation suits commenced by athletes to protect their image rights in Singapore, a close example would be the successful defamation



suit commenced by politician Chiam See Tong concerning the publication of a photograph of him in the newspapers without his consent, which suggested that he had agreed to the use of his photograph for commercial gain and that, in doing so, he had taken advantage of his position as a Member of Parliament.

Therefore, the tort of defamation may provide a viable avenue of recourse for the protection against unauthorised use of an athlete's image if such use is defamatory in any way.

## 5.4 Licensing

### Licensing

Sports bodies/athletes may seek to exploit their IP through brand endorsement deals, where their images may be used by the brand in exchange for monetary payment or sponsorship. Sports bodies may also license their trade marks for use on merchandise, or enter into co-branding arrangements with sports brands for such purposes.

### Assignment

Apart from licensing, sports bodies/athletes may assign their IP rights to third parties, whether in whole or in part.

In Singapore, there are generally no restrictions on the assignment of copyrights or trade marks, save for the requirement that the assignment must be in writing and be signed by or on behalf of the assignor to have valid legal effect.

Further, in the case of assignment of registered trade marks, the assignment should be registered with IPOS. Although non-registration does not affect the validity of the assignment, non-registration has undesirable consequences for the assignee, such as being unable to claim for remedies in respect of any trade mark infringe-

ment that occurred after the assignment but before the registration of the assignment.

## 5.5 Sports Data

Sports data is used by the Singapore Sports Institute to perform research in the areas of sports biomechanics, nutrition, physiology, psychology, and strength and conditioning. The data is used to (among others):

- optimise an athlete's training;
- reduce recovery time; and
- minimise the chances of injury.

SportSG has also set up a data exchange platform, Sport Data Exchange Singapore (SportDexSG), designed specifically for the sports sector in order to make data from its National Sport Participation Survey and ActiveSG facility usage available to stakeholders in the sports ecosystem (ie, gym operators and event organisers). This allows such stakeholders to enhance their products and services.

Sports retailer Decathlon has also used AI to analyse the behaviour of its customers, such as by tracking frequented parts of the shop and what the customers were viewing. This helps Decathlon to know which sporting products draw consumer attention. Decathlon will also collaborate with SportSG in using the collected consumer data for improving sporting education programmes in Singapore.

## 5.6 Data Protection

### The Personal Data Protection Act

The Personal Data Protection Act (PDPA) deals with the protection of personal data in Singapore's private sector.

Under the PDPA, organisations must obtain the informed consent of individuals before col-

lecting, using and/or disclosing personal data, unless certain prescribed exceptions apply (eg, the “legitimate interests” exception). Organisations are also obliged to (among others):

- take reasonable efforts to ensure that the data remains accurate and complete;
- protect the data in their possession by making reasonable security arrangements to avoid data breaches; and
- cease retaining the data as soon as it is no longer necessary to do so.

In view of the PDPA, various sporting organisations have also put personal data protection policies in place. For example, young athletes and/or parents may need to supply the National Youth Sports Institute (NYSI) with personal data about young athletes and/or parents and other individuals for purposes in connection with an athlete’s enrolment in the NYSI. The NYSI has therefore put a Personal Data Protection Policy (young athletes/parents/guardians) in place to govern the collection, use and disclosure of such data.

Organisations are also subject to certain obligations if they wish to perform cross-border data transfers. They must also notify the Personal Data Protection Commission of notifiable data breaches that result in significant harm and/or that are of a significant scale. Finally, organisations that engage intermediaries to process personal data on their behalf remain liable for compliance with the data protection obligations in respect of the personal data as if the personal data was processed by the organisations themselves.

## The Public Sector (Governance) Act

The Public Sector (Governance) Act (PSGA) and the Government Instruction Manual on Info-

comm Technology & Smart Systems Management (“IM on ICT&SS Management”) deal with protection of personal data in the public sector. The former imposes criminal liability on public officers who knowingly or recklessly:

- disclose data without authorisation;
- misuse data; or
- re-identify anonymised information without permission.

Among other matters, IM on ICT&SS Management sets out the government’s data policies and aims to ensure that agencies put effective data management practices in place to utilise and safeguard access to, and the distribution and exploitation of, data. The PSGA and IM on ICT&SS Management would govern sports data collected and processed by SportSG and other public agencies.

## 6. Dispute Resolution

### 6.1 National Court System

The Singapore courts may hear and adjudicate disputes arising in the sports fraternity, as with all other types of civil disputes.

However, where sporting organisations have provided for dispute resolution procedures in their constitutions and that are applicable to the sporting disputes at hand, the resolution of the sporting disputes must follow the prescribed procedures – eg, be determined by internal panels at first instance before appealing to an appeals panel. The dispute resolution procedure may provide that the internal processes must be exhausted before there is a right to seek judicial recourse in the courts. If there is no right of appeal to the courts, the role of the courts will generally be limited to reviewing the decision-

making process to ensure that due process was observed, in contrast to adjudicating on the merits of the dispute.

The court's limited role can be seen from the case of Singapore Amateur Athletics Association v Haron bin Mundir. The Singapore Amateur Athletics Association's (SAAA) disciplinary committee had suspended its athlete Haron Mundir for misconduct by leaving a training stint early and without its approval. The athlete then appealed against the disciplinary committee's decision to the High Court, which found that the SAAA had breached the rules of natural justice in the conduct of their disciplinary proceedings. The Court of Appeal agreed with the High Court. In dismissing the appeal, the Court of Appeal said that the function of the court was a supervisory one, and was limited to determining whether the rules of natural justice had been observed and not to reviewing the evidence or the correctness of the decision on the merits.

The dispute between the Singapore Shooting Association (SSA) and one of its member clubs, the Singapore Rifle Association (SRA), also illustrates this. The SSA had previously agreed to lease an area within the National Shooting Complex to the SRA to construct its own shooting ranges. The SRA carried out works at the area and built structures which the SSA believed to be illegal. It issued a demolition order requiring the SRA to demolish these structures. The SRA brought proceedings against the SSA, challenging the demolition order. It successfully obtained declarations from the High Court that the demolition order, which suspended the SRA's privileges at the NRC, was null and void as the SSA did not have the power to make such suspensions. The merits of the decision were not examined.

## 6.2 ADR (Including Arbitration)

Alternate dispute resolution mechanisms in Singapore include arbitration and mediation.

### Arbitration

Domestic arbitrations in Singapore are governed by the Arbitration Act; while international arbitrations are governed by the International Arbitration Act. Both pieces of legislation require a binding written arbitration agreement that covers the dispute between the parties before an arbitration can be validly commenced.

The arbitration eventually culminates in a binding arbitral award on the parties. The courts will generally not set aside or refuse the enforcement of the award, save on specific prescribed grounds.

The Kuala Lumpur-based Asian International Arbitration Centre recently established the Asian Sports Tribunal, a first of its kind in South-East Asia. The Tribunal consists of independent experts in the sporting industry, and seeks to provide fair and expedient adjudication of sporting disputes in the region.

### Mediation

The Mediation Act applies to mediations that are wholly or partly conducted in Singapore, or where the mediation agreement provides that the Mediation Act or the law of Singapore is to apply to the mediation. Mediation is a consensual and "without prejudice" process, and must therefore be agreed to by the parties, typically in the form of a written mediation agreement provided by the relevant mediation institution.

If the mediation is subject to the Mediation Act, the courts are empowered to stay any proceedings brought before them, to allow the mediation to take place. Disclosure of any communications made during mediation to a third party is also

prohibited, and such communications are inadmissible as evidence before any court or tribunal. Finally, mediation can culminate in a mediated settlement agreement, and, with the consent of all parties, can be recorded as a consent order, which allows for the enforcement of the order as a court-issued order.

### The Safe Sport Disciplinary Panel

The Safe Sport Disciplinary Panel hears, resolves and adjudicates on safe sport reports and violations of the Safe Sport Unified Code as part of the Safe Sport Programme. The Disciplinary Panel comprises independent individuals appointed by the Ministry of Culture, Community and Youth, including lawyers, former athletes and laypersons.

## 6.3 Challenging Sports Governing Bodies

The powers that sports governing bodies have over their constituent members typically stem from their respective constitutions, by-laws or codes of conduct. If there are provisions therein which allow the sports governing body to impose sanctions (such as the suspension of rights and privileges, fines and expulsions), the members will be bound by such imposed sanctions as a matter of contract.

Similarly, sports governing bodies may be contractually entitled to make decisions affecting officials and athletes of sports, such as banning them from participation in the sport. For instance, the SNOC may impose sanctions such as fines and debarment from future selection on athletes for misconduct at major games, pursuant to the Team Membership Agreement entered into between the athlete and the SNOC.

A decision made by a sports governing body may be challenged in quasi-judicial review proceedings. As stated in **6.1 National Court Sys-**

**tem**, here the court acts as a reviewer of the decision-making process of the sports governing body, ensuring that there was no procedural impropriety or unfairness.

Alternatively, decisions of a sports governing body can be reviewed on the merits where the constitution of the governing body provides for a right of appeal to the courts. National sports associations, such as the Football Association of Singapore, have incorporated provisions into their constitutions allowing for appeals against the decisions of their internal panels to be determined by the Court of Arbitration for Sport, whose awards are enforceable in Singapore under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the “New York Convention”).

## 7. Employment

### 7.1 Sports-Related Contracts of Employment

#### Relationship of Employment

The relationships between sports organisations and players may or may not involve an employment relationship.

Examples of players employed by sports organisations include the following:

- former table tennis player Feng Tianwei, who was employed by the Singapore National Table Tennis Association from 2007 to 2016;
- basketball players playing for the professional basketball team, the Singapore Slingers; and
- football players whose clubs participate in the Singapore Premier League.

No mandatory salary caps are imposed as a matter of law in Singapore.

Regulations promulgated by the international sporting bodies may also contain rules that could affect the employment relationship. For example, the employment relationship for a professional football player in Singapore is governed not just by the contract between the player and their club but also by the FIFA Regulations on the Status and Transfer of Players (FRSTP).

## Restraint-of-Trade Clauses

Employers may impose certain restrictive conditions in the employment contract to protect their interests in the event they wish to terminate their player-employees' contracts, including non-compete covenants and non-solicitation covenants.

These clauses are prima facie void, unless it can be shown that the restraint is reasonable with reference to the interests of the parties and of the public, as well as to the presence of a legitimate proprietary interest (eg, trade secrets) to be protected.

Regarding anti-competition, the Competition Act governs antitrust issues in Singapore; however, no specific provision is made in respect of the sporting industry or sporting employment relationships.

## 7.2 Employer/Employee Rights

Generally, the rights of employers and employees vis-à-vis each other are governed by the employment contract between the parties. However, the contract is subject to the Employment Act, which sets out the minimum level of rights that should be granted to the employee under the contract.

The rights between the parties may also be subject to the rules of the relevant international sports governing body. Failure to adhere to

these rules may lead to the employers being sanctioned by the international governing body.

The case of Roberto Ivan Fergonzi v Geylang United FC illustrates this. The claimant, an Argentinean football player, was employed by Geylang United Football Club in 2011. Pursuant to the contract, it was agreed that the contract could be terminated without compensation if the claimant did not clear a medical screening required to play in the Singapore Premier League. During the screening, the claimant was diagnosed with heart issues that put into question his ability to play professional football. The club thus terminated the contract, without paying compensation to the claimant.

While the club may have been entitled to do so under ordinary contractual principles and employment law, the FRSTP prohibits the making of the validity of a player contract subject to a positive medical examination. The club was bound by FIFA's decision and had to pay the player compensation as ordered by the FIFA Dispute Resolution Chamber, as failure to do so would have resulted in a ban being imposed on the club from playing in FIFA-sanctioned football tournaments, including the Singapore domestic football league.

## 7.3 Free Movement of Athletes

Currently, there are no laws in Singapore which limit the number of foreign athletes competing in sports tournaments/competitions.

However, restrictions on participation by foreign athletes may be imposed by the tournament organiser. For instance, the FAS currently allows up to a maximum of four foreign players to be registered with and to play for a Singapore Premier League Club; though this limit will increase to six in the 2024–2025 season.

There could also be visa restrictions for foreign athletes. Pursuant to the Employment of Foreign Manpower Act, athletes will need a valid work pass in order to work as athletes and stay in Singapore. A possible avenue for foreign athletes in this regard is the Overseas Networks and Expertise Pass, which is a “personalised pass for top talent in all sectors, such as business, arts and culture, sports, academia and research”. Although it has a minimum monthly salary criterion of USD30,000, athletes who do not meet this salary threshold may still apply if they show “outstanding achievements” in sports.

## 8. Esports

### 8.1 Esports Overview

Singapore has a robust and promising e-sports scene. E-sports is enjoyed by some 700,000 of its five million inhabitants, as of 2021. The e-sports market is projected to reach a revenue of USD8.9 million in 2024, and is expected to grow by 9.28% a year. The e-gaming sector is in fact now the fastest growing field driving Singapore’s digital economy, which contributed 17.3% to the country’s GDP in 2022.

The Singapore Esports Association is the NSA for esports in Singapore. It is a member of the SNOC and has nominated teams for participation in various competitions, such as the 32nd SEA Games held in Cambodia. The Singapore Esports Association is also supported by the Singapore Tourism Board.

Many large e-sport publishers recognise Singapore’s potential as an e-sports hub, and thus choose to base themselves in Singapore. Examples are Blizzard Entertainment, Electronic Arts, Ubisoft and Riot Games. Singapore has also seen the establishment of home-grown e-sports

companies such as Garena and Razer. The Global Esports Federation, which aims to be the global esports governing body and to advance the interests of esports globally, is also based in Singapore.

In 2023, Singapore hosted the first-ever Olympic Esports Week, organised by the International Olympic Committee. It also hosted the International 2022 Dota 2 competition (which had a prize pool of USD40 million) and the M3 World Championships in 2021 for Mobile Legends: Bang Bang (which had a prize pool of USD800,000).

E-sports has reached the point where seeking full-time employment in the industry has become a viable career option. About 2,000 Singaporeans were employed in the games sector in 2021 for roles in content creation and business development, and the industry is set to expand on hot tech such as AI, blockchain and the metaverse.

As a full-time professional career, e-sports allows top-tier athletes and team managers in Singapore to command salaries similar to that of university graduates. They may also be able to receive substantial prize money – examples being world-class Dota 2 player Daryl “iceiceice” Koh, who has earned about USD1.8 million in prize money; and Jeng Yih “nutz” Wong, who has earned about USD230,000, in prize money. E-sports athletes and teams can also further increase their income by merchandising and streaming their gameplay.

Singapore’s e-sports landscape holds immense potential owing to numerous variable factors, including the availability of world-class infrastructure (such as fast and stable internet connectivity, which allows players to properly enjoy e-sports and allows tournaments to be organ-

ised) and venues that can comfortably host such events (such as the Singapore Indoor Stadium and Suntec Convention Centre). Another factor is the ease of travel to Singapore by e-sports teams, without undue travel restrictions.

## 9. Women's Sport

### 9.1 Women's Sport Overview

#### Rise of Female Athletes

Singapore has seen the rise of notable female athletes, including the following.

- Track and field athlete Shanti Pereira, who in 2023 was ranked first in Asia for 100m and 200m sprints by World Athletics. She clinched the gold medal for 200m at the 19th Asian Games in 2023, ending Singapore's 49-year gold drought in athletics. She is also the record-holder for various competitions such as the 200m SEA Games and the 200m Asia Athletics Championships.
- Swimmer Yip Pin Xiu also has a plethora of victories under her belt. She has seven gold medals from events such as the 2020 Tokyo Paralympics and the 2016 Rio De Janeiro Paralympics 50m and 100m backstrokes, and was the world champion of the 100m backstroke competition at the 2022 World Para Swimming Championships.
- Bowlers Shayna Ng, Daphne Tan and Cherie Tan were all recent world champions in bowling, while Farhanna Farid has broken her own deadlift world record in powerlifting eight times in the past one-and-a-half years.

Shanti Pereira's achievements have allowed her to secure significant sponsorship deals, including endorsement contracts with German fashion brand Hugo Boss and American sports apparel titan Nike.

Meanwhile, Yip Pin Xiu has sponsorships with Speedo and Citibank. She was awarded SGD800,000 by the Singapore National Paralympic Council and the DBS for her stellar performance in the 2020 Tokyo Paralympics, and received awards of SGD200,000 for her other five gold medals at the previous Paralympics.

Singapore's women's tchoukball team is ranked number one in the world, while Singapore's women's table tennis team won the 2010 World Team Table Tennis Championships by upsetting mighty China 3–1 in the final.

#### Women's Sporting Events

Singapore has hosted several large-scale and top-tier women's sporting tournaments.

Since 2008, Singapore has hosted the HSBC Women's World Championships, a women's golf tournament organised by the Ladies Professional Golf Association. The 2024 tournament has a prize pool of USD1.8 million and features eight of the top ten players in the world.

From 2014 to 2018, Singapore hosted the BNP Paribas Women's Tennis Association Finals at the Singapore Indoor Stadium. The prize money in the 2018 WTA Finals was USD7 million, and a record-breaking 133,000 people spectated the 2017 WTA Finals.

More recently, in 2023 Singapore hosted the 14th Women's World Floorball Championships. This was the second time that Singapore hosted this event, and the only occasion when the world championships were played outside Europe.

#### Anti-discrimination in Women's Sports

Singapore has institutions for dealing with gender discrimination in place, which helps to achieve equality for women employed in the

sporting industry, be they physiotherapists, coaches, match officials, team managers, technical staff, administrative personnel or otherwise. The Tripartite Alliance has promulgated the Tripartite Guidelines on Fair Employment Practices (TAFEP). It requires employers to recruit, select, provide opportunities for and reward employees based on merit and performance rather than on characteristics such as gender. Although the TAFEP is not official legislation, any failure to comply with its provisions could subject the employer to sanctions by the Ministry of Manpower.

Further, Singapore is in the midst of drafting the Workplace Fairness Legislation, which will have full legal effect. A key purpose is to address workplace discrimination. The legislature has accepted the Tripartite Committee on Workplace Fairness's recommendation that gender, marital status, pregnancy status and caregiving responsibilities should be characteristics protected from discrimination.

## Women's Sports Organisations

The SNOG established the Women in Sport Committee (WSC) in 2019 to meet the needs and aspirations of women and girls in sport. The WSC aims to create opportunities for improving the lives of women through sports and exercise. It also strives to promote women's sporting excellence by providing facilities and developmental paths, and advocates for equality of treatment of women in sports.

Soccer Girl Goals is a media start-up founded by two female Singaporean footballers. It focuses on the promotion of women's football in South-East Asia through the use of storytelling, social media coverage and collaborations with fans, athletes and athletic brands. Some initiatives include the "Keeping Score" campaign, which is a social media campaign with the goal of

equipping women in sports with knowledge and resources to combat discrimination that they may face in sports. SportPlus.sg has also signed a memorandum of understanding with Soccer Girl Goals to join as an affiliate partner in this campaign, committing to equal media coverage for women in sport for all content on its website.

## 10. Non-fungible Tokens (NFTs)

### 10.1 Non-fungible Tokens (NFTs)

The non-fungible token (NFT) market in Singapore has experienced meteoric rises and equally spectacular falls in the past few years. At the height of the NFT craze, a Singapore-based investor procured SGD92.9 million worth of NFTs at Christie's auction house in 2021. In the same year, a team of Singaporeans created and sold 3,876 units of their "Dark Zodiac" NFT digital trading cards for about SGD1.4 million. Prices for NFTs fell rapidly after this, causing losses for many Singaporeans. This was partly owing to risks associated with NFTs, such as volatility of value, lack of liquidity, and exposure to online scams and fraud. Notwithstanding, Singaporean businesses still believe in the potential and utility of NFTs as marketing tools. For instance, Vogue Singapore has launched their "Love Chain" NFTs, and McDonald's Singapore has launched NFTs of their character "Grimace".

Sports organisations have also attempted to exploit NFTs. For instance, Group ONE Holdings, a Singapore company that organises the globally popular ONE Championship and ONE Esports, has created the mobile game ONE Fight Arena which utilises NFTs featuring the organisation's martial artists. One Championship has also partnered with blockchain platform Theta Network in launching its NFT marketplace, with collectibles of its athletes and their memorable moments.



SportsCollective was also released in February 2022. Co-founded by chief executives of the Singapore Silat Federation, and with the aim of providing another avenue for athletes to generate revenue and interact with their fans, the platform allows fans to obtain NFTs of national athletes. Such NFTs include super-fan badges, iconic sporting moments, athletes' portraits and signed accessories.

Finally, Liv3ly launched 1,000 running-related NFTs in 2022. NFT holders enjoy benefits such as entry into certain running events organised by Infinitus, exclusive access to private events and allocation of the company's revenue.

## 11. Regional Issues

### 11.1 Regional Issues Overview

This topic is not applicable.

## 12. Artificial Intelligence (AI)

### 12.1 AI Overview

#### Use of AI in Singapore

Generally, Singapore views AI as harbouring great potential for bringing about increased innovation and efficiency in all sectors. Singapore has channelled significant resources into the development of the AI landscape, including SGD1 billion recently. The Singapore National AI Strategy 2.0 has also been introduced, which:

- identifies areas to focus on for AI development;
- sets out how the government, companies and researchers can work together to reap the benefits of AI; and
- addresses areas where attention is needed to manage change or new forms of risks, should they arise.

The sports industry in Singapore has always capitalised on science and technology for enhancing sporting performance. AI has been deployed in various aspects of sports and has had a major impact on how sports are managed, prepared, played, viewed and commercialised. Technology has also been used to give a competitive edge to Singapore's athletes. For example, video-based analysis of opponents during Silat competitions using the AI performance analysis system Dartfish allows for identification of their behaviours and strategies. Thereafter, coaches and athletes can formulate plans for dealing with such opponents. The Sports Singapore Institute uses motion-capture systems to capture, visualise and assess specific movements in sports, providing feedback on their forms so that improvements can be made for better performance.

With the improvement in AI technologies, the capabilities of AI are being increasingly employed in the sporting industry.

- SportsSG has used Vision AI to boost productivity in the processing of photos with auto-tagging of photos, saving thousands of man-hours in sorting and looking for photos.
- Singapore-based start-up Television Content Analytics uses NVIDIA-powered AI to automate match-tagging, via the creation of a timeline of significant in-game events for sports video analytics. This generates reports containing information such as performance statistics and visual feedback for referees, coaches, athletes and fans. This greatly increases the efficiency and accuracy of match-tagging, which was previously performed by having up to 20 people working on tagging the match live (and where details could be missed owing to human error).
- EliteFit.AI, another Singaporean start-up, uses AI to enhance fitness training. It provides a "virtual trainer" that gives real-time analysis

and feedback. This helps the avoidance of injuries and ensures optimal returns from the exercise, all without having to go through the hassle and costs of hiring a real personal trainer.

## Risks and Regulation of AI

Despite the benefits of AI, the technology is not foolproof and there are risks associated with its use – eg, production of inaccurate results or the making of poor decisions with potentially severe consequences.

Additionally, the misuse of AI has given rise to the threat of cybercrime and online scams. For example, AI can be used to produce Deepfakes, which is media that has been altered to manipulate performances of subjects in existing videos, in order to mislead people. A noteworthy case was the creation of a Deepfake video of Singapore's Deputy Prime Minister Lawrence Wong concerning the furtherance of an investment scam.

Currently, Singapore has no laws regulating the use of AI; however, certain guidelines have been issued by regulators. For instance, the Personal Data Protection Committee released the Model AI Governance Framework, which aims to promote public understanding of and trust in AI technology.

The Monetary Authority of Singapore also released the Principles to Promote Fairness, Ethics, Accountability and Transparency (FEAT) in the Use of Artificial Intelligence and Data Analytics in Singapore's Financial Sector, aimed at providing guiding principles for firms that use AI in the decision-making process when offering financial products and services.

No guidelines have been issued in Singapore specifically in relation to the use of AI in sports.

## 13. The Metaverse

### 13.1 Metaverse Overview

#### Uses of the Metaverse in Singapore

The metaverse is another exciting area that Singapore has increasingly focused its attention on. Metaverses are virtually constructed spaces that harness virtual reality, augmented reality and extended reality technology to create phygital experiences (experiences that comprise both physical and digital elements) for users. This has led to numerous innovative practical applications.

Singapore-based company Xctuality has launched the Xctualyfe metaverse platform, which allows users from around the globe to connect to and explore virtual worlds, such as a world recreated to represent Singapore's National Day Parade.

Changi Airport Group has created the Roblox-based metaverse ChangiVerse, which is a virtual world that replicates various Changi-linked landmarks such as Jewel Changi airport and the Changi control tower. It allows players to digitally explore virtual reconstructions of such spaces, play mini games and collect digital items. OCBC Singapore has also launched its Decentraland metaverse platform, OCBCx65Chulia, which allows any user to digitally explore virtual spaces to learn about personal finance and OCBC's products and services.

Regarding sports, Singapore-based firm Football Metaverse Pte Ltd has secured the exclusive global IP rights to Captain Tsubasa, a popular Japanese manga about a fictional football player. With these IP rights, Football Metaverse Pte Ltd can create blockchain games and NFTs relating to Captain Tsubasa, and can allow fans to enjoy Captain Tsubasa in the metaverse via

the Football Metaverse Ecosystem eXperience platform.

## Risks of the Metaverse

Like AI, the metaverse brings some novel risks, despite its potential utility. For instance, metaverse users may be at risk of phishing and scams. Scammers might create metaverse avatars impersonating others (such as the victim's co-workers or clients) to extract sensitive information.

The use of extended reality technologies to enter and interact within the metaverse may also expose users to privacy concerns, as large amounts of personal data are gathered (including the user's head and eye movements). This can be processed to learn about highly sensitive behavioural and psychological information concerning the user.

Additionally, users may experience cyberbullying in the metaverse. As users interact with each other in the virtual world via in-game chat and private messaging, there is a possibility of users harassing, using unsavoury language towards and threatening each other.

Other cybersecurity risks include user accounts being hacked and digital assets (eg, NFTs) being stolen from account holders.

Costly and long-term investments could be incurred by organisations, since creating VR and AR experiences requires significant time and resources. Encountering cyber-attacks is also a risk, and organisations would do well to have adequate security measures in place to minimise such risk.

# SWITZERLAND



## Law and Practice

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## 1. Regulatory

### 1.1 Anti-doping

#### Doping as a Criminal Offence Under Swiss Law

Under Swiss law, using or applying prohibited substances per se is not a criminal offence for the athlete using or applying the substances. However, certain actions in connection with doping are subject to criminal sanctions under the Federal Act on the Promotion of Sport and Exercise (“Sport Promotion Act”, SPA).

A custodial sentence up to five years may be imposed on anyone who, for doping purposes, manufactures, acquires, imports, exports, transports, distributes, sells, prescribes, markets, administers or possesses doping substances, or applies prohibited methods to other persons. The sanction applies to professional as well as amateur sports, such as bodybuilding and fitness, without any connection to competitive or professional sports.

#### Prohibited Substances

The prohibited substances and methods are enumerated in the Ordinance to the Sport Promotion Act in an exhaustive list. While there are considerable overlaps, the list does not fully correspond with the Prohibited List of the World Anti-Doping Agency (WADA).

#### Further Anti-Doping Regulations/National Anti-Doping Organisation

In addition, Swiss athletes are subject to the anti-doping regulations of sports governing bodies and WADA, and may be sanctioned for doping offences in accordance with the applicable sanctioning regime established in the World Anti-Doping Code (and the corresponding regulations implementing the Code).

Swiss Sport Integrity is officially recognised by the Swiss authorities and by WADA as the national anti-doping agency. Its mission is to combat doping in sports by means of testing, investigations, prevention work and collaboration, the latter including working together with law enforcement.

#### Implementation of the World Anti-Doping Code

In Switzerland, the World Anti-Doping Code is implemented in the form of the so-called Doping Statute of the National Olympic Committee of Switzerland, Swiss Olympic, with binding effects on all its member associations. The Doping Statute is accessible here: [Swiss Olympic Doping Statute | SSI \(sportintegrity.ch\)](https://www.sportintegrity.ch/ssi/).

#### Recent Case Law

Most recent cases in which criminal sanctions were handed down under the SPA concern the illegal production and distribution of doping substances in the bodybuilding scene. Often, the cases are interlinked with other violations of other state laws – for example, the Federal Act on Medicinal Products and Medical Devices. Cases have already been brought before the Swiss Federal Tribunal, and sanctions that were handed down included custodial sentences, monetary penalties and the confiscation of considerable amounts of cash.

On an international sporting level, it can be noted that the Court of Arbitration for Sport (CAS), with its seat in Lausanne, Switzerland, regularly renders awards concerning violations of anti-doping rules. These proceedings normally concern appeals against sanctions handed down for anti-doping rule violations. Recent examples involve, for example, the Italian MotoGP rider Andrea Iannone (CAS 2020/A/6978 & CAS 2020/A/7068) and the Russian figure skater Kamila Valieva (CAS 2023/A/9451-55-56).

## 1.2 Integrity

Under Swiss law, a distinction is made between misconduct, which directly manipulates sports competitions (“match-fixing” in the more classical sense), and an illicit behaviour, which does not directly manipulate the outcome of a sports competition but that otherwise affects the integrity of sports governing bodies (notably acts of bribery concerning sports officials in connection with bidding procedures).

### Manipulation of Sports Competitions (Match-Fixing)

In cases concerning the manipulation of sports competitions, the regulatory framework is provided by the SPA together with its implementing ordinance.

Under the SPA, anyone who offers, promises or grants an undue advantage to a person who exercises a function in a sports competition (which includes athletes, trainers and referees) on which sports betting is offered, for the purpose of distorting the course of this sports competition in their favour or in favour of a third person, may be sanctioned. Vice versa, if a person exercising a function in a sports competition demands, accepts or allows themselves to be promised an undue advantage, this may be sanctioned as well.

Both active and passive sports competition manipulation is punishable with a custodial sentence up to five years and/or a monetary penalty.

### Other Illicit Behaviour

Misconduct, which does not directly manipulate sports competition but nevertheless is damaging to the integrity of sports, such as the bribery of sports officials, is mainly governed by the Swiss Criminal Code.

Both active and passive bribery is prohibited and may be penalised with a custodial sentence up to three years or a monetary penalty.

In this respect, sanctions may not only apply to the offending person but also to their employer. An undertaking such as a sports governing body may be liable to a fine up to CHF5 million in case it has failed to take all the reasonable organisational measures that are required in order to prevent such misconduct (ie, liability for organisational fault).

### Reporting Obligations

Swiss sports governing bodies are required to file a report to the competent authority, in case there is suspicion of manipulation of a competition which is either taking place in Switzerland or on which sports betting is offered in Switzerland.

### Restriction on Federal Funding

Sports organisations may only receive governmental funding from the Federal Office of Sport (FOSPO) if they prohibit their members from placing sports bets on their own competitions and from misusing or disseminating inside information.

### Measures Taken by Sports Governing Bodies

In addition, sports governing bodies have taken a variety of measures to combat behaviour affecting the integrity of sports competitions, ranging from reporting obligations to sanctioning and monitoring regimes.

In football, for example, UEFA (in co-operation with the company Sportradar) has implemented a betting fraud detection system which detects irregular betting movements both pre-match and live in all the core betting markets. Moreover, most international sports federations domiciled in Switzerland have implemented rules of con-



duct, codes of ethics, or similar rules to protect the integrity of their respective sports. Violations of such rules are generally sanctioned very severely.

## Case Law

In a recent decision, an Albanian football club, Skënderbeu, was sanctioned by UEFA with a ten-year ban from UEFA competitions and a fine of EUR1 million for match-fixing. The sanctions have been upheld both by the CAS and by the Swiss Federal Tribunal (4A\_462/2019).

## 1.3 Betting

Under the newly enacted Federal Gaming Act, betting is in principle permitted but subject to strict regulation and licensing requirements.

### Regulatory Regime of Sports Governing Bodies

A large number of international (sports) federations (IFs) with a seat in Switzerland have a specific regulatory regime, including rules against illegal betting. This regulatory regime is then handed down to the national level and thus implemented by national sports governing bodies.

Typically, those bound by an international code of ethics – namely, officials, referees, players, etc – are prohibited from betting both directly and indirectly on games of their own sports and Olympic competitions in general. Furthermore, they are not allowed to share any insider information (such as team tactics or injuries) and must always report any suspicious behaviour.

Sanctions may include disciplinary measures such as a fine or a suspension, and may range up to a life ban. Notable examples of ethics codes of Swiss-based IFs are the FIFA Code of Ethics, the IIHF Ethics Code and the IOC's Code of Ethics.

## Co-operation

Sports governing bodies often enter into co-operation agreements to protect the integrity of their sport. For example, UEFA signed a memorandum of understanding with the European Union's law enforcement agency (Europol) for mutual support, exchange of information and education programmes.

Furthermore, many IFs have concluded partnership agreements with operators of betting fraud detection systems in order to monitor both their games and the betting markets so as to identify, analyse and sanction illegal betting behaviour.

## Recent Case Law

In October 2023, FIFA upheld a suspension of ten months against the Italian football player Sandro Tonali for illegal betting on football events organised by FIGC, UEFA and FIFA.

In January 2021, FIFA upheld a suspension of four weeks and a fine of GBP70,000 issued against an English football player, Kieran Trippier, for providing inside information on his transfer, which was later used by friends for betting purposes.

## 1.4 Disciplinary Proceedings

### Disciplinary Proceedings in General

Typically, when enforcing disciplinary sanctions, sports governing bodies will, as a first step, open a formal investigation against an athlete. During such investigation, the alleged misconduct and all the surrounding circumstances are examined, with the athlete being granted the right to be heard.

The investigation is usually carried out either by a specialised internal body or by a department with broad and general jurisdiction, depending on the matter and the organisation of the respective federation.

If a sanction is imposed after completion of the investigation, the athlete may, in many instances, file an appeal before an internal judicial body, such as the Appeals Body of UEFA (in European football-related matters) or the FEI Tribunal (in equestrian sports).

If foreseen by the applicable rules and regulations, the final decision of the sports governing body may be appealed before the CAS or another arbitral body, rarely before state courts. Ultimately, decisions of the CAS may be appealed with limited grounds before the Swiss Federal Tribunal (see **6.1 National Court System**).

## 2. Commercial Rights

### 2.1 Available Sports-Related Rights

A variety of sports-related commercial rights are available under Swiss law. In addition to sponsorship and broadcasting (which is addressed in **2.2 Sponsorship** and **2.3 Broadcasting**), event organisers may conclude contractual arrangements relating to merchandising, hospitality and ticketing.

#### Freedom of Contract and Limitations

While, in principle, contractual parties are free to negotiate the terms of their arrangements, certain restrictions apply.

By way of example, during so-called high-security-risk games, the sale of alcoholic beverages is prohibited in the stadium. Furthermore, when selling merchandise, necessary trade marks must be obtained. The sale of fake goods such as football shirt imitations is prohibited and punishable by law.

### Secondary Ticket Sales

Under Swiss law, there are no provisions specifically regulating secondary ticket sales. To combat such secondary ticket sales, organisers often rely on technical (personalised tickets) or contractual (prohibition of resale) measures.

### Illegal Ticket Sales

In contrast to secondary ticket sales, the sale of non-existent or forged tickets is a criminal offence and may be sanctioned with imprisonment up to five years and/or a monetary penalty.

## 2.2 Sponsorship

As in other countries, sport sponsoring in Switzerland is a popular tool for corporate and brand promotion. Depending on the sponsor's commercial strategy, sponsoring takes various forms and ranges from collaborations with athletes, teams and clubs to sponsoring of leagues, tournaments and sports associations.

Usual forms of sponsoring include title or series sponsoring, branding of equipment (jerseys, helmets, etc) and PR activities.

Conversely, sports rights-holders have various options to attract a sponsor's investment, such as:

- live sports, where sponsors may benefit from corporate and brand exposure;
- shirt sponsorships and kit supplier deals;
- stadium sponsorship; and
- name sponsoring (if permitted by the competent sports body, such as in volleyball).

The relevant rights and obligations are negotiated in a sponsorship agreement. Key terms vary and depend on the contractual parties. A standard contract between sponsor(s) and a National

Federation may include the following rights of the sponsor(s) in return for a fee:

- branding of equipment;
- production of image and communication material;
- right to use names, photos, testimonials, etc, of the athletes for own commercial and promotional purposes;
- participation of athletes at sponsors' events; and
- social media posts.

## 2.3 Broadcasting

In Switzerland, SRG SSR, the publicly funded Swiss broadcasting corporation, offers a high variety of sports events on a free-to-air basis. Recently, broadcasters, including SRG SSR, have started to expand their online services. This has led to an increase in livestreaming of “less popular” sports. Additionally, sports events are available on a subscription (pay-TV) basis from other broadcasters.

### Broadcasting Rights

Broadcasting rights are usually bundled into a variety of packages by the sports rights-holders, ranging from premium (live TV including priority picking rights per match day) to low-priced options (such as highlights and delayed games).

Premium packages are generally offered on an exclusive basis, subject to limitations by any mandatory law (eg, antitrust restrictions). Typically, exclusivity is offered on a channel and territorial and/or language basis. Low-priced options, on the other hand, are usually granted on a non-exclusive basis.

For example, the rights to the matches of the Swiss Super League – the highest football league in Switzerland – were sold by the Swiss Football League for a period of four seasons to

two broadcasters through a dedicated sales process. While all matches will be broadcasted on a pay-TV basis, SRG SSR will broadcast live one match per round on free-to-air TV.

### Right to Record and Neighbouring Rights

Venue access is usually granted by the holder of the domestic authority, allowing the broadcaster to record the sports event. Spectators with access to the stadium are generally prohibited from recording, which is foreseen in the house rules of the domestic authority as well as the terms to the entry ticket (see 3.1 Relationships).

Sports events as such are generally not protected by copyright as they are not considered to be in accordance with the Federal Act on Copyright and Related Rights (“Copyright Act”) (see 5.2 Copyright/Database Rights). However, producers of image and sound carriers, as well as broadcasters, are granted so-called neighbouring rights. Under these rights, producers of audio-visual materials are granted the exclusive right to reproduce, copy, provide access and distribute the recordings. Broadcasters, on the other hand, are granted the exclusive right to make perceptible and retransmit their programme. However, these rights may not be exercised directly by the producers and/or the broadcasters themselves, but only by an authorised collective rights management organisation.

## 3. Sports Events

### 3.1 Relationships

When organising an event, the promoter enters into a multitude of contracts. The contracting parties depend on the event to be organised, but typically include athletes, venue owner(s), local authorities, hospitality and other service providers as well as spectators.

## Contractual Relationship Between Organiser and Spectator

With the sale and purchase of a ticket in order to gain access to a sports event venue, the organising entity and the spectator enter into a contractual relation. In addition to the main contractual duties (access to venue in return for a fee), the spectator contract generally includes ancillary contractual rights and obligations of the parties, such as in relation to safety, liability, taking of pictures, etc.

## Venue Owner's Domestic Authority Rights

Sports events take place in privately or publicly owned closed venues (eg, stadiums, sports event halls) or on public open grounds (eg, city marathons).

If the event takes place in a privately or publicly owned closed venue, such as a stadium, the organiser may aim at protecting its rights under the venue owner domestic authority doctrine.

In fact, many sports events, such as in football, ice hockey or volleyball, usually take place in such closed venues and are thus only accessible with a valid ticket. Based on the venue owner's domestic authority rights, house rules are typically enacted, which entail regulations on various matters, including the prohibition of taking pictures and video recordings of the event. Identical restrictions or rules are then also contained in general terms applicable to the contractual relationship between the organiser and the spectator.

However, in the absence of copyright protection (which may apply only in limited circumstance to sports events, see **5.2 Copyright/Database Rights**), the sporting event per se does not enjoy particular protection under Swiss law. Hence, as soon as a sporting event or performance is made accessible to the public – ie, outside a sports

venue (city marathon, automobile race on public ground, etc) – acts by spectators such as watching the event from a balcony or the recording the event may not be validly prohibited.

## 3.2 Liability

Organisers of sports events have, in general, a duty of care and a general duty to provide safety for the spectators and the athletes. Such duty of care may be based on contract or on tort law. In addition, in case of certain accidents, criminal law may be applicable.

Generally, an organiser of a sports event will have to take all reasonable and appropriate protective and precautionary measures to protect spectators and athletes from accidents and damages. Of course, such obligation is not unlimited, and an organiser will be able to reject any liability in case there was a faulty behaviour on the side of the spectator or of a third party that caused the damage or the accident, respectively.

## Limitation of Liability

In the general terms and conditions underlying the ticket purchase it is possible for sports event organisers to limit their liability. However, under Swiss law, any agreement purporting to exclude or limit liability for unlawful intent or gross negligence in advance is void.

Furthermore, according to the prevailing Swiss legal doctrine, it is not permitted to exclude or limit in advance liability for bodily injuries (physical integrity) or death.

## Rules on Keeping Sporting Events Safe From Violence and Disorder

In the light of disturbances at the 2008 UEFA European Football Championship, various measures have been implemented in Switzerland to prevent violence in and around sport. Besides the Federal Act on Measures to Safeguard Inter-

nal Security (BWIS), the most important regulation currently in place is the Cantonal Concordat on Measures against Violence at Sporting Events (“Hooligan Concordat”). According to the Hooligan Concordat, football and ice hockey matches involving clubs of the male top division are in general subject to authorisation by the competent cantonal authorities.

Depending on the risk classification of the matches, the authorities may order various constraints and prohibitions such as ID checks at the entrance of the stadium to ensure that persons with stadium bans do not enter the venue, body searches at the entrance, prohibition of serving alcohol inside and outside the stadium, area restrictions and the duty to report to the police at certain dates and times for actual and potential offenders.

## 4. Corporate

### 4.1 Legal Sporting Structures

The vast majority of sports governing bodies are either organised as an association (*Verein*) or incorporated as a company limited by shares (*Aktiengesellschaft*). Combinations of both legal forms are also seen in practice.

#### Sports Governing Bodies

In Switzerland, sporting bodies typically have an idealistic social purpose and are organised as associations pursuant to the Swiss Civil Code. This applies for both national as well as for the many international sports governing bodies domiciled in Switzerland.

The main reason for sports governing bodies opting for the legal form of an association is a large degree of flexibility in their internal organisation, a wide-ranging autonomy and, at least in

some cantons, certain tax benefits. Swiss association law provides for a wide discretion to the associations in their organisation and governance.

#### Professional and Non-professional Sport Clubs

For domestic sports clubs, it is also common to be organised as an association, particularly non-professional sports clubs. By contrast, professional teams of sports clubs, especially in football and ice hockey, generally focus more on economic profits and thus operate as a company limited by shares. In this respect, it is noteworthy that the Swiss Football League and the Swiss Ice Hockey Federation only grant a licence to participate in their championships if the professional teams of sports clubs are organised as a company limited by shares. In parallel, however, it is also possible that the “umbrella” organisation and/or the amateur section of the same sports club is still incorporated as an association.

### 4.2 Corporate Governance

Apart from a very limited set of duties particularly addressing sporting events, such as the prohibition of match-fixing, there is no general code under federal Swiss law which would contain sport-specific corporate governance rules. However, general corporate governance rules applicable to (commercial) entities are pertinent. In addition, within the autonomy of associations, sports governing bodies are permitted to enact corporate governance codes themselves. Indeed, this has been done in the recent past by a large number of international sports federations.

#### General Corporate Governance Rules

Directors and owners of sport clubs, as well as executive members of associations, are subject to the general corporate governance rules under

Swiss law: amongst others, rules apply regarding duties of fidelity, independence, conflict of interests, transparency (eg, towards the shareholders), etc.

### Sport-Specific Corporate Governance Codes

Swiss association law is based on the principle of autonomy. This includes the right of self-organisation and structure. Accordingly, sports associations are free in establishing their internal governance – that is, the rights and obligations of their members.

Due to the growing commercialisation of sports and demand for transparency, many sports associations and federations have introduced quite strict corporate governance regulations. FIFA, for example, enacted the FIFA Governance Regulations and the FIFA Code of Ethics, which establish general principles regarding duties, powers and responsibilities of certain bodies and their members. Non-compliance may lead to severe disciplinary sanctions.

### Financial Stability and Prevention of Insolvency

Financial stability and preventing clubs from going insolvent are matters of the utmost importance to ensure fair and undisturbed competitions.

As a result, sport licensing authorities often require detailed financial information to verify a club's financial soundness. If the financial status of a club or a team is considered unsatisfactory, the club or team may be refused the licence and, therefore, the right to participate in a certain competition.

### Insolvency

In the event of insolvency of a Swiss sporting club, the proceedings are governed by the Fed-

eral Debt Collection and Bankruptcy Act. Under this Act, in essence, it is up to the creditors' assembly to decide whether to continue the operation of the sporting activities during the insolvency.

Should the creditors' assembly agree to continue to operate the sporting activities, then, subject to the position of the competent league and/or regulatory sporting authority, the club may continue to play, at least until the end of the season (when granting of a new licence may presumably fall to the insolvency proceedings).

What is more, the competent league and/or regulatory sporting authority may, depending on the applicable regulations, in case of insolvency issue sanctions, take appropriate measures to protect an ongoing competition.

### 4.3 Funding of Sport

Professional and elite sport in Switzerland is mainly funded through the commercialisation of rights (ticketing, sponsoring, merchandising, broadcasting revenues, etc), contributions from international sports federations and national organisations such as the Swiss Sports Aid Foundation, lottery and betting funds, as well as the public purse (federal, cantonal and local government).

The funds are distributed to the sports associations, the national sports federations, organisers of sports events and national leagues, athletes and coaches as well as to Antidoping Switzerland.

Depending on their potential for success, athletes may qualify for the Swiss Olympic Card and thereby receive financial support, subsidised services and discounted offers from the sponsors of Swiss Olympic, FOSPO, the federations

and clubs. Furthermore, athletes have the possibility to join the Swiss Military Elite Sport Recruit School (Sport RS) in which, after their basic military education, they will attend an intense training period organised by FOSPO. After completing the Sport RS, athletes are offered further training to prepare for international championships (Olympic Games, world championships, etc) and they may perform additional military service that entitles them to income compensation.

#### 4.4 Recent Deals/Trends

In January 2024, Los Angeles FC became new majority shareholder of the Top Division Swiss club Grasshoppers FC, Zurich.

The deal sees Los Angeles FC continuing its expansion outside of North America and follows the acquisition concluded in 2021 by another MLS Club, the Chicago Fire FC, of FC Lugano, another Top Division Swiss club.

## 5. Intellectual Property, Data and Data Protection

### 5.1 Trade Marks

Swiss trade marks can be registered online by filing an application with the Swiss Federal Institute of Intellectual Property (IPI). The entire process is well structured and very well managed by the IPI.

#### Registration Process

Upon payment of a registration fee, the IPI examines whether there are any pertinent grounds to exclude the trade mark from protection. In principle, any sign that is capable of being represented graphically can be registered as a trade mark, provided that the sign is used to distinguish goods or services from those of a competitor.

By contrast, descriptive or deceptive signs, simple signs or signs contrary to public policy cannot be registered. The IPI will review the formal requirements but does not examine whether similar or identical trade marks exist.

Following a successful registration, the trade mark is published online in the Swiss trade mark register (Swissreg). The trade mark protection starts with the entry therein.

If the trade mark was originally registered outside of Switzerland and an additional protection through Swiss jurisdiction is sought, the owner can apply for an extension through the World Intellectual Property Organization (WIPO). A corresponding entry will be made in the WIPO database. An additional publication in Swissreg does not take place.

#### Advantages of Registration

Protection is the main advantage of the registration. The owner can preserve its rights in case of an unauthorised use of a trade mark in civil and/or criminal proceedings. The protection inherently allows the owner to prohibit third parties from using similar trade marks for similar products and/or services.

### 5.2 Copyright/Database Rights

#### Copyright

The copyright law of Switzerland is codified in the Swiss Federal Copyright Act. It protects the authors of literary, artistic and scientific works and software, which are equally deemed works. Work is protected irrespective of its value or purpose if it is considered to be a literary and artistic intellectual creation with an individual character.

Protection begins with the creation of the work and expires 70 years (or for software, 50 years) after the death of the author. An exception

applies for photographs without an individual character; their protection expires 50 years after creation. Copyright vests in the person of the author at the time they created a work, and can be inherited. Registration of the work is not required (there is no copyright register in Switzerland). The author has the exclusive right to exploit the work without registration. Copyright can be assigned or licensed to a third party. Such exploitation is not subjected to any formal requirements, even though written form is recommended. Nonetheless, moral rights of the author must be respected.

The author or the exclusive licensee can allege violations of the copyrights in civil and/or criminal proceedings (intentional copyright infringement is a criminal offence), unless an exception provided for by the Copyright Act is applicable. In cases of urgency, provisional measures can be sought. Damages are calculated in accordance with tort law, account of profits or unjust enrichment.

As to live sports events, obtaining copyright protection is often difficult as, in general, they are not considered to be works within the meaning of the Copyright Act since they lack intellectual creation and/or individual character.

### Photographic Reproductions

Under the Copyright Act, pictures without individual character (while fulfilling the other requirements) may also enjoy protection as photographic reproductions.

While similar, the protective rights differ in certain aspects from the scope of protection given to copyright-protected work.

### No Database Right

Even though there have been several attempts to do so, Switzerland has never implemented a database right similar to the one introduced by the Database Directive in 1996. Accordingly, there is no *sui generis* protection of databases in Switzerland.

Swiss law only provides to database owners very limited protection under the Copyright Act and the Act Against Unfair Competition. According to Swiss copyright law, databases only qualify for protection if they qualify as original databases. The requirement of originality demands that a database must constitute an intellectual creation by reason of the selection or arrangement of its contents in order to enjoy copyright protection.

As soon as a database serves its true purpose (ie, is comprehensive), it fails to meet the criteria of originality. Consequently, the majority of the databases are not protected under copyright law even if substantial investments have been made to produce them.

### 5.3 Image Rights and Other IP

An athlete's image rights are part of their personality rights and are protected from unlawful infringements by the Swiss Constitution and the Swiss Civil Code. The protection is to some extent limited as soon as an athlete is considered a public personality.

Nonetheless, in accordance with the Swiss Civil Code, any commercialisation of image rights requires the athlete's consent. Commercialisation without consent is considered an unlawful infringement and allows the athlete to seek legal protection against the infringing party. Protection includes a cease-and-desist order and claim for damages.



Further, trade marks are frequently used by athletes to exploit their image rights. In case of an unauthorised use of a trade mark, the athlete has the above-mentioned remedies at their disposal (see 5.1 Trade Marks).

## 5.4 Licensing

The most common way for athletes to exploit their IP is to register their brand/name as a trade mark, which is subsequently licensed to their partners or sponsors. The latter can use the brand/name for merchandising or brand extension purposes.

Restrictions upon the assignment of IP rights apply to authors' moral rights (one part of the copyright) and anyone's personality rights. Both rights cannot be assigned but contractual waivers are permitted to a certain degree. In practice, licence agreements are very common.

## 5.5 Sports Data

According to Swiss law, no ownership rights on data exist. The applicable data protection law only provides for defence claims. This makes any exploitation of data per se difficult.

Sports data is commonly used for statistical or analytical purposes.

There is vast potential in sports for real-time data and analytics. They are of interest not only from the perspective of athletes or teams in order to track their performances during the game and use them for analysis purposes, but also present a new form of fan engagement – the latter leading to the creation of new revenue streams.

During the 2018 World Cup, FIFA allowed teams to use player tracking systems during games for the first time.

## 5.6 Data Protection

The Swiss Data Protection Act (DPA) is the relevant law applicable to sports data in Switzerland (and to all data processing acts in general). The DPA was recently revised in order to be more aligned with the EU General Data Protection Regulation (GDPR) and entered into effect on 1 September 2023.

The revised DPA aims, amongst other things, at strengthening the individual's data protection rights. As a consequence, the revised DPA requires data controllers – such as sporting federations and associations – to comply with new and stricter rules with regard to the processing of personal data from affected data subjects and provide, in case the relevant prerequisites are met, for further obligations such as the performance of a Data Protection Impact Assessment (DPIA) or the appointment of a Swiss representative.

### Private Regulations of Sports Associations

The strengthening of the individual's data protection is mirrored in the private regulations of sports associations. FIFA provides for FIFA Data Protection Regulations, establishing a standard to be applied when processing personal data and to provide preventive safeguards against the infringement of personality and privacy rights through the inappropriate processing of personal data.

### Relevance of the GDPR

Finally, it must be noted that although the GDPR does not directly apply in Switzerland (as Switzerland is not a member state of the European Union), certain data-processing activities of entities based in Switzerland may nevertheless fall under the scope of applicability of the GDPR. Therefore, in practice, as soon as an entity or sports governing body has an international out-

look (which is certainly the case for all international federations), it is standard practice to align all processing activities directly with the GDPR.

## 6. Dispute Resolution

### 6.1 National Court System

In principle, sport-related disputes fall within the ordinary jurisdiction of state courts, the same as any other type of disputes. There is no statutory law which would per se provide a mandatory alternative forum for such disputes.

However, in reality, most sports governing bodies establish (first) an internal judiciary system, based on association law and aimed at enforcing properly the internal rules of the organisation.

Further, the vast majority of sports organisations rely on arbitration as a system to solve sport-related disputes. This is, on the one hand, to ensure the equal treatment of all athletes, players, clubs, etc, and on the other hand, to avoid the situation whereby a state authority without expert, in-depth knowledge of the specificities of that sport may have to decide a sporting matter. Therefore, the role of national state courts in connection with sport-related disputes is very limited and mostly confined to criminal law matters relating directly or indirectly to sport.

#### The Basis: Autonomy of Associations

The autonomy of associations under Swiss law provides extensive freedom to sports governing bodies in terms of how internal dispute resolution proceedings shall be organised. Moreover, the Swiss Federal Tribunal has explicitly recognised the specific needs of arbitration in sport, with the involvement of sport-specialised arbitrators. The Swiss Federal Tribunal has therefore adopted a rather tolerant approach with regard

to the validity of arbitration clauses inserted in sports regulations and accepted by an athlete or a club only “by reference” to those regulations.

There are a few limitations to this, but they are important and are as outlined below.

#### Limitations

First, even if an association implements an “internal judiciary system”, there is a mandatory right to appeal against any decision rendered by an association, provided that all internal dispute resolution mechanisms have been exhausted. The appeal can be made before a state court or, alternatively, in case of a valid arbitration clause, before an arbitral tribunal. In the majority of these cases, the CAS is determined in the applicable regulations as being the competent appeal instance.

Furthermore, certain disputes – such as domestic employment law matters – are arbitrable only under limited circumstances, so that for such matters a jurisdiction of state courts may exist.

Finally, based on the jurisprudence of the Swiss Federal Tribunal, it is admitted that an athlete cannot be requested to waive their right to appeal with the Swiss Federal Tribunal against a final decision of an arbitral body, if the athlete has been required to accept the competence of that arbitral body.

### 6.2 ADR (Including Arbitration)

As mentioned in **6.1 National Court System**, many sports governing bodies in Switzerland have established their own internal judiciary systems and (for the subsequent court review) enacted arbitration clauses.

## Dual System of Internal Judicial Systems and Sports Arbitration (CAS)

The most prominent examples of alternative dispute resolution mechanisms are the internal judiciary instances within IFs, such as FIFA and UEFA, including the FIFA Football Tribunal and the UEFA Control, Ethics and Disciplinary Body.

In particular relation to the decision-making bodies of FIFA, it must be noted that they do not only adjudicate on disciplinary matters (ie, on “vertical” disputes between FIFA and a direct or indirect member), but also on financial disputes between clubs, players, associations, etc (ie, on “horizontal” disputes).

Internal judiciary systems of sports governing bodies are very loosely regulated by statutory law. Only fundamental principles of association law and other fundamental principles of the law apply.

### 6.3 Challenging Sports Governing Bodies

Sports governing bodies establish disciplinary regulations and disciplinary committees in order to ensure the compliance by their direct or indirect members with the rules of the sports organisation. Disciplinary proceedings may lead to sporting and financial sanctions, such as a suspension, a fine, a transfer ban, match suspensions, etc. The Swiss Federal Tribunal has repeatedly confirmed that such disciplinary proceedings are matters of civil law and not of criminal law.

As a remedy available to the parties, decisions of internal judiciary instances can, as mentioned in **6.1 National Court System**, be appealed either before a state court or, typically, before the CAS.

## 7. Employment

### 7.1 Sports-Related Contracts of Employment

The relationship between a sports organisation (eg, a club) and its players or athletes is, in particular for team sports, usually based on a fixed-term employment contract governed by Swiss employment law.

#### Content

In principle, within the limits of mandatory Swiss law, the parties are free to negotiate the term of the employment contract. In certain industries, such as football and ice hockey, the competent sports associations have enacted standard contractual terms, which are typically included in the respective player–club relationship.

In the event of a transfer of a player, their employment contract with the former club must be validly terminated first, before a new employment contract with the new club may be concluded. Accordingly, in case the contract between a certain player and a club is still valid and its duration has not expired, it may be necessary for the new club to enter into a transfer agreement with the club, to ensure that the old contract is validly terminated.

#### Salary Caps

Salary caps are not common in Switzerland. In fact, as of today, no sports organisation has enacted salary cap rules to limit the amount of money a team may spend on its players' salaries. Club Licensing and Financial Sustainability Regulations enacted by UEFA provide for certain limitations, but they are of other types and nature than a salary cap. It is not to be excluded that, in the near future, some budget limitations or even salary caps may be introduced in the Swiss professional hockey league.

## 7.2 Employer/Employee Rights

The relationship between a sports organisation, such as a club, and its personnel is usually based on employment law. While staff and working personnel are typically employed, members of commissions, such as executive boards, are usually contracted on the basis of a simple mandate.

There is no statutory law which would specifically define rights and obligations under such contracts. General provisions of the Swiss Code of Obligations apply.

### Additional Rules

In addition to the respective contractual terms, sports governing bodies usually provide for a detailed set of ethics rules (code of conduct), with respective duties and sanctioning regimes.

## 7.3 Free Movement of Athletes

Based on international treaties between Switzerland and the European Union (EU) as well as the European Free Trade Association (EFTA), citizens of contracting countries are granted the right to freely choose their place of employment and residence within the respective territories. Consequently, discrimination because of citizenship is in principle forbidden.

The respective provisions also apply to athletes, staff, trainers, etc. Accordingly, in relation to EU and EFTA nationals, capping the number of foreign athletes competing in a sport may violate the aforementioned treaties.

However, work permit restrictions, hence capping of the number of athletes, may be applied to non-EU and non-EFTA member states residents (subject to treaties to the contrary). As a general requirement, applicants must be considered highly qualified. For athletes over the age of 21, this means, for example, that they must have

several years of solid competition experience at the international level (with at least three years of experience in one of the top leagues).

No work permit is required for participating in competitions and taking part in training for up to two months a year. However, if applicable, a visa must be obtained.

Notwithstanding the above, some sports have applied limitations on the basis of citizenship, with such restrictions based on simple “gentlemen’s agreements”.

## 8. Esports

### 8.1 Esports Overview

Esport is an emerging area in Switzerland and has experienced constant growth rates in recent years. Nevertheless, in international comparison, esports in this country is still small and the existing national competitions (with the exception of the esport competitions organised by FIFA) and leagues have not reached the size that would permit Swiss athletes to perform on a professional basis. Moreover, there are certain Swiss sports clubs, notably in football, which have started establishing their own esport teams. However, due to various negative reactions towards esports by fan groups of these clubs, the commercial success of this remains to be seen.

The Swiss Esports Federation (SESF), a founding member of the International Esports Federation (IESF), was established in 2008. The SESF pursues the recognition of esport as a sport.

The legal landscape for esports is relatively stable and there have not been significant trends or developments recently.

## 9. Women's Sport

### 9.1 Women's Sport Overview

As in many other sports and other jurisdictions, there has been an exciting growth in women's sport, notably in football. Since 2020, the women's football league has an official sponsor and more games are broadcast by SRG SRR, either on TV or livestreamed on its website. In many other popular sports in Switzerland (such as tennis or skiing), women's sport has always played an important role, so that there have not been significant changes recently.

Swiss Olympic continues to specifically promote female top athletes – for example, with a specific programme called *Frau und Spitzensport* (“woman and elite sport”). The programme supports female athletes in elite sports in optimising their performance. The focus is on topics that are specifically relevant for female athletes, such as pregnancy, in regard to training, nutrition and recovery.

## 10. Non-fungible Tokens (NFTs)

### 10.1 Non-fungible Tokens (NFTs)

Recently, the sports market has seen an increase in co-operation between sports organisations and NFT providers and platforms. NFTs are typically used to generate additional sources of income – for example, by way of a co-operation/ sponsorship agreement with an NFT platform, which pays the sports organisation a fixed and/ or royalty-based fee in return for the right to use certain intellectual property rights of said sports organisation for operating a fantasy game. Additionally, certain sports organisations have also started using NFTs as a way to increase direct fan experiences.

While offering great new business opportunities, there are also risks associated with such operations. For example, in practice, it may be difficult to obtain outstanding payments from defaulting NFT providers. Moreover, there are several questions relating to intellectual property – such as the use of name, image and likeness (NIL) rights of athletes – which may be difficult to handle in practice, causing corresponding risks and uncertainties.

## 11. Regional Issues

### 11.1 Regional Issues Overview

While Switzerland is not part of the EU, Switzerland's relationship with the UK was governed in the past in key areas, such as trade and migration, on the basis of bilateral agreements between Switzerland and the EU. With Brexit, these have had to be replaced by new bilateral agreements.

Switzerland and the UK were largely able to retain their existing legal relationship. However, particularly in relation to migration, a new regime applies. In replacement of the previous free movement of persons, Switzerland has introduced a separate quota for UK nationals to work in Switzerland.

If, on the other hand, a Swiss person wants to emigrate to the UK, they will be evaluated according to the new points system. Whether or not this points-based system will have any influence on Swiss sports is difficult to predict for the time being and must be reviewed at the appropriate time. Having said this, it appears in practice that it has become more difficult, at least in football, to transfer a player from the Swiss League to the UK under this new points-based system.

Brexit also continues to have an impact on sports insofar as cross-border data flows are concerned. In many sports, personal data (such as athlete results data) is a key asset, which needs to be transferred between various jurisdictions, in particular in the context of international competitions. Insofar as transfers to or from the UK are concerned, there have been some obvious legal questions triggered by Brexit, but it currently seems that a legal regime is in place to ensure that data transfers can continue quite smoothly.

## 12. Artificial Intelligence (AI)

### 12.1 AI Overview

Currently, Switzerland has not implemented any specific key AI regulation. However, after having examined the developments, opportunities and challenges associated with AI, last year the Swiss Federal Council instructed the Federal Department of the Environment, Transport, Energy and Communication (DETEC) to identify potential approaches to regulating AI in Switzerland by the end of 2024, and to involve all federal agencies responsible in the legal areas affected. The analysis is supposed to build on existing Swiss law and identify possible regulatory approaches for Switzerland that are compatible with the EU AI Act and the Council of Europe's AI Convention. In particular, the EU AI Act will also have extraterritorial application to sports organisations and sponsors/brands in Switzerland in certain cases.

Furthermore, the Federal Act on Data Protection (FADP) provides one article that is being called the "AI provision". Article 21 FADP deals with the permissibility and transparency requirements for automated individual decision-making. Automated individual decisions are decisions made without any human intervention or review, based

on the processing of personal data about an individual, that lead to legal or similar consequences for the affected individuals, eg, that individual does not receive a loan from a bank or has to pay higher health insurance. Article 21 FADP states that individuals who are affected by automated individual decisions have to be informed about such decisions, eg, in the organisation's privacy policy, and they have a right to request that the decision be reviewed by a human being. The EU GDPR has a similar provision in Article 22 GDPR.

While the opportunities of AI are vast (eg, increased efficiency, automation, advances in scientific research, enhancing educational possibilities, etc), the risks related to the use of AI are also manifold. From a legal perspective, for example, the following topics are currently being debated regarding potential risks that AI is associated with: privacy and data protection, intellectual property, liability and accountability, bias and discrimination, security and cybersecurity, and regulatory compliance. Furthermore, organisations are dealing with the question of how to best set up AI governance for the implementation of AI within their organisation and how to deal ethically with the AI and its use cases.

## 13. The Metaverse

### 13.1 Metaverse Overview

In March 2023, 47 partners from the economic, scientific and administrative sectors founded the Swiss Metaverse Association. The aim of the association is to create a broad-based metaverse ecosystem. In addition, the founders want to promote attractive framework conditions in Switzerland so that new business models, companies and jobs can be created. As far as the choice of topics is concerned, the

Swiss Metaverse Association has set its sights on a variety of areas right from the start: taxes, industrial metaverse, regulation, art and culture, research and education, insurance and banking, technology and infrastructure, health, tourism and sport are named as overarching topics.

The metaverse is mainly being used in the gaming industry, but less within companies for collaboration purposes or suchlike. However, the metaverse is only at its beginning and many organisations, sponsors and brands are looking into the various use cases the metaverse may have, such as advertising and branding in the metaverse, which in fact is already being used by some brands actively. That being said, after the initial hype around the metaverse, the interest in the metaverse seems to have died down a bit due to the current rise of AI applications and regulation.

Again, the opportunities that the metaverse promises are vast and range from revolutionised social interactions to innovative educational platforms, new aspects in entertainment, e-commerce and marketing innovation, and new opportunities for disabled individuals. From a legal perspective, there are various risks that have been identified in the past, eg, whether contracts, for example for the sale of property, signed in the metaverse can be legally binding and enforced in the real world. Furthermore, similar risks as with the use of AI are associated with the metaverse, such as privacy and data protection, intellectual property, as well as liability and accountability when everyone is acting through their avatars.

## Trends and Developments

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**Bär & Karrer Ltd** is a leading Swiss law firm with more than 200 lawyers in Zurich, Geneva, Lugano, Zug, Basel and St. Moritz. Its core business is advising its clients on innovative and complex transactions, and representing them

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### Introduction

In the world of sports, Switzerland remains the country in which the International Olympic Committee, many international sports federations (Fédération Internationale de Football Association (FIFA), Union of European Football Associations (UEFA), Fédération Internationale de Volleyball (FIVB), Union Cycliste Internationale (UCI), International Ice Hockey Federation (IIHF) and many others) and the Court of Arbitration for Sport (CAS) are located.

The country's unique position continues to have a strong impact on what can be observed as its current trends and developments. Like the rest of the world, Switzerland was severely affected by the COVID-19 pandemic, although the effects of the pandemic are becoming less and less important, and other crises, such as the war in Ukraine, have become the focus of attention in the recent past. Because of its unique position in the world of sports, many of the legal and regulatory impacts of the pandemic and the war in Ukraine could be closely observed in Switzerland. The latter was the reason for the exclusion of Russian athletes and Russian clubs from international sports competitions. There have also been other recent developments unrelated to the war (eg, promotion of women in sports governing bodies and the influence of digitalisation on sports).

### The Importance of Swiss Law

Whether in disputes related to COVID-19 or the war in Ukraine, or in other sports-related disputes (commercial, contractual, disciplinary, etc), Swiss law will continue to play an important role.

There are a number of reasons why many sports-related matters are and will continue to be governed by Swiss law.

As many international sports federations are seated in Switzerland, Swiss law ordinarily governs international commercial contracts in the world of sports. Most contractual/commercial disputes (eg, related to sponsorship agreements or TV rights contracts) will thus be subject to Swiss law considerations.

However, for disputes of a regulatory nature, Swiss law also plays a predominant role. The statutes and regulations of most international sports federations provide that such disputes are adjudicated primarily based on applicable regulations, but with Swiss law applying on a subsidiary basis. This mechanism is also reflected in the procedural rules of the CAS, which establish that a dispute is governed, primarily, by sports regulations and only in a subsidiary way by a state law.

## The Regulatory Approach to Recent Crises

Since 2020, many international sports federations have issued specific rules and regulations to preserve the possibility to continue sports activities and events despite the COVID-19 pandemic, on both a professional and amateur level.

By way of example, Swiss Tennis was one of the very first Swiss sports federations to issue a COVID-19 protocol and so ensure that practising tennis remained possible, notwithstanding the restrictions caused by the pandemic. On an international level, UEFA developed a “back to football” framework, allowing for European football competitions to continue and to be completed. On a domestic level, the major Swiss leagues (football, ice hockey, handball, basketball, floorball, etc) also implemented detailed health and safety protocols and have so managed to continue their competitions – if not at all levels, then at least at the highest (generally professional) level.

Furthermore, various international sports federations took specific (temporary) measures addressing the exceptional situation deriving from the war in Ukraine. FIFA, for example, issued an Annexe to its Regulations on the Status and Transfer of Players (RSTP) which applies to all employment contracts of an international dimension concluded between players or coaches and clubs affiliated to the Ukrainian Association of Football (UAF) or the Football Union of Russia (FUR), as well as to the registration of all players registered with the UAF.

## Matters of Debate

Although, fortunately, the sports legal landscape is no longer dominated by COVID-19, some disputes are still (directly or indirectly) caused by circumstances of the pandemic. Furthermore,

several disputes have been caused by the war in Ukraine.

FIFA adjudicates disputes where football clubs and football players argue about possible amendments, changes or even terminations of existing contracts because of a change in the overall economic environment of football. A first – quite solid – body of case law has developed in the meantime, which indicates that FIFA shows great restraint in accepting unilateral changes to existing contracts.

Other sports federations or stakeholders are still involved in disputes concerning TV and broadcasting rights, often linked to adjustments in payment terms which one party may require, or to unilateral terminations of such contracts. Similar disputes have also occurred in relation to sponsorship agreements or other commercial contracts in a sporting context. Many disputes of this type are still pending, and we expect to see further development of relevant case law in 2024 and probably even beyond.

Needless to say, each of these cases has its unique features, and each dispute will ultimately have to be decided on a case-by-case assessment, taking account of all pertinent factual, regulatory and legal circumstances. Hence, it is not possible to make general predictions about the outcome of such cases.

## Financial Impacts

The COVID-19 pandemic and to some extent the war in Ukraine caused financial difficulties on various levels in recent years. Probably most affected by the pandemic were those sport disciplines that enjoy little TV coverage, the so-called “minor sports”. In the absence of any income generated by ticket sales, and with negligible turnover generated by TV rights, those sports

and the respective (amateur) leagues were particularly thankful to receive important financial aids from the Swiss government.

Some funding even had to be made available to sports clubs of a higher level, up to the highest professional leagues in football or other professional sports. Since TV revenues in Swiss leagues are still not at a very substantial level, gate revenues continue to be an important factor within budgets of many sports organisations.

The Swiss government's financial aids to professional sports clubs, which suffered a loss of revenue due to the COVID-19 pandemic and the associated interruptions in sports competitions, were partly conditional, for example on the promotion and development of youth and women's sports, for example in football. In some cases, the financial aid was paid as bridging loans and will become due for repayment in the coming years. This is also something to keep in mind in any transaction involving a Swiss professional sports club, as change of ownership clauses and league licensing requirements may lead to an early repayment of such loans becoming due.

In 2022 and 2023, however, sports organisations in Switzerland recovered financially. For 2024, it remains to be seen whether gate revenues, TV revenues, etc, will again increase so that sports in Switzerland will return to or even surpass pre-pandemic levels from a financial perspective.

## Impacts on the Dispute Resolution System in Sport

The pandemic also had an important impact on the dispute resolution system in sport; since the COVID-19 pandemic, the CAS started to conduct a large number of hearings online, and so did other sport judicial bodies. This trend continued in 2023 and it seems that in 2024 hearings

will continue to be conducted in many cases online or hybrid (online and in person), in particular where costs, travel circumstances or reasons of urgency so demand. Online or hybrid hearings will thus remain an important feature in sports-related arbitration.

## Other Recent Topics

On a commercial level, the trend to increase interactive possibilities for fans has continued. More and more football clubs are introducing non-fungible tokens (NFTs) for fans, while other sports clubs are examining the possibilities of NFTs. There is a vast potential in esports, which has huge market potential, especially for the younger generation.

Furthermore, the Swiss government has decided to introduce far-reaching policies in relation to Swiss sports law.

On the one hand, the Swiss Olympic Association and national sports federations will have to fulfil a mandatory women's quota of 40%. The goal of this policy is to promote women in sports governing bodies.

On the other hand, in reaction to well-publicised cases of abuse of athletes, particularly in the sport of gymnastics, the Swiss government decided that sports associations must comply with an ethical code approved by the Swiss parliament in 2021 in order to keep receiving state funding. Swiss Olympic, the Swiss National Olympic Committee, has subsequently introduced the Ethic Statute, which supplements the nine principles of the Swiss Sports Ethics Charter with specific provisions and rules of conduct. Furthermore, an independent reporting office with investigatory powers, as well as a disciplinary body with sanctioning powers, was introduced.

Also, self-doping shall become a criminal offence in the future in accordance with a parliamentary initiative and the criminal provisions of the Sport Promotion Act (SPA) shall be expanded accordingly. Today, self-consumption of doping substances is not prosecuted under criminal law. Athletes at fault are currently only sanctioned by the sports federations (eg, suspended).

Starting from 1 July 2024, a new national and independent foundation called the Swiss Sport Tribunal will rule on doping cases and ethics violations in Swiss sport. The Foundation will assume the duties of the previous Disciplinary Chamber of Swiss Sport.

Contrary to the view of authorities and courts in other countries, the Swiss Competition Commission (COMCO) has decided not to issue any interim measures against FIFA's new Football Agents Regulations (FFAR) that entered into force on 1 October 2023. In the meantime, FIFA itself has decided on the worldwide temporary and partial suspension of the FFAR rules until the European Court of Justice renders a final decision in the pending procedures concerning the FFAR.

And last but not least, the year 2023 has brought the decision from the European Court of Human Rights (ECHR) in the case of Semenya v Switzerland. Semenya won Olympic gold in 2012 and 2016 over 800m but has been banned from competing in international races over this distance since 2019 due to the so-called Testosterone Rule of the IAAF. The South African opposed this, but her claim was rejected by the CAS (June 2019) and then by the Swiss Federal Supreme Court (September 2020). The ECHR now concluded in July 2023 that Semenya's appeal to the Swiss Federal Supreme Court should have been better examined by the court and further stated that "the Plaintiff was not granted sufficient institutional and procedural guarantees in Switzerland to allow it to examine the complaints effectively". This decision of the ECHR calls into question the applicable provisions regarding the appeal of decisions of a sports arbitral tribunal like the CAS before the Swiss Federal Supreme Court. It is still unclear whether this will lead to a change in the law and, if need be, expand the limited grounds allowed today for challenging an arbitral award before the Swiss Federal Supreme Court. Switzerland has requested that the case be referred to the Grand Chamber of the ECHR for a final decision, which the court has accepted.



## Law and Practice

### Contributed by:

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Onside Law

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**Onside Law** has been at the forefront of sports law for nearly two decades, and has offices in Geneva and Sydney in addition to its London HQ. Specialist advisers to clients across sport, media and entertainment, the firm provides practical and effective legal and commercial advice. With an unrivalled depth and breadth of expertise, its team of 26 in London – supported by Geneva and Sydney – is able to provide the most informed advice needed in this increasingly complex and sophisticated sector. The team at Onside Law pride themselves on being seen as trusted advisers and problem-solvers by all

their clients. The firm acts for many of the major governing bodies and international federations, counts six FA Premier League clubs as clients, and acts for some of the most high-profile people in sport on the planet. Onside Law specialises in disciplinary, integrity and anti-doping matters; major sport events; broadcasting and media rights; sponsorship, licensing and merchandising; investment in sport; acquisition of sports clubs and properties; and esports. The firm would like to thank James Tobias for his contribution to this chapter.

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## 1. Regulatory

### 1.1 Anti-doping

#### UKAD

UK Anti-Doping (UKAD) is the national anti-doping association in the UK and is responsible for producing regulations (UKAD Regulations) that comply with the World Anti-Doping Code (WADA Code) and implementing those at national level.

The UKAD Regulations often serve as a template for sports governing bodies in the UK to adopt for their particular sport. Many simply adopt them in their entirety while higher profile sports such as football and cricket amend them, in consultation with UKAD, for their own specific needs.

Participants in any sport will be required to comply with both UKAD Regulations and those produced by their own sport. UKAD is also responsible for carrying out testing, managing results and presenting cases regarding many of the alleged breaches within UK sport.

#### WADA

A new version of the WADA Code came into force on 1 January 2023, having been approved by WADA's executive committee on 23 September 2022. All sports have been required to review

and update their own rules to ensure compliance.

One change that came into force in 2021 relates to recreational substances (eg, cannabis and cocaine) where significantly lower sanctions are now possible if an athlete can demonstrate the usage was recreational and outside competition. Athletes with an existing sanction for use of recreational substances may be entitled to a review. Although this was reviewed again in the latest code, it was confirmed that cannabis would remain on the list.

Often, when updates on prohibited substances that have been monitored for a while come into force, WADA will allow for sufficient time to communicate and educate on the rule change. For example, Tramadol was prohibited during competition as per the 2023 code. However, the committee permitted an extension of this coming into effect until January 2024.

Doping is not a criminal offence in the UK. However, certain substances that appear on the prohibited lists are criminalised, such as cocaine.

A British athlete, Chijindu (CJ) Ujah's positive result for banned substances Ostarine and S-23 at the Tokyo Olympics reinforced principles of



strict liability. As a relay athlete, his offence led to Team GB being stripped of the silver medal and the three innocent members of Team GB's 4x100 m men's relay team also losing their medals.

## 1.2 Integrity

### Integrity

Integrity is a broad concept within UK sport. Anti-doping and anti-corruption issues (such as match-fixing) are high profile but the concept also captures governance (see **4.2 Corporate Governance**), safeguarding, athlete welfare, disciplinary issues and social media.

### Match-Fixing

Sports governing bodies should now be proactive in dealing with their integrity issues. To take match-fixing as an example, it is expected:

- for sports to implement specific anti-corruption regulations which participants are contractually committed to abide by;
- for such regulations to deal with the investigation and prosecution of alleged match-fixing offences by a dedicated body;
- that an independent judge will ultimately decide whether an offence was committed and award the appropriate sanction (lifetime bans in serious cases);
- for there to be close collaboration between betting operators through memorandums of understanding to ensure relevant data is shared that might evidence fixing; and
- that there will be incorporation (where applicable) of global codes such as the Macolin Convention (signed by the UK in 2018 but not yet ratified) and the Olympic Movement Code on the Prevention of the Manipulation of Competitions.

Depending on the specific facts, integrity rule infringements can also constitute criminal

offences, such as fraud, as was the case when a number of Pakistani cricket players were given prison sentences ranging from six to 32 months for spot-fixing during a test match played in England in 2010. In such circumstances, sports governing bodies need to liaise with the criminal authorities to ensure neither set of proceedings is prejudiced.

### Applicable Law

Certain integrity offences are captured under UK law (such as the Fraud Act 2006 or the Bribery Act 2010). However, prosecution relies on law enforcement having the resources and interest to investigate and this is not always the case, particularly if there is an international element.

## 1.3 Betting

### Sports Governing Bodies

While betting is not illegal, sports governing bodies in the UK are mindful of the potential conflicts of interest if a participant is known to be betting on their own sport. This raises suspicion that the participant has some kind of inside information regarding the outcome of the event in question or, worse, could influence a result.

Whether or not this is the case, sports governing bodies wish to avoid any suggestion of a lack of integrity in their sport. As a result, sports regulations will often prohibit participants from betting on their own sport, usually on a very broad level, and participants will be subject to sanction in the event of betting breaches.

### Gambling Act

The Gambling Act 2005 requires information sharing between sports governing bodies and betting operators and other stakeholders in the gambling industry. In addition, specific information-sharing arrangements are often put in place to allow governing bodies to be aware of, and

respond swiftly to, any concerning betting. The UK government has announced a formal review of the Gambling Act 2005.

## Sanctions

Despite the long-standing regulation, participants are still regularly sanctioned for betting-related offences – for example, in December 2020, footballer Kieran Trippier received a ten-week playing ban and a GBP70,000 fine for passing on confidential information regarding a potential transfer. Ivan Toney was charged with 262 breaches of the FA Betting Rules between 25 February 2017 and 23 January 2021. Of these, 30 breaches were later withdrawn and he admitted to the remainder, resulting in the player receiving an eight-month ban from playing professional first-team football.

## Sponsors

There is increasing scrutiny as to the appropriateness of betting operators sponsoring professional clubs or events – currently an important stream of revenue for sports in the UK (see **2. Commercial Rights**).

### 1.4 Disciplinary Proceedings Sporting Regulation

Sports governing bodies in the UK provide for disciplinary proceedings as part of their regulations where an athlete is alleged to have committed anti-doping, betting or other integrity offences as well as on-field offences.

The athlete provides their contractual agreement to any relevant regulations as a condition of their participation in the sport. Employment contracts with clubs (see **7. Employment**) also require adherence to the regulations.

These disciplinary proceedings tend to be before tribunals or judicial bodies that are administered

internally by sports governing bodies, albeit the judges should be independent of the governing body (eg, the FA's Regulatory Commission).

Smaller organisations may elect to provide for external independent tribunals such as Sport Resolutions to both administer their proceedings and provide the judges.

### On-Field/Off-Field Offences

There is a distinction between disciplinary proceedings related to on-field offences and off-field offences in the UK, as follows:

- on-field offences – sports organisations usually have wider discretion and can render decisions very quickly with no external involvement; and
- off-field offences (eg, the betting offences described in **1.3 Betting**) – it will take longer for such cases to be investigated, for proceedings to run their course and for decisions to be made, and decisions will usually be appealable to an independent body, such as Sport Resolutions panels or the Court of Arbitration for Sport.

## 2. Commercial Rights

### 2.1 Available Sports-Related Rights

Aside from sponsorship and broadcasting rights (see **2.2 Sponsorship** and **2.3 Broadcasting**) and exploitation of data rights (see **5.5 Sports Data**), there are a number of other commercial rights across the sports landscape in the UK, including merchandising, ticketing and hospitality and “official supplier” rights (where the sponsor becomes the official supplier of a product or sponsor to the team or club).

## Merchandising

Rights-holders, such as sports teams and event organisers, often seek to exploit the goodwill in their brand by selling branded merchandise. To do this, rights-holders typically enter into licensing arrangements, pursuant to which a licensee (or sub-licensee) is granted the right to design, manufacture and sell a specific range of products that incorporate the rights-holder's intellectual property in exchange for paying the rights-holder a licence fee and royalties on the licensee's sales.

## Ticketing Income

The ability to sell tickets to an event remains a cornerstone of the potential revenues for sports rights-holders in the UK. While fans were allowed back into stadiums during the summer of 2021, with live sporting venues no longer facing any restrictions on fan attendance, loss of ticket income during the COVID-19 pandemic was felt the most by teams and sports that do not benefit from significant broadcasting income.

## Secondary Ticketing Platforms

Where ticket-holders are able to resell tickets to an event, the Consumer Rights Act 2015 provides that online secondary ticket platforms must provide the buyer of the resold ticket(s) with information on the seat they are purchasing.

If these tickets are resold without the consent of the relevant organiser of the event, the available information on the platform enables the event organiser to identify the original purchaser and, in turn, this assists them in bringing claims against such offenders.

Recent legislation bans the use of automated software by ticket touts to purchase a number of tickets in excess of the permitted number. In August 2021, the Competitions and Market

Authority called for stronger laws to tackle illegal ticket resales, by notably increasing the liability of ticket resale websites.

## Hospitality

Hospitality can also provide a substantial source of income to sport venue owners in the UK. Significant hospitality offerings (including fine dining, tickets and player meet-and-greets) are now built into stadiums and on land controlled by sports rights-holders, wresting much of this income from unofficial providers. By way of example, Tottenham Hotspur FC's stadium was designed and built with tailored luxury hospitality facilities, various hospitality lounges and approximately 8,000 of the 62,850 seats in the stadium being premium hospitality seats.

## 2.2 Sponsorship

### Brand Association with Sport

Sport has an emotional and commercial appeal that companies frequently look to leverage to promote their own brand. Rights-holders in the UK are aware of the potential value that their association brings and are increasingly sophisticated in the way they target potential sponsors, either directly or by using a specialist agency.

Depending on the nature of the rights-holder, its assets and the number of interested sponsors, it may be able to sell different sponsorship packages relating to specific competitions or events, specific territories or simply different levels of rights and access. In recent years, the use of data has become increasingly important to the valuation and activation of sports sponsorships in the UK.

### Key Contractual Terms

Aside from a clear articulation of the sponsorship rights being granted, some of the key terms in a typical sponsorship contract include:

- the scope of exclusivity for the sponsor;
- the applicable sponsorship fees and any other value-in-kind consideration;
- control over the use of the rights-holder's intellectual property (eg, approvals); and
- any post-termination rights the sponsor will be entitled to, including any matching rights and/or right of first refusal.

Given the difficulties posed by the COVID-19 pandemic, rights-holders and sponsors alike are paying more attention than ever to what contractual provisions should apply if sponsorship rights are not delivered. In the light of recent events in Ukraine, rights-holders are revisiting the importance of termination and suspension rights. In particular, the ability to terminate for reputational reasons.

## 2.3 Broadcasting

### Traditional Sport Broadcasters

Broadcasting rights have arguably become the most important set of commercial rights within UK sport over the last 20 years. For TV companies such as Sky, BT and ITV, live sport remains one of the few types of content that has bucked the trend of declining viewing figures in recent years. As such, sport is often the cornerstone of their lucrative subscription packages and helps to drive significant advertising revenues.

### Broadcasting Rights

In return, sports rights-holders have benefited from exponential growth in the value of their broadcasting rights. For example, the domestic broadcasting revenues earned by the FA Premier League have risen from GBP191 million during the 1992–93 to 1996–97 period, to approximately GBP5 billion due to be paid in the shorter 2019–20 to 2021–22 period, albeit the most recent domestic rights cycle resulted in a small decrease in revenues. In light of the potential for

a further devaluation of domestic rights for the 2022–25 cycle, the FA Premier League received government authorisation (with broadcasters' approval) to bypass the tender process normally used and simply roll over the rights from the previous cycle at the same fee.

This exceptional rise in value has made it very difficult for terrestrial broadcasters to compete. However, the Broadcasting Act 1996 still requires certain "crown jewel" events, considered integral to British culture (eg, Wimbledon), to be shown on terrestrial TV. This legislation has a depressing effect on rights values, given that only terrestrial broadcasters can bid.

### Non-traditional Sport Broadcasters

Digital companies and content platforms such as Amazon, YouTube and Facebook are also increasingly active in the sports broadcasting space, whether through live rights, highlights and/or associated entertainment content such as documentaries. They have different motivations and commercial models to the traditional pay-TV broadcasters, which impacts the type of rights they acquire and the price they pay to acquire them.

### Intellectual Property

In relation to the contractual arrangements between rights-holders and broadcasters, the relevant sporting league or event organiser typically grants a licence to the broadcaster(s) to access the relevant venue (and thereby create the broadcast).

Ownership of the copyright in the images of the broadcast itself will automatically vest in the producer/director of the footage under the Copyright, Designs and Patents Act 1988 and so the relevant contract usually assigns such copyright to the sports event organiser, which licenses it

back to the broadcaster so that it may be broadcast in a specific territory.

## 3. Sports Events

### 3.1 Relationships

#### Hosting, Attendance and Participation

Presently, there are no proprietary rights in a sports event in the UK. Instead, sports events are primarily protected by the commercial contracts that control the various rights attached to the event and the access to the relevant venue.

For example, the organisers of sports events may enter hosting or participation agreements with venues, teams and athletes, and issue tickets to spectators that include specific restrictions (eg, to limit sharing of footage from the event and re-selling their tickets to third parties). See also **2.1 Available Sports-Related Rights (Ticketing)**.

#### Structure and Organisation

The structure of sports events will depend on the governance of the specific sport. In UK sports, the national governing body of the relevant sport will often be the organiser of competitions within that sport – where this is the case, the relationship between athletes/sports clubs and the governing body will be regulated through the governing body's rulebook or participation agreement.

In instances where the competition organiser is not the governing body (eg, the Premier League in English football), a shareholder model can be used to enable the competition's participants to take decisions collectively in relation to the competition's rules, commercial arrangements and so on.

### 3.2 Liability

#### Duty of Care

In the UK, event organisers owe a duty of care to take reasonable steps to prevent injuries to people at their event and provide access to proper medical equipment and treatment should anyone be injured. Should this duty of care be breached, event organisers may be liable on the grounds of negligence. Two primary pieces of legislation that deal with the applicable civil liability of event organisers in the UK are the Occupiers' Liability Acts 1957 and 1984.

It is rare for athletes themselves to be deemed liable to spectators (since spectators are generally treated as having consented to being at risk of reasonably foreseeable events).

#### Safety

Legislation has been introduced to increase the safety of sporting events and reduce the risk of public disorder – for example, the Criminal Justice and Public Order Act 1994 made it illegal to stand at specific football matches.

The Safety of Sports Grounds Act 1975 also makes it a criminal offence for event organisers to admit spectators into sports grounds unless the grounds have a safety certificate from local authorities if the ground can accommodate more than 10,000 spectators (or more than 5,000 spectators for grounds hosting Premier League and English Football League matches).

Following widespread incidents of mass violence during the Euro 2020 final held at Wembley Stadium in July 2021, an independent review by Baroness Casey made several recommendations to improve stadium safety. Some of these include a review of stewarding, increased penalties for football-related disorder and increased co-operation between private and public bodies.

## 4. Corporate

### 4.1 Legal Sporting Structures

Typically, sporting entities in the UK adopt one of the following legal forms (determined on a case-by-case basis but with the following generalisations).

#### Company Limited by Shares

It is most common for commercial sports organisations (such as football clubs and sponsors) to operate through a company limited by shares. Such legal entities can be “private” or “public” (ie, their shares are traded on a stock exchange). Key features include the ability to fundraise in return for issuing equity to investors and paying dividends from its profits to its shareholders.

#### Company Limited by Guarantee

A company limited by guarantee is typically associated with “not-for-profit” organisations. It is the legal form normally adopted by sports bodies (such as national governing bodies) which seek to reinvest profits back into their particular sport. There is no share capital so this structure also tends to suit sports organisations with a fluctuating membership.

#### Charitable/Community Vehicles

A sports organisation which undertakes charitable and/or community purposes is often set up as a company limited by guarantee but there are other specific corporate forms available, including CIOs (charitable incorporated organisations, specifically created for charities) and charitable community benefit societies (CBSs) registered with the Financial Conduct Authority.

Whatever legal structure is adopted, charity is a status that can only be achieved if the organisation fulfils certain legal requirements and is confirmed by registering with the Charity Commission.

#### Unincorporated Association

Many local sports clubs/organisations exist based simply on an agreement between their members/stakeholders – for example, a governing constitution and/or set of rules – avoiding the formality and cost associated with operating as a company.

### 4.2 Corporate Governance

While there are no existing governance laws that apply exclusively to sports organisations in the UK, there are a number of published codes, regulatory frameworks and applicable laws that, together with public scrutiny, encourage and/or require good governance. As sport evolves into a multibillion-pound industry, there is increasing pressure on sport bodies at all levels to demonstrate good corporate governance.

#### Sport-Specific Governance Codes

The Code for Sports Governance (the “Code”), published by UK Sport and Sport England in 2017, accelerated better corporate governance of sporting bodies. The Code sets out certain governance requirements under five principles (structure, people, communication, standards and conduct, and policies and processes). Crucially, sports organisations must satisfy the relevant requirements in order to receive central public funding. A revised Code was published in December 2021, with a focus on governing bodies developing a diversity and inclusion action plan, as well as increasing welfare and safety in sport.

The Sport and Recreation Alliance (the umbrella body for sport and recreation in the UK) has also produced a Voluntary Code of Good Governance, setting out seven principles of good governance that it recommends sports bodies should implement in order to perform their role effectively.

## Owners' and Directors' Tests

Several sports bodies in the UK, notably the three main English football governing bodies – the Football Association (FA), Premier League and English Football League (EFL) – have each established an Owners' and Directors' Test (ODT).

ODTs seek to protect the image and integrity of the relevant league, as well as the interests of its other stakeholders, by preventing unsuitable individuals from becoming an owner or a director of a club.

The ODTs are a prominent feature of football in England and regularly make the sporting headlines due to their controversial nature. For example, the following came to light in recent months.

- The Saudi Arabian Public Investment Fund (PIF), together with PCP Capital Partners, acquired Newcastle United FC for a reported GBP300 million. The deal had initially fallen through in July 2020, seemingly due to the acquirers' failure to comply with the Premier League's ODT. With disputes continuing in the background, it was finally announced in October 2021 that PIF, PCP Capital Partners and RB Sports & Media had completed the acquisition of the club, with PIF holding an 80% stake. Due to PIF's close ties with the Saudi Arabian government, and human rights concerns regarding that government, the takeover was only allowed after the Premier League received assurances that the club would not be under Saudi Arabian control.
- The adequacy of the EFL's ODT is also in the spotlight due to events at Reading FC, currently in League One (the third level of English professional football). The club recorded pre-tax losses of GBP146 million over five years. The EFL has a set limit of GBP13 million

pre-tax losses annually, accumulating GBP65 million maximum over five years. Reading's losses were more than double this threshold, forcing the EFL to act against the club by issuing a 12 point deduction.

The ODTs are not restricted to football, with other sports bodies such as the Rugby Football League administering a similar test which requires influential persons at a club under its jurisdiction to satisfy certain requirements. However, the football ODTs, in particular, tend to come under more scrutiny, and the Premier League is currently considering adding a human rights element to its test.

## Other

Sporting organisations (and their officers) must also comply with applicable laws. For example, the Companies Act 2006 sets out a number of codified duties for directors of companies.

## 4.3 Funding of Sport Traditional Revenue Streams

UK sporting organisations such as national governing bodies, leagues and clubs principally derive revenue by exploiting their commercial rights, as set out in 2. **Commercial Rights**.

The COVID-19 pandemic had a significant impact on such traditional revenue streams, with the lack of live sport and the behind-closed-doors action hitting match-day revenue and providing sponsors and broadcasters with the power to renegotiate deals, particularly if rights could not be delivered.

## UK Government

The UK government reacted to the short-term financial distress suffered by many UK sporting organisations due to the effect of COVID-19 by providing specific financial support to sport.

While the sports industry was not as heavily impacted by the COVID-19 pandemic during the 2021–22 period (largely because live sport was not put on hold and attendance at live events was limited rather than restricted), the UK government worked closely with Sport England to make funds available, as detailed below. Additionally, it announced in August 2021 a GBP232 million investment to support athletes ahead of the Paris 2024 Olympic and Paralympic Games.

The government confirmed, in January 2023, an allocation of GBP230 million would be made for investment in grassroots football facilities.

## Sport England

Many national governing bodies and sports bodies are eligible to obtain central funding through Sport England (established by Royal Charter in 1996). Sport England invests in the region of GBP250 million of National Lottery and public money every year. Following a first “Winter Survival Package” in November 2020, Sport England made a further GBP300 million available to sports governing bodies in spring 2021 as part of its “Extended Survival Package”.

## Other

Sports organisations also secure funding from stakeholders, donors and, increasingly, private capital (see 4.4 Recent Deals/Trends). It is up to each organisation to determine how to distribute money across its sport.

## 4.4 Recent Deals/Trends

### Private Capital

The sports business investment landscape in the UK has experienced a notable increase in private equity, venture capital and institutional investment and interest. This upward trend in investment continued into 2023, with investors confidentially backing sports properties – espe-

cially since stadiums were full and rights-holders could more easily engage with fans.

In addition, sports governing bodies and leagues are considering alternative sources of investment such as private capital (which has not traditionally been the case) as they manage revenue shortfalls and working capital needs. Rights-holders will seek longer-term partnerships where investors can bring commercial expertise, connections, ideas and further sources of funding.

Recent examples include:

- Two Circles (backed by Bruin Sports Capital) acquiring the sports agency, LiveWire Sport;
- Private Equity Firm CVC Capital Partners finalising a USD150 million investment into the Women’s Tennis Association (WTA) in return for a 20% stake in the tours new commercial business, WTA Ventures; and
- Elevate Sports Ventures acquiring executive search firm SRI and launching Elevate Talent.

### Mitigating Risk

Private capital investment must navigate governance regulation (in particular around ownership and control – see 4.2 Corporate Governance), the establishment of breakaway leagues/events and reliance upon club/athlete/league performance. In addition, the ongoing pandemic will continue to cause concern and investors may seek the right to withhold investment should there be further disruption – as CVC Capital Partners reportedly requested as part of its Six Nations investment. Investment in sport will force private equity to accommodate the passion and emotions of fans not often present in many of their typical leveraged buy-outs.

### Player Influence

More athletes and players are bolstering their earnings outside their playing careers by endors-



ing sport brands and/or investing in sports organisations. In February 2021, Therabody (a technology wellness firm) attracted investors including footballers Marcus Rashford and Kevin De Bruyne and rugby player Maro Itoje.

The door is open for athletes and players to invest in unique and purposeful sport properties, such as women's sport, where lower valuations may make them more attractive.

## 5. Intellectual Property, Data and Data Protection

### 5.1 Trade Marks

#### Registering a Trade Mark

To register a UK trade mark, an application should be filed with the UK Intellectual Property Office (UK IPO), in compliance with the requirements set out in the Trade Marks Act 1994 (TMA 1994). An applicant can apply for:

- a word mark;
- a logo;
- a combination of the above;
- a trade mark series (up to six similar marks in a single application); or
- more unusual marks, such as a hologram, colour, sound or pattern.

UK trade marks can be filed in up to 34 goods classes and 11 service classes (using the internationally recognised Nice Classification system).

#### Refusal

A trade mark application can be refused by the UK IPO on the basis of a statutory “absolute ground” (such as the mark exclusively designating the geographical origin of the goods/services).

The UKIPO refused to allow Liverpool FC to register “Liverpool” for a wide range of classes, denying it the right to have exclusive rights to the name due to its “geographical significance” as a city. Interestingly, this contrasts with an earlier UK IPO decision to permit the registration of the club's trade mark application for the well-recognised Liverpool city emblem – the “liver bird”. Here, it was found that, despite the city's widespread use of the emblem, its incorporation within the club's logo meant that the overall mark was distinctive and registrable.

A third party can oppose an application on the basis of both absolute and “relative grounds” (eg, where a mark is identical and/or similar to an existing registration and there exists a likelihood of public confusion).

On 1 October 2021, the Sentencing Council published a definitive guideline that sentencers must have regard to when sentencing criminal offences under the TMA. This has been a significant development that should further deter counterfeiters and provide a degree of protection from abuse of registered trade marks. One of the most significant changes is the assessment of harm – this is now based on the equivalent retail value of the genuine goods being counterfeited.

In 2022, the UK IPO raised bad-faith objections to refuse the registration of the names of a couple of famous footballers, by a third party. Although relatively rare, bad faith can be used as a reason to reject an application. The QC stated in this case that it was the duty of the registrar to raise these issues in order to protect both the consumer who might be misled, as well as the famous individuals themselves.

#### Registration Advantages

A registered trade mark has the following key advantages:

- the period of protection is perpetual in theory (provided it is renewed every ten years and certain other conditions are satisfied);
  - the holder has a monopoly right over the registered brand in respect of the goods and services for which it is registered; and
  - the process for enforcing against infringers is more efficient and cost effective than it is for unregistered rights.
- 50 years from first publication in respect of broadcasts.

As an example, British Gymnastics successfully argued a trade mark infringement against UK Gymnastics, relying on its registered trade marks. This case was taken to the Court of Appeal and subsequently held as a breach, based on the overall impression of the trade mark. The case demonstrated the importance of being able to rely on a registered trade mark.

## 5.2 Copyright/Database Rights

### Copyright

The UK's copyright law is laid down in the Copyright, Designs and Patents Act 1988 (CDPA), whereby copyright:

- arises automatically (it does not require registration);
- is designed to protect the results of creative output; and
- is formed as soon as that output is created and fixed in material form.

In general, ownership of the copyright is vested in the “author” of the work, with copyright protection lasting until:

- 70 years after the author's death for literary, dramatic, musical or artistic works (and in the case of films, 70 years after the death of the director, screenplay author and composer);
- 70 years from first publication in relation to sound recordings; and

### Defences

There are various “permitted uses” under the CDPA which serve as a defence for alleged copyright infringement (such as non-commercial research and reporting), but in most instances the user must attribute sufficient acknowledgement to the copying.

“Fair dealing” must also be established in some cases, requiring the user to demonstrate that the copying does not exceed what an honest and fair-minded person would consider to be justified. This has no statutory definition and is assessed on a case-by-case basis, depending on the facts in hand. There is also the common law defence of “public interest”.

In the case of *ECB & Sky v Tixdaq & Fanatix*, Tixdaq – the developer of the Fanatix app – was unable to demonstrate fair dealing through their uploading of eight-second highlight clips from cricket matches (the copyright in which was owned by the ECB, and Sky).

### Databases

The UK also recognises a legal database right under the Copyright and Rights in Databases Regulations 1997. This is an unregistered right that arises automatically upon the creation of the relevant database.

A database right protects the contents of the specific database, where there has been substantial investment in the acquisition, verification and/or presentation of the data comprised within it (which British Horseracing could not establish in the landmark case against William Hill).

UK citizens/businesses are now ineligible to hold database rights in the European Economic Area (EEA) for databases created on or after 1 January 2021.

## 5.3 Image Rights and Other IP Image Rights

There is no standalone legal recognition for image rights (or personality rights) in the UK. Instead, individuals must rely on a myriad of IP and other rights to protect and exploit their image, including trade marks, passing off, privacy rights and robust contractual protections.

### Passing Off

High-profile sportspersons may be able to rely upon the tort of passing off to prevent the unauthorised use of their image in a commercial context. To bring a claim, the individual must demonstrate:

- the goodwill attributed to their name/image;
- that the third party has misrepresented to the public a link between the sportsperson and the third party's goods and/or services, and this has, in turn, led to customer confusion; and
- that damage has been, or is likely to be, incurred as a result of this misrepresentation.

One of the leading cases in this context is *Irvine v Talksport Ltd*, where Eddie Irvine, the Formula One driver, successfully claimed passing off against Talksport for manipulating a photo of him holding a phone and replacing this with a Talksport handheld radio, thereby falsely representing that he had endorsed the station.

### Unlawful Exploitation

The issue of unlawful exploitation of image rights has arisen on numerous occasions, particularly in the context of football players.

Notably, in 2020, Gareth Bale tweeted (following on an original tweet from fellow footballer Zlatan Ibrahimović) in relation to the alleged unlawful use of player images in the FIFA video game. However, EA – the developer of the FIFA video game – currently licenses player image rights (as well as other club rights, such as stadium names) collectively from the Premier League. Nothing has since been said on this, although it appears to still be a prominent discussion point in the sports industry.

These types of claims are also being seen in other sports. For example, the cricket player's union, FICA, have alleged that the International Cricket Council is using player's image rights without appropriate approvals from the players by means of fantasy cricket leagues and documentaries.

## 5.4 Licensing Licensing

Intellectual property possesses significant intrinsic value to both sports governing bodies and players/athletes in the UK, each of whom regularly license their IP rights.

By way of example, a UK sports governing body may own all of the IP rights in a new event format, including the trade mark to the name of that event and the copyright in its rules and regulations. These can be licensed, as individual rights or as a package, to the various different stakeholders involved in the hosting of that event (such as venues), those participating (teams or players/athletes) and to those exploiting commercial and media rights (such as broadcasters, sponsors and official suppliers).

The exploitation of IP through a licensing structure enables the rights-holder to retain control and ownership of the relevant rights, as well

as generate revenue from the use thereof. The continued exploitation of these rights will also increase goodwill and brand value for the rights-holder over time.

## Assignment

Broadly speaking, the only formality required to effectively assign UK IP rights is for the assignment to be in writing and to be signed by the assigning and assignee parties. In certain instances – for example, in the case of registered trade marks – the assignment must also be recorded at the UK IPO to update the official record.

## 5.5 Sports Data

### Use of Sports Data

Sports bodies and other stakeholders in the UK are using sports data in increasingly sophisticated ways to, among other things:

- improve athletic performance;
- engage with fans;
- protect the integrity of their sport; and
- enhance sponsor/media rights packages.

Sports bodies are also increasingly licensing official data directly to third parties, particularly betting companies.

Kevin De Bruyne previously engaged an analytics company to assist his contract negotiations with Manchester City. The company (Analytics FC) used an algorithm to project De Bruyne's future performances. Based on this data, he negotiated the terms of his contract with Manchester City.

The following is a snapshot of sports data activities by sports bodies and other stakeholders in the UK in the past few years:

- In 2020, England Rugby trialled the training use of a “smart” rugby ball which collects data on the speed and distance of passes – in 2021, this trial was extended further with the use of a “smart ball” in the 2021 Women's Six Nations.
- Liverpool FC has signed a deal with DeepMind to explore the use of AI in football – it can be used, for example, to determine what impact a tactical change may have, or the changes a team may make in the event of injuries.
- The England and Wales Cricket Board was forced to rely on Depth App, which recorded player data, when a COVID-19 outbreak forced all of the soon-to-be participating England cricket team into isolation, with the information then being used to aid selectors in finding in-form cricketers to form a squad against Pakistan.
- Manchester City FC employed an astrophysicist and Treasury policy adviser, Laurie Shaw, to head up a team of analysts at the club.
- Arsenal FC has a team of 15 people solely responsible for the data analysis side of the game.
- Brighton and Hove Albion FC is heavily reliant on data analytics in order to find talented young players and coaches.
- World Rugby has also implemented new technology in mouthguards that detect when a player has suffered a heavy hit. This will then flag the requirement for a head injury assessment and the player will be removed from the field. The Men's Six Nations 2024 is the first time these have been used in international rugby.

### Issues for Sports Bodies

While sports bodies may assume they have the right to collect and commercially exploit data relating to their sport (or to restrict a third

party from collecting such data), the legal reality is often more complex. Sports bodies must consider the effect of data protection, contract, intellectual property and competition legal frameworks (among others), often in multiple jurisdictions.

In the wake of GDPR (as referred to in **5.6 Data Protection**), fans and athletes are also becoming more alert to the use of their personal data by third parties. In July 2020, a group of over 400 professional football players in England and Scotland announced that they were taking legal action against various betting and data processing companies (including official partners of their clubs and leagues) for the use of player personal data without consent, in breach of GDPR, in what has been dubbed “Project Red Card”.

### Project Red Card and Lloyd v Google

A ruling in *Lloyd v Google* slightly reduced the uncertainty around the future of athletes’ data and Project Red Card. The Supreme Court unanimously held that the claimant should not be successful in bringing representative action against Google. The judge ruled that, to be awarded compensation, the claimant must have actually suffered damage as a result of the breach. The breach alone is not sufficient.

Notably, group action such as in Project Red Card may no longer be viable following this ruling. However, there is still a possibility for individuals to bring a claim where damage has been suffered.

As the amount of sports data being collected in the UK increases and the methods of exploitation become more complex, it is important that sports bodies and stakeholders establish and implement robust data policies which anticipate and mitigate potential legal risks. Nevertheless,

as sports data becomes a more important commercial asset in the industry, the number of legal challenges between stakeholders is only expected to increase.

## 5.6 Data Protection

### Data Protection Legislation

The Data Protection Act 2018 (DPA), the General Data Protection Regulation 2016 (GDPR) and, following Brexit, the retained UK version of the GDPR (known as the UK GDPR), may all apply to the use and exploitation of sports-related data in the UK.

Post-Brexit, the GDPR is only relevant to UK organisations that continue to offer goods or services to, or monitor the behaviour of, EEA individuals (eg, a club that sells merchandise to fans based in EEA countries).

### GDPR Impact

The introduction of the GDPR has had a wide-ranging impact on the ability of organisations to use and exploit personal data, which in the sporting context impacts upon both fan and player/athlete data.

Alongside the tightening of the regulatory landscape, there has been a huge increase in the use of new technologies and digital innovation, whether that is in the use of wearable technology, augmented reality (AR) and virtual reality (VR) or matchday apps, to name but a few. This has necessitated in bringing a sharp focus on the data protection impacts of use of the same, from the design stage through to commercialisation.

### Sensitive Personal Data

In the context of more sensitive types of personal data (termed “special category personal data”) such as player health and biometric data, the ability for rights-holders to collect and use

this data has become more challenging, in large part due to the stricter requirements for obtaining valid consent from the individual.

By way of example, it might be difficult for a rugby club to prove that player consent is freely given (and that consent can be refused without detriment) where, for example, all players are being asked to use wearable technology during practice sessions, particularly because there is an inherent imbalance of power between an employer (club) and employee (player).

## Exemptions

The DPA offers certain useful sports-specific exemptions to the requirement to obtain consent for the processing of special category personal data. These have been welcomed by governing bodies, anti-doping bodies and integrity units alike.

In reliance on Article 9(2)(g) of the GDPR and UK GDPR, where the processing of special category data is for reasons of substantial public interest, the UK introduced an anti-doping exemption and a sports integrity exemption, which have greatly facilitated the sharing of special category personal data for these legitimate purposes within sport.

## 6. Dispute Resolution

### 6.1 National Court System

#### Types of Dispute Resolution

In England and Wales, disputes are resolved through litigation before the national court system unless the parties agree to alternative dispute resolution (ADR).

Parties need to consider their relationship to one another and any agreement and/or rules

that govern that relationship, which may require a certain type of dispute resolution over another.

However, where ADR or another internal dispute mechanism have not been agreed to by the parties or provided for in the relevant rules, then the national court system will be competent and parties will not be required to, for example, first exhaust governing bodies' respective internal dispute resolution mechanisms.

For instance, Liverpool FC's sponsorship dispute with marketing agency Winlink Marketing was resolved before the High Court, while it was an FA Regulatory Commission that ruled in the FA's betting charge against England and Brentford player Ivan Toney (see **1.3 Betting**).

### ADR and the National Court System

Even where parties agree to ADR, the national court system may still have a role to play. Following the conclusion of a sports governing body's internal dispute resolution mechanism, national courts are competent to review a decision.

However, appeals against the decisions of sports governing bodies' judicial bodies are limited in scope, and national courts effectively carry out a supervisory role to ensure that parties' rights are duly exercised (see **6.2 ADR (Including Arbitration)** and **6.3 Challenging Sports Governing Bodies**).

### 6.2 ADR (Including Arbitration)

#### Matters for Arbitration

The Arbitration Act 1996 (the "Act"), which is currently being reviewed by the Law Commission, provides for the possibility to resolve disputes by arbitration before an arbitral tribunal. The Act sets out certain formalities, including that the arbitration must be agreed to by all parties involved and be provided for in writing.

While much freedom is afforded to parties, certain disputes cannot be resolved through arbitration, such as criminal matters, insolvency proceedings or certain employment disputes. In such cases, the national court system will be competent by default.

In the sports sector, it is common for UK sports governing bodies to provide for dispute resolution through arbitration in their rules, which are accepted by participants before competing. For example, the FA, the Premier League and Premiership Rugby all have internal dispute resolution mechanisms.

Once the internal mechanisms are exhausted, a party may appeal the decision before the national courts if they believe the decision was reached unlawfully. The Act allows appeals in cases where:

- the arbitral tribunal was incompetent to rule on the dispute;
- there was a serious irregularity affecting the tribunal, the proceedings or the arbitral award that has or will cause injustice; or
- a question of law arises out of the award (although this may be excluded in the arbitration agreement).

If no dispute resolution rules are provided for by sports governing bodies in their rules, parties may wish to resolve a dispute through arbitration before external tribunals, such as Sport Resolutions, an independent dispute resolution service that is based in London and provides sport-specific ADR services.

## Mediation

Mediation allows parties to attempt to find an amicable solution without affecting their right to resort to a more direct approach if a favourable outcome is not found.

In England, Sport Resolutions (previously the Sports Dispute Resolution Service) provides sport-specific mediation services. With lower costs, more flexible timeframes and far greater confidentiality compared to litigation before the national courts or even arbitration, mediation can be appealing to the often fast-paced and sensitive nature of high-profile sports disputes.

## 6.3 Challenging Sports Governing Bodies

### Enforcing Sanctions

It is common for a UK sports governing body to provide in its rules how it will enforce sanctions, whether these are financial or sporting. Decisions of sports governing bodies that are considered arbitral awards can be enforced under the Act (as defined in **6.2 ADR (Including Arbitration)**).

Domestic sports governing bodies may seek to give worldwide effect to their decisions through co-operation with international federations. In the case of footballer Kieran Trippier (referred to in **1.3 Betting**), he was sanctioned under both the FA's Regulatory Commission and the FIFA Disciplinary Code.

### National Court Involvement

The decision taken by the judicial body of a sports governing body can be challenged in the national court system on limited grounds. It was confirmed that the national court system has a supervisory role in *Bradley v Jockey Club*.

Judicial bodies of sports governing bodies are held to the following standards by the national court system:

- the relevant regulatory or contractual framework gave the judicial body the authority and power to act as it did;
- the judicial body did not abuse its power;

- the decision that was reached was rational; and
- the judicial body acted fairly with regard to the process by which a decision was taken (in accordance with the principles of natural justice).

## 7. Employment

### 7.1 Sports-Related Contracts of Employment

#### Employment Status

In many elite team sports in the UK, athletes are employed by their club under contracts of employment. Such arrangements typically include a number of standard terms agreed on a collective basis between relevant player unions, clubs and governing bodies, with commercial terms (ie, remuneration, the contract's duration and any bespoke provisions pertaining to use of the athlete's image) usually negotiated directly between the athlete and the club.

Under English law, an employee accrues a range of legal rights. Where workers are not classified as employees, this status can be deemed dependent on circumstances designed to ensure employees cannot be cheated out of their rights simply by terminology.

The Employment Appeal Tribunal's 2020 decision regarding cyclist Jessica Varnish's failed claim that she should be deemed an employee of British Cycling, gives a helpful summary of some key considerations determining employee status:

- Ms Varnish signed an athlete agreement with British Cycling, the purpose of which was to provide her with a personalised training plan, in the hope that she would be selected to compete for Great Britain;

- although the arrangement made her eligible to receive certain funding from UK Sport, Ms Varnish did not receive any remuneration from British Cycling and the arrangement with UK Sport was more analogous to a university grant; and
- Ms Varnish did not perform a service for British Cycling (or UK Sport), but instead was performing a commitment to train in the hope of becoming a successful cyclist on the international stage.

This is by no means an exhaustive analysis of the determinative factors for employment status, which is a notoriously uncertain concept in the UK.

#### Salary Caps

Salary caps are becoming a feature of sport in the UK. To date, a sports governing body or league is generally free to exercise its discretion in setting salary restrictions in its rules, providing these are proportionate.

#### Football

In February 2021, the English Football League (EFL) set a salary cap on clubs competing in League 1 (third division) and League 2 (fourth division), and fixed a limit on how much clubs could spend on their total squad's salaries. However, the EFL removed the salary caps for League 1 and League 2 clubs, which were ruled unlawful by an arbitration panel. The challenge was brought by the Professional Footballers Association (PFA), arguing the restrictions had come in without appropriate consultation and agreement. This was said to have breached the Professional Football Negotiating and Consultative Committee's constitution. The EFL chair has confirmed the League will definitely see the implementation of salary control in the near future. This continues to be under debate and will be an interesting area to watch.



## *Rugby*

The salary cap in Premiership Rugby has caused numerous issues over the years with many disputes arising. Saracens FC were judged to have breached the salary cap three times in a row by failing to disclose player payments in the form of investment. The total investments took the total squad's salary payments over the clubs permitted GBP7 million threshold. This consequently saw them receive a 70-point penalty and the team was thus relegated to the Rugby Championship.

Since the Saracens' breach, there have been other examples of clubs potentially falling foul of the salary cap rules. Leicester Tigers were fined GBP310,000 for salary overspend, also suffering consequent damage to their reputation. Leicester Tigers had exceeded the salary cap by between GBP55,000 and GBP147,000 during four seasons from 2016/17 to 2020/21. There were arrangements in place so that a third-party company could make payments to the image rights companies of Tigers' players.

The salary cap is reportedly set to rise in the 2024/25 season to GBP6.4 million. However, this has caused a split in opinion among the clubs, with some Premiership clubs feeling it simply "shoots Rugby in the foot" since there is evidence from this past season that clubs are already struggling to stay afloat. Worcester, London Irish and Wasps have all gone under leaving a much smaller Premiership. It is a very interesting period for Premiership Rugby in the UK and will likely be a key talking point for years to come.

There have also been numerous other examples of salary cap breaches across various different sports, as corporations and sports bodies often try to find a way to keep investments and thus search for alternative methods of paying players.

## **Compatibility With Competition Law**

Salary cap rules can raise issues with wider competition laws and the common law doctrine of restraint of trade. Where a rule impacts upon an athlete's ability to earn a living, the body imposing the rule must demonstrate that the rule is a legitimate restriction and is proportionate in its approach. In the Saracens case, it was found that the salary cap was legitimate and proportionate and promoted the financial health of Premiership Rugby clubs, so it was considered a permissible restraint.

## **7.2 Employer/Employee Rights Statutory Employment Law**

Where UK athletes are employees (see 7.1 **Sports-Related Contracts of Employment**), the right not to be unfairly dismissed, family rights including maternity leave, and the right not to be subjected to discrimination, will generally override any contradictory provisions in their contract.

It is fairly standard, however, for UK sporting employment contracts to require disputes to be addressed via a bespoke dispute resolution forum, such as Sport Resolutions, which can be an effective method for an athlete to enforce their statutory employment rights.

## **Constructive Dismissal Case Study**

Under his employment contract with Newcastle United FC, former manager Kevin Keegan had the final say in recruiting players. When in practice this did not happen, he resigned, claiming that he had been constructively unfairly dismissed (ie, that the club's actions constituted a repudiatory breach of contract, entitling him to treat the contract as having been terminated by the club). In 2009, the Premier League Managers' Arbitration Tribunal found in Mr Keegan's favour and awarded him compensation for constructive unfair dismissal.

## 7.3 Free Movement of Athletes Brexit and Free Movement

When the UK was a member state of the EU, citizens of the EEA enjoyed the right of free movement and, as such, UK sports governing bodies could not impose restrictions on the number of EEA citizens they allowed to compete in their competitions, or to be included within a club's squad.

Since 31 December 2020, the UK has no longer been subject to free movement rules and all foreigners (including EEA citizens) require a permit to work in the UK, except for Irish nationals. However, EEA nationals (and certain others) who were already residing in the UK could apply for "settled status" under the EU Settlement Scheme, which allowed these individuals to remain in the UK indefinitely.

### Obtaining a Work Permit

Foreign athletes (and other sporting staff) generally need a work permit issued by the Home Office in order to be permitted to work in the UK. As such, arrangements are often made between the Home Office and the relevant sports governing bodies.

This commonly involves a sports governing body granting a Governing Body Endorsement (GBE), depending on whether the athlete meets certain criteria agreed in advance with the Home Office. Where a GBE is granted, the athlete is then usually granted a work permit by the Home Office without the need for further analysis to be undertaken.

### International Sportsperson Visa

As of October 2021, international athletes coming to the UK are also able to apply for an International Sportsperson Visa. This has replaced both the T2 and T5 visas and collated both requirements together. The Sports Governing

Bodies appendix, located within this new set of rules, sets out the sporting organisations that can issue an endorsement to certify an athlete as meeting the visa requirements. The sportsperson must also be issued with a valid certificate of sponsorship by the sponsoring club.

In light of Brexit, and in advance of the January 2021 transfer window, the FA agreed with the UK government and key football stakeholders the criteria for granting a GBE, which provided for automatic approval if a player from one of the top 50-ranked FIFA nations had featured sufficiently for their national team, or if players accrued sufficient points based on sporting criteria (such as the number of club matches played and their club's progression in European club competitions). There was also an Exceptions Panel to determine whether a GBE should be granted to players falling short of the required points total.

## 8. Esports

### 8.1 Esports Overview

#### Traditional Esports Market

The traditional esports market in the UK features non-sport video games (such as League of Legends and Counter-Strike) and is already relatively sophisticated: tournaments, teams and individual players have huge followings, live events fill arenas, prize money on offer is substantial and betting on game outcomes is available.

Traditional sports with an "obvious video game" have also been successful in the UK, including the hosting of the FIFA eWorld Cup at the O2 Arena in London since 2018. Consequently, many esports teams and game publishers are based in the UK, including Guild Esports – a global esports business backed by David Beckham – which closed an IPO in October 2020.

Activate, a technology consulting firm, estimates that more than 250 million people watch esports. At the World Championships in August 2023 in Las Vegas, a sell out crowd and more than one million esports fans tuned in online. However, according to Forbes, esports needs to be careful to ensure financial stability throughout 2024.

## COVID-19 Effect on Esports

COVID-19 undoubtedly accelerated the professionalism and commercialisation of esports and virtual sport in the UK, as it has across the world. People are continuing to spend more time at home, even after the passing of the pandemic, and an increasing number have turned to esports as entertainment. For example:

- there has been a marked increase in online events, viewership and active users according to Fnactic Insights: Esports Covid Report, 2020; and
- Excel Esports secured a ground-breaking partnership with BT (a non-endemic sponsor) including naming rights and apparel branding.

## Traditional Sports and Esports

Traditional sports are also embracing esports and virtual sport with real purpose and seizing the opportunity to engage with its fanbase, sponsors and, potentially, a new and untapped audience. The International Olympic Committee (IOC) appointed the first-ever head of virtual sport at the start of 2022. The aim is to continue the growth and focus of virtual sport for the Olympic body and oversee the Olympic Virtual Series. There were positive discussions around the inclusion of esports at the Paris 2024 Olympic Games, although ultimately it was decided this was premature. There is definitely a much greater focus internationally on esports inclusion at traditional sport tournaments. In February 2023, it was announced that Savy Games

Group, a Saudi Public Investment Fund-owned esports company, had agreed a USD264 million deal in the Chinese company VSPO. This is the biggest cash investment ever in esports.

Additional examples include:

- the 2022 FIFAE World Cup;
- the 2022 Commonwealth Games hosted an esports pilot event;
- F1 hosted the Virtual Grand Prix in 2020 in the absence of F1 racing, featuring professional esports players, drivers and celebrities;
- the 2021 Virtual Olympic Series featured nearly 250,000 participants and more than two million entries; and
- the virtual Grand National in 2020 attracted peak viewing figures of 4.8 million.

## 9. Women's Sport

### 9.1 Women's Sport Overview

Women's sport has continued to grow throughout 2023, following similar trends to the previous three years, with likely trends showing this is still just the start. Deloitte have predicted that in 2024, revenue generated by women's elite sports will surpass USD1 billion, with USD1.28 billion in total forecast revenues. The major growth driver appears to be the sharp increase in commercial revenue and income from broadcast and match-day sources. This is the same as the three main revenue streams for the men's game, although the women's game sees the most impact through commercial revenues, whereas in the men's game it is the sale of broadcast rights. Global competitions such as the FIFA Women's World Cup, Ladies Professional Golf Association tour, and the WTA tour, are expected to contribute USD425 million of the forecast total.

The UK government recently stated its clear intention to share best practices and accelerate progress across all women's sport, through the Independent Review. The Department for Culture, Media and Sport's latest response to this review into women's football, chaired by Karen Carne, endorsed and supported each of the ten recommendations from the review, as well as identifying a number of legal and practical considerations. This response, as well as the review itself, highlight the government's desire to invest in and support women's sport. Women's sport is also seeing some very positive trends and outlooks for the coming years, including the following:

- The Lionesses' push for fan engagement, investments and support has already led to an 88% increase in interest in the Women's Super League (WSL). This figure is expected to continue to grow, with key fixtures selling out main club stadiums such as The Emirates, Stamford Bridge and Old Trafford.
- The FA, Sky Sports and the BBC currently have a landmark rights deal streaming the WSL, with Sky showing 35 live matches per season and the BBC showing 22. This deal is due to expire at the end of this season, and TNT Sports is set to place a new bid for the rights for the coming period. This is following the encouragement of the removal of the 3pm broadcast blackout on Saturdays, which could lead to WSL games being shown on Saturday afternoons; World Rugby launched WXV at the start of the 2023 season, a brand-new global women's competition, supported by an investment of GBP6.4 million from World Rugby and a dedicated commercial programme; and an increasing number of women's club teams are now joining forces with their respective men's club teams, thereby benefiting from greater integration and shared resources – recent examples are Burnley FC Women, who were brought under the same ownership as the men in February 2021, and Charlton Athletic Women being acquired by Thomas Sandgaard, the owner of Charlton FC.
- Equal prize money in the men's and women's tournaments in cricket's new elite competition, "the Hundred".
- England Netball are set to launch their new Super League in 2025, with the 2024 season due to be streamed by the BBC; the UEFA Women's Football Euro 2022 was hosted in the UK, with 350 million people watching globally.
- The Women's Rugby Six Nations has attracted 10.4 million viewing hours, making it the most viewed edition so far.
- In January 2022, it was confirmed that the new women's football contracts would include their right to maternity leave and long-term sickness benefits.
- The Women's Cricket World Cup has increased its prize money to match the men's prize money. Furthermore, the ECB have suggested that there should be equal pay on average at domestic level by 2029 and at international level by 2030.
- The ECB received a GBP400 million private equity bid for the Hundred after a very successful few years.

With continued investment from rights-holders, broadcasters and sponsors, women's sports is only expected to gain momentum from here.

## 10. Non-fungible Tokens (NFTs)

### 10.1 Non-fungible Tokens (NFTs)

Sports properties are increasingly exploring how to use non-fungible tokens (NFTs) to generate

additional revenues and engage with fans. While the relationship between these “one-of-a-kind” digital assets and sport is still in its infancy, sporting rights-holders are looking closely at this new revenue-generating opportunity, which combines public interest in elite sport with the exclusive, authentic sporting content that it creates.

Neymar Jr recently paid over USD1 million for two NFTs, while Andy Murray and Kevin De Bruyne have also launched their own NFT collections. Currently, the key applications of NFTs by sports properties include the creation of digital collectibles (eg, digital trading cards featuring players or highlights) and “fan tokens” providing enhanced benefits to fans (eg, the right to access promotions or exclusive content).

Athletes are increasingly taking an interest in NFTs, not only for the obvious financial benefits, but also to interact with their fans. Fans can also benefit from holding official athlete NFTs, for example, through metaverse interactions and meet-and-greets, which make the fans part of the athlete community.

However, while presenting commercial opportunities to rights-holders, some NFTs may relate to assets which infringe their IP rights or facilitate such infringements. For this reason, it is important for rights-holders to understand and engage with NFTs in order to adequately protect their commercial rights and those of their partners.

## 11. Regional Issues

### 11.1 Regional Issues Overview

#### COVID-19, Brexit and the Global Recession

The main regional issues impacting sport in the UK, alongside most industries, tend to follow

economic and political trends. However, the unusual fallout from Brexit and the COVID-19 pandemic had an enormous impact on sport over the past few years. Although the sector is recovering and moving forwards, some impacts are still being felt, as highlighted below:

- the impact of COVID-19 on match-day revenue (see **2.1 Available Sports-Related Rights**), disruption to the delivery of rights (see **2.2 Sponsorship**), accelerating the emergence of esports and virtual sport (see **8. Esports**); and
- the ongoing impact of Brexit on data protection (see **5.6 Data Protection**) and free movement of athletes and other sporting staff (see **7.3 Free Movement of Athletes**).

In addition to these ongoing issues, the economic uncertainty and the global recession is having an impact on all industries, and sport is no exception to this. A coalition of almost 200 sports governing bodies and athletes recently wrote to the UK prime minister warning that the ongoing energy crisis could be the final straw for many gyms, pools and clubs. These signatories include the Rugby Football Union, England and Wales Cricket Board, British Cycling, Swim England and the British Paralympic Association.

#### Environmental Challenges

Environmental challenges have increasingly become a top priority in sport. Despite its ability to entertain and promote health, sport can also degrade the environment. Football grounds, with their massive water and energy needs, are sites of environmental impact. Thousands of fans who travel generate huge amounts of waste and carbon emissions. To remedy this, professional teams and colleges are turning sport into a positive force for environmental change by adopting sustainable practices. Key areas that have been

addressed are waste, energy, transport and supply chains. For example, one club saved 42% in energy costs by installing efficient lighting. A top Premier League club ensured that 90% of its office buildings were built from material sourced within a four-mile radius of the club and 80% were made from recycled materials (which ended up costing 25% less than traditional building methods). Clubs are now mandating their drinks suppliers to ensure they only supply plastics that can be recycled and also that they supply re-usable cups for beverages as seen at the new Tottenham Hotspur stadium. The FIH, the governing international hockey body, has attempted to address environmental concerns in the sport due to the use of water-based pitches, by developing dry fields. This is still in the very early stages and is yet to be approved, but demonstrates the desire to improve the sport and remedy potential impacts.

## Digitalisation

Digitalisation is unlocking unprecedented opportunities for growth in the sports industry. Notwithstanding COVID-19's profound impact on the sports market, sports teams are searching for new monetisation options to replace those that are no longer viable. For instance, the Premier League in conjunction with Intel True View allows fans to select a particular perspective from which to view the game. Kickform is a platform that provides odds, statistics and predictions for every Premier League match using a unique algorithm that allows those who bet to develop their own predictive models without performing any mathematical calculations. FIFA introduced the FIFA+ app for the 2022 World Cup which allowed the fans to access full tournament coverage, highlights and the stadium experience which included live augmented reality overlay of stats, heatmaps, insights, different camera angles and VAR replays as on TV.

## Private Equity Investment

Whenever sport is for sale, private equity is not likely to be very far away. Cultural shifts within leagues have made it easier to invest in teams. In 2020, the National Basketball Association (NBA) shifted its rules to allow private equity firms to invest in teams. The amount of funding available to clubs has been of great benefit to them. Tedd Boehly, for instance, bought Chelsea FC for more than GBP4 billion, supported by Clearlake Capital, while Sir Jim Ratcliffe and INEOS have had approval from the FA to fully finalise a minority takeover of Manchester United, investing GBP236.6 million into the club. CVC Capital invested in La Liga and an IPL cricket team, and also had a 14% stake in the Six Nations championship. The rise of streaming services such as Netflix, Amazon Prime, Disney+ and the takeover of BT Sport by Discovery+ have meant that viewers can watch sport on TV whenever they like, making broadcast rights for sporting events and advertising one of the most lucrative revenue streams for private equity firms.

## 12. Artificial Intelligence (AI)

### 12.1 AI Overview

The current AI boom owes much to several key factors: the advent of big data, enabling the storage and processing of vast and complex datasets; the accessibility and scalability of cloud computing resources; and the development of powerful deep learning algorithms. These algorithms, essentially sets of instructions for training models to understand data, have enabled breakthroughs in various types of AI applications.

These AI applications encompass a range of fields, including natural language processing, computer vision, speech recognition, recommender systems, expert systems, robotics,

and generative AI, each with its own capabilities and potential uses. Many AI systems today are examples of “artificial narrow intelligence”, meaning they excel at specific tasks but lack general human-like understanding. The pursuit of “artificial general intelligence” or “superintelligence” remains a goal for the future.

However, as AI systems become more prevalent, concerns about their explainability and unintended consequences have surfaced. The “black box” nature of some AI decision-making processes can lead to scepticism and distrust, while biases present in data can perpetuate or exacerbate societal inequalities. Additionally, fears of deep fakes, misinformation, and privacy breaches underscore the importance of digital literacy and technological safeguards.

Moreover, the dominance of a few major companies in the AI landscape raises concerns about monopolisation and diversity in development. Efforts to address biases and power imbalances include diverse data collection, hiring practices, bias audits, and open-source initiatives, supported by regulatory measures and funding.

In the realm of sports, AI is increasingly used for athlete performance analysis, injury prevention, strategic decision-making, and enhancing the fan experience. Wearable trackers, predictive models, and AI referees are transforming how sports are played and managed. In addition, AI-driven insights are shaping sponsorship, marketing strategies, and stadium operations, while innovations like AI commentators and augmented reality enhance fan engagement.

For women’s sports, AI holds particular promise in data analysis for performance improvement, injury prevention, and combating online abuse. Access to data remains a challenge, but AI tools

offer cost-effective solutions and the potential to create more inclusive and supportive sporting communities. As AI continues to evolve, its impact on both sports and society at large will likely grow, necessitating ongoing efforts to address ethical and practical concerns.

## Legal Implications in the UK

The UK has chosen not to implement specific legislation to regulate AI use at the moment, opting instead for an approach focused on innovation and sector-specific guidelines. However, this strategy has faced criticism, including from the European Court of Human Rights (ECHR). There are some signs of potential regulation, such as the proposed Artificial Intelligence (Regulation) Bill, which seeks to establish a central AI Authority to oversee regulation in this area.

The Trade Union Congress (TUC) has launched an AI taskforce with the goal of introducing a draft AI and Employment Bill in early 2024, aiming to persuade the government to pass this legislation. This bill would include provisions to address concerns about discriminatory algorithms and privacy risks associated with AI’s use in employment decisions, such as analysing job applicants’ facial expressions and tone of voice.

The UK government has decided against expanding exceptions for text and data mining without permission or a license. However, it acknowledges the need to clarify how AI developers can use copyrighted works and data for training AI models. The UK Intellectual Property Office (IPO) is working on a voluntary Code of Practice on copyright and AI, which aims to facilitate commercial licences for data mining while protecting copyright holders’ rights.

A report by the House of Lords Communications and Digital Committee highlights concerns the

use of large language models (LLMs) and generative AI, stressing the importance of upholding copyright law and ensuring fair compensation for rightsholders. The report recommends that the government collaborate with licensing agencies to create large datasets that can be licensed for LLM training, emphasising the economic, political, and societal benefits of maintaining a respected copyright regime. It also calls on the government to take proactive steps rather than relying solely on case law to address these issues and promote innovation.

## 13. The Metaverse

### 13.1 Metaverse Overview

The metaverse is currently a hypothetical future version of the internet within a single virtual world that can be accessed through virtual reality and augmented reality. The development of the metaverse continues to be a key area in the ever-evolving world of technology. However, how the metaverse will develop and the impact it will have on sport are yet to be seen.

The metaverse initially developed within media, fashion and entertainment, but has recently drawn the attention of sports rights-holders, exemplified by collaborations such as Manchester City's virtual Etihad Stadium and the virtual hosting of the Australian Open in Decentraland. As the metaverse continues to evolve, stakeholders must address key issues to harness its full potential while navigating its complexities responsibly.

The landscape of the internet is currently centralised, with major platforms like Facebook, Google and Amazon controlling access to information on their private servers. However, as the metaverse emerges, there is a push for decentralisation and interoperability in a seam-

less environment where economies, avatars and technologies interact freely. Achieving true interoperability requires stakeholders to reconsider their approach to intellectual property and licensing.

Within this evolving digital realm, opportunities arise for rights-holders to engage with fans and brands, necessitating the securing of intellectual property rights for virtual products like football kits. Additionally, broadcasting sports events in the metaverse requires the restructuring of traditional broadcasting deals to align with modern trends. As brands navigate this new frontier, they need to prioritise protecting and promoting their trade marks while grappling with enforcement challenges in a realm where intellectual property rights are easily infringed.

Moreover, the integration of XR technology raises data privacy concerns, especially regarding biometric data, necessitating compliance with stringent privacy regulations. Regulatory frameworks, such as the UK's Online Safety Bill, underscore the importance of moderation and accountability among delivery partners in safeguarding users from online harm. Furthermore, as the metaverse relies on blockchain and cryptocurrencies, concerns about sustainability emerge, potentially deterring brands that are trying to minimise their environmental impact.

Manchester City and Sony have been working together for the past few years to recreate the Etihad Stadium in a virtual world. Fans across the world could, for example, explore and watch Manchester City play and train. The concept involves fans being a part of the game in ways we can currently only imagine. They would themselves be a part of the action, no matter where they are in the world. There would also be no limits on stadium capacity.



**Contributed by:** Jamie Singer, Flora Peel and Nathan Chambers, **Onside Law**

Part of the attraction lies in the possibility for fans to interact with their heroes, as well as each other, from the best possible viewpoints in the stadium. There is further talk of a 3D format across the globe, with fans attending at different locations and wearing headsets to enjoy the experience.

Additionally, there is also the option of including statistics and other add-ons, to grow sports even more and extend their reach. The metaverse truly does seem to have the potential to transform the world of sport as we know it.

## Trends and Developments

### Contributed by:

Bruce Caldwell

**Harper Macleod LLP**

**Harper Macleod LLP** is Scotland's first recognised sports law specialist team. Members of its sports law team are specialists in a wide range of legal areas but all have specific knowledge of the sports sector, with 16 team members based in Glasgow, Edinburgh and Inverness. The firm advises in every aspect of sports law for the highest-profile international federations and national governing bodies, tournament organisers, sports clubs, sports people and sports representatives. The team is highly experienced in advising on issues arising at lo-

cal, national and international level. It has acted for sports clients from a wide range of sporting backgrounds, from football, rugby, tennis and cricket to bowling, shinty and archery, and including clubs, governing bodies, associations and organisations working in the sports sector. Harper Macleod is uniquely placed as an adviser to elite and grassroots sport as its solicitors are actively embedded in sport in Scotland and beyond. The firm's expertise in sports law is unrivalled in the Scottish legal market.

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### An Independent Regulator for Football in England & Wales – Implications for Wider Sport?

In the King's speech in November 2023 a new independent regulator for men's elite football was announced, following the UK government's white paper and consultation response. The independent regulator will be set up as a standalone body to ensure it is operationally independent and can adequately protect clubs' and fans' interests.

The new regulator will have a narrow scope. Legislation will define the boundaries of the independent regulator's authority, primarily centred on ensuring:

- clubs maintain appropriate financial and non-financial resources (a very hot topic at present);
- club decision-makers meet standards of suitability (an ever-increasingly important issue – with the finances and risks involved in football);
- clubs take into account fans' interests in significant decisions and aspects of club heritage (to avoid the loss of history at the whim

of a wealthy, occasionally interested owner); and

- clubs participate solely in competitions approved by the regulator (super league anyone?).

While the government's consultation response states that an independent regulator would intervene only in cases of evident market failure, posing risks of harm that cannot be resolved through self-regulation, the line has been and always will be difficult to draw for any regulator. New regulators in non-sporting arenas have found it historically difficult to clearly and amicably draw the line to their jurisdictional limit and, no doubt, football will be no different.

The rules and powers of the independent regulator will need to be carefully framed and while the independent regulator will not have the power to intervene in sporting matters or commercial decisions – with the government acknowledging that leagues, the FA and clubs themselves are better placed to act on those matters – one has to hope that the independent regulator's jurisdiction does not push up too heavily on the existing regulatory structure, or its attention and

resources may be diverted to challenges, rather than regulating.

While presently the independent regulator is focused on financial regulation within football, questions do begin to become more keenly focused on whether this could be the first step, leading to further independent regulation of other sports. With various high-profile systemic issues across various sports, one may quickly consider that the independent regulator concept has an attraction. Well-documented racism and failings in cricket, sexism in Welsh rugby, and the Whyte review bringing alarming accounts to the fore in gymnastics, questions may well be asked and undoubtedly, if issues of such a serious nature continue to occur, the questions will be repeated.

The Independent Commission for Equity in Cricket report did recommend the introduction of a new independent regulatory body for the sport. While not quite on a par with football's independent regulator, the new cricket regulator, sitting independently within the England and Wales Cricket Board, will assist in monitoring compliance with the game's regulations, assessing evidence of inequalities and discrimination of all forms in cricket, together with the actions needed to tackle the issues. The issues noted in cricket, rugby and gymnastics do stand apart from the issues converging in football that have prompted the need for an independent regulator; indeed, perhaps the fact that each of these sports has, through its own co-ordinated action, responded to and set out a plan to address issues, illustrates that a form of independence of regulation is not needed.

## A Refreshed Focus on Governance?

Looking at the way in which the ECB has established the Cricket Regulator's remit and author-

ity, separately overseen by an independent Cricket Regulatory Board, ring-fenced from the rest of the ECB, the ECB has ceded responsibility for areas of work that had previously been in the ECB's remit. Now sitting with the Cricket Regulator will include safeguarding, integrity (anti-corruption, misconduct, anti-doping) and anti-discrimination. The Cricket Regulator will sit separately to the Cricket Discipline Commission (which will be re-purposed as the Cricket Discipline Panel in 2024). Providing this enhanced independence to enforce the regulations of the sport will, in the words of ECB Chief Executive Officer Richard Gould: "ensure that their work is distinct from our work as the game's promoter".

Not all sports will have the resources or desire or possibly need, to split and create division within the framework of their sport, in a similar fashion. But all sports should consider that good governance is underpinned by clear boundaries to decision-making, with protections against undue influence. Performing an annual audit, or review, to ensure that the structures and boundaries in place are being respected, is an excellent measure to adopt, and will be the means by which the ECB can reassure cricket and the public that there is no interference in the work of the Cricket Regulator.

While many sports are increasing efforts to improve the transparency of decision-making and accountability, and enhance complaints processes, to help sports operate in an environment that is demonstrably not afraid to bear scrutiny, whistle-blowing procedures are taking on increased importance. Abuse, integrity issues, equality and financial compliance complaints are all to be guarded against, with whistle-blowing procedures offering the opportunity to demonstrate that wrongdoing will not be tolerated within a sport.

## Sports Betting and Sports Integrity

American gambling capital Las Vegas hosted Superbowl 58 and it was only fitting that NFL Commissioner Roger Goodell be questioned on the impact of legalised sports betting on the NFL, with sports betting legalised in the US in 2018. Goodell was keen to emphasise the importance of the NFL's gambling policy to protect the integrity of the game, highlighting rules against players betting on NFL games and disclosure of insider information.

Sports in the UK have long held gambling policies and rules prohibiting behaviour that may risk the integrity of our games. Yet still we see high-profile persons, particularly but not exclusively footballers, face lengthy suspensions for betting on their sports, contrary to the rules and regulations in place. Ivan Toney and Sandro Tonali are recent examples of professional footballers to be caught up in losing more than their wagers, while in rugby, Rob Howley returned to coaching with the Welsh national side recently, having served an 18-month ban for betting on the sport.

Technological advancements, evolving consumer preferences, and ongoing regulatory shifts are poised to shape the future of sports betting in the UK. Innovations such as virtual sports, in-play betting, and mobile apps are expected to gain traction, alongside anticipated legislative changes prioritising responsible gaming. Stricter age verification, enhanced self-exclusion mechanisms, and tighter advertising regulations are potential measures to safeguard the industry's sustainability, while prioritising consumer welfare may in turn help protect risks to sport.

## Sport, the Metaverse and Data

Innovation has always gone hand in hand with sport. Whether that be in relation to use of data analysis to improve on-field tactics and

techniques, improvements to equipment or a greater understanding of sports science and off-field recovery techniques, sport has always embraced technology in a bid to maximise performance. Could the rise of the metaverse lead to a new revolution in sport? The metaverse is often thought of as the next phase in the development of the internet which will lead to a blurring of lines between the physical and digital worlds. The development of the metaverse has already posed important questions for the sports world and will continue to do so.

Of particular importance in the sports law world is the impact on players and athletes in sports. There is a question of ownership when it comes to the collection of vast amounts of athlete data whether that be physical data or performance data in training or competition. Existing player contracts and regulations did not envisage such technological advancements. Data capture and use needs to be considered with far greater attention and foresight at this point in time than before, particularly when some sports are seeing double-digit year terms for sponsorship agreements and even player contracts stretching beyond a handful of years, making these agreements particularly vulnerable to technological developments.

Will image rights continue to be turned to non-fungible tokens? What will the modern "season ticket" or "match ticket" look like in the next year or two? Quite possibly an electronic item with a QR code, collecting data, enabling deeper fan interaction, while giving greater control to prohibit or profile from resale, or exclude undesirable individuals. The prospect of using greater technology to control access and regulate and respond to the fan experience, or fan behaviours, is wide ranging and should not be underestimated.

With more data comes more responsibility and whether that relates to the sportsperson, or the spectator, data privacy, handling, sharing and destruction need to be carefully considered and not overlooked, as technology develops. Technology often has untold consequences and sports should ensure that problems are not unwittingly created; the gumshield in rugby that can apparently predict a concussion impact may have excellent intent, but who will retain the data? What use could that be put to? Will it impact on a player's future ability to obtain insurance, or health products? Data control will be vital, or good intentions could prejudice future activities.

## Data, Privacy and Investigations, and Associated Issues

The privacy of data is one particular area that requires careful consideration in the context of sport and particularly, sports investigations. Long gone are the days of opening a book and scribbling down notes, further to interviewing individuals. Identifying the purpose of ingathering information, where it is to be stored, for how long it is to be kept, in what way it can be processed and shared, are all essential and key to a sound investigation in sport.

The lawful basis for processing data is essential to compliance with the relevant provisions of the UK General Data Protection Regulation 2018 and the Data Privacy Act 2018, and particular care will be needed if ingathering any "special category" data, being data that includes racial or ethnic origin, political opinions, religious or philosophical beliefs, or details regarding health, sex life or sexual orientation. Data impact assessments and the assessment of legitimate interests can also be key to framing the bounds of what occurs. With many sports now seeing more significant complaints, broader investiga-

tions and the need for more robust processes to demonstrate legitimacy in the findings of an inquiry (whatever that may be), getting the data rules right is as important as setting appropriate terms of reference and adhering to the requirements of any given policy.

As we move into a new era of well-being protection in sport (in terms of duty of care, mental health support, concussion awareness) and in relation to protecting children and vulnerable groups, attention to what happens with health data, and criminal offences data, is going to be very important. Good data management will be necessary, or sports organisations may experience enhanced scrutiny and find limited resources being stretched further to correct mistakes and respond to complaints.

## Complaints Generally and Online Abuse

Sport is far from immune to the seemingly ever-increasing propensity in society to confront and complain. While refreshing complaints procedures, to provide a slick, but fundamentally finite process, will help sports to best arm themselves to right wrongs or correct misconceptions, sport should also consider how best to improve protective measures that the sport itself can take, or support, or promote, to assist those exposed to the changes in society and pockets of increased hostility. While, as set out above, digitising access to events may help exclude undesirable elements, or assist in speedy identification and response should issues arise, excellent examples are now available to inspire efforts to create a safer space for sportspeople; or at the very least a space that, if impacted, can still offer protection.

The Rugby World Cup 2023 saw levels of online abuse directed at participants, including match officials, reach unprecedented scales. World

Contributed by: Bruce Caldwell, Harper Macleod LLP

Rugby, in response, took unprecedented steps and compiled dossiers which were passed to law enforcement agencies around the world, to result in the prosecution of many individuals whose social media activity crossed way beyond the whitewash and went way beyond questioning a decision, to amount to criminality.

The UK's Online Safety Act 2023 received royal assent in late 2023 at a time when online abuse in sport is increasing by multiples on an annual basis (the anti-abuse organisation Kick It Out reported an increase of online abuse of 279% in the last year) and high-profile participants are feeling the need to take a break from international duty (such as England Rugby's Owen Farrell's decision to play in the relative tranquility of France), and there are calls on sporting bodies to do all they reasonably can to help protect individuals. Kirsty Gilmour, a renowned Scottish badminton player, switches off from social media regularly to avoid the abuse that can occur, believed to be from gamblers, in the event of a loss. Female tennis players report the same, from people who presumably have too much money and too little sense to realise that once a bet is lost, an abusive social media post will not get back the money frittered away. The Act seeks not only to deter such stupidity but to regulate the hosts – the providers of social media services – to oblige them to remove and protect against illegal content.

In our experience, getting traction with hosts has hitherto been a challenge and any legislative improvements to assist in the challenge of having material removed, and protections put in place, are welcome. But sports will need to ensure that they clearly define their own policies on when to step in and assist (as not every sport can engage experts in the way World Rugby did, to police, ingather and respond), when to edu-

cate and when to complain (to the authorities). Having some people within a sports organisation who are trained to counter online abuse using the Act will become an important step and may even become as important as taking ownership of bribery, integrity, equalities and whistle-blowing issues, within an organisation.

Knowing how to identify and correctly label “illegal” content could be vital to getting traction with the authorities and the hosts of such material. Threats to kill, abuse and other actions (that may be particularly pertinent to sport at present), could include offences (in England & Wales) in respect of the Public Order Act 1986, Protection from Harassment Act 1997 and Crime and Disorder Act 1998 (and other equivalent legislation in Northern Ireland and Scotland). Fear or provocation of violence, harassment, use of words or behaviour or the display of written material to harass, stalking, and racially or religiously aggravated public disorder or harassment offences, will all be covered. Sports should watch out for the detailed guidance and codes due to be published to fully bring the Act to life, but commencing preparations now is important.

## The Structure of Certain Sports

Important developments are inevitable in European football and separately in the global professional golf game, for different but connected reasons, revolving around finance. On 21 December 2023, the Court of Justice for the European Union (CJEU), on referral from a Madrid court, delivered significant judgments with potentially significant consequences for sports in Europe. Hailed by all parties as a victory for themselves, many commentators consider that the door is ajar to the prospect of so-called breakaway leagues, whether in football, skating, equestrian sports (or indeed others), or to the prospect of regulators embedding further safeguards within

their sports, to better enforce defined rules and impose sanctions.

While the CJEU recognised rules can be set to preserve the status quo, proportionality is essential. Sporting activities and related sports bodies may well have specific characteristics, but competition rules still apply. To guard against breakaways (and not rely solely on public opinion to dissuade the same), comprehensive regulatory reform may be needed to provide essential safeguards and repel competition law-based challenges.

It is challenging to predict whether golf will further fracture over the course of the coming year, or whether peace and harmony will reign. Rory McIlroy, often the spokesman for the non-LIV (Saudi-PIF backed league) golfers, sagely noted that the game was in danger with spectators being turned off from events by the best players not all congregating to compete together. In much the same way F1 would not attract the same attention if Lewis Hamilton was racing on a YouTube-streamed event involving go-karts round a public park, while Max Verstappen lapped competitors on Sky Sports F1 channel's coverage of a reduced field in Monaco, the upper echelons of golf's professional game (on both sides) need to accept a solution is important, or the product could be irreparably damaged. Yet creating a closed super league of golf, of sorts, would likely be vulnerable to its own anti-trust/competition law problems.

### Refocusing on Women's Sport

As rumours circulate of PIF-funds switching to tennis and the proposal to merge the men's and women's tennis tours, to create a unified calendar, further steps have been taken and will continue to be taken, to refocus and promote women's sport. Karen Carney's review of football in England has made key recommendations to the funding of the women's game, diversity, facilities, broadcasting and steps to raise the standards in domestic football. A report recently released in Scotland focused on the need for women's cricket to be better resourced and supported, to address the significant imbalance in participation and organisation of the sport. The focus to promote and improve women's sport may also need to deal with the odd challenge to inclusion policies, such as in swimming, in a case to watch when American transgender swimmer Lia Thomas seeks to change World Aquatics rules on participation (which forbids participation in elite women's races if a person has undergone any part of the process of male puberty). The Court of Arbitration for Sport will consider the challenge and determine if World Aquatics' objective of fair competition trumps Ms Thomas's claims of discrimination.



# URUGUAY



## Law and Practice

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González Mullin, Kasprzyk & Asociados has undergone several changes in recent years and is currently led by Horacio González Mullin and Notary Public Irene Kasprzyk. The firm's practice covers various areas of law, including civil, commercial, labour, family and sports law. In the sports law arena, the firm has established itself as one of the leading law firms in Uruguay, and

is also well known in South America and other parts of the world. The firm's team of highly qualified and well-regarded professionals adopt modern and creative approaches to provide efficient and effective legal services to clients. The firm is committed to treating all clients equally, but also places special emphasis on providing a bespoke service to each individual client.

## Authors



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ESTUDIO

## 1. Regulatory

### 1.1 Anti-doping

Uruguay considers voluntary and consenting doping a crime under Law No 14,996 (1980). Athletes who supply themselves or consent to a third party providing them with a depressive or stimulant drug to abnormally decrease or increase sports performance can be punished by three months to three years in prison, if the conduct does not constitute a more serious crime. The sentence may be reduced by one third to a half if the substance consumed is harmless to the athlete's health due to the nature of the substance or the dose taken. However, doping or the use of prohibited substances by athletes is subject to disciplinary sanctions by the National Anti-Doping Organisation of Uruguay (*Organización Nacional Antidopaje del Uruguay* or ONAU).

#### Doping Sanctions for Use of Social Drugs (Substance Abuse)

In Uruguay, the use of social drugs included in the World Anti-Doping Agency's (WADA) list of prohibited substances, such as cocaine and heroin, outside sports is not considered a crime, but

is rather treated as an addiction. However, Article 4.2.3 of the WADA Anti-Doping Code classifies this type of prohibited substance as a substance of abuse. If it is proven that its use was outside competition and unrelated to sporting performance, it is punishable by a three-month suspension, which can be reduced to one month if the athlete has started undergoing treatment or has initiated a programme against the use of such substances.

#### ONAU

The ONAU is responsible for preventing and controlling doping in Uruguay. The ONAU is under the authority of the Uruguay Sports Foundation (*Fundación Deporte Uruguay*), an institution created in 2002 and comprised of the National Secretariat of Sport (*Secretaría Nacional del Deporte*) and the Olympic Committee of Uruguay (*Comité Olímpico Uruguayo Uruguayo*).

The ONAU operates in accordance with the rules of the WADA World Anti-Doping Code, and its mission is to eradicate doping in sports in Uruguay. Its programme is founded on "the spirit of sport": the ethical pursuit of human excellence through the dedicated perfection of each ath-

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lete's natural talents (in other words, the integrity of sport and fair play).

## The World Anti-Doping Code Implemented in Uruguay

Uruguay's National Anti-Doping Code is based entirely on the WADA World Anti-Doping Code, and was last updated in 2021.

## Examples of any Recent Noteworthy Anti-doping Cases

In the last seven years or so there have been at least 13 doping cases; some were national cases while others were international.

The last involved a very well-known football player, Agustín Canobbio, who played for Atlético Peñarol, one of Uruguay's most important football clubs (he currently plays for Paranaense, a Brazilian club). He also plays for Uruguay's national team, and was part of the team that played in the 2022 FIFA World Cup in Qatar. This firm handled this particular case.

In August 2021, Canobbio was notified of an adverse analytical finding following a doping test conducted in Lima, Perú, after a match against Sporting Cristal during the Conmebol South American Cup. The prohibited substance found in Canobbio's system was an anabolic steroid called "boldenona", which is prohibited in Uruguay, though in Perú it is legally supplied to cattle, chickens and other animals for fattening.

The player was notified of the adverse analytical finding seven days before the second semi-final match against Paranaense in Brazil, posing two significant problems. The first objective was to quickly prove that the adverse analytical finding could have been owing to contamination from eating meat or chicken in Perú. This had to be proven within three days to avoid a

provisional suspension and to allow him to play in the second semi-final. The second objective was to prove the contamination. He was facing a potentially career-ending suspension of two to four years (he was 23 years old at the time).

This firm was successful in achieving the first objective, and was able to convince the Disciplinary Commission that the boldenona found in the player's system was due to the consumption of contaminated meat or chicken. As a result, the Commission decided not to impose a provisional suspension, allowing the player to participate in the semi-final match against Paranaense. He was also able to compete in the national championship with his club Peñarol and join the Uruguayan national team in the South American Qualifying rounds for Qatar 2022.

Ultimately, this firm was able to demonstrate with a high degree of probability that the adverse analytical finding was due to contamination from the consumption of contaminated meat or chicken. As a result, the Disciplinary Commission issued a warning to the player on 4 March 2022, and he was able to continue playing with Peñarol. He was later transferred to Paranaense, where he currently plays, and he represented the Uruguayan national team in Qatar 2022.

## 1.2 Integrity

### Unsportsmanlike Pacts

In Uruguay, Law No 14,996 criminalises unsportsmanlike pacts, which involve delivering or offering gifts or rewards to another to ensure or facilitate the irregular result of a sports competition or the abnormal performance of one or more participants. This crime carries a penalty of three months to four years in prison, unless it constitutes a more serious crime. Anyone who accepts such gifts or rewards for themselves or a third party is subject to the same punishment.

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In Uruguay, there is a prevailing view in the legal and academic community that this law does not punish those who offer or receive incentives to strive harder to achieve a result, such as a win, because the incentive is not intended to modify the athlete's normal behaviour. Rather, the incentive is seen as a means to motivate the athlete to maintain their normal behaviour in pursuit of victory.

## Disciplinary Sanctions

Unsportsmanlike conduct is also subject to disciplinary or ethical codes established by sports federations.

For instance, Article 11 of the Disciplinary Code of the Uruguayan Football Association (*Asociación Uruguaya de Fútbol* or AUF) is dedicated to "Incentives and Bribes", outlining the consequences for anyone who offers or accepts an illegal reward, such as money, to alter the normal performance of a player or the outcome of a match or competition. Individuals found guilty of such conduct may face suspensions ranging from one to two years, while clubs may be suspended from membership for 12 to 24 months. The severity of these penalties is increased to the maximum extent when the conduct affects club promotions or relegations. Finally, it is also important to know that in cases of incentives and bribes, the competent court may rule based on moral conviction.

As can be seen, the Disciplinary Code reiterates the wording of Law 14,996 in respect of the crime of unsportsmanlike pacts; what is punished is the offering and taking of an incentive to alter the normal performance of players, or the outcome of matches.

However, there are those who consider that an incentive for a player to make a greater effort

should also be punished, as it is an incentive that seeks to alter the player's normal performance.

Finally, it bears highlighting that in November 2022 the AUF began an integrity programme for players and officials of its competitions, in order to identify match fixing and to protect the sport.

## Recent Noteworthy Misconduct/Match-Fixing Cases

In the professional football scene, there have been no cases of incentives and bribes reported by the AUF for many years now. However, in 2022, a case of attempted bribery of a referee in amateur football was brought to light by the Interior Football Organisation (*Organización de Fútbol del Interior* or OFI), resulting in a club's membership being suspended for six months. Although it was never proven whether the person who had attempted the bribe was a club official (a necessary condition for imposing a sanction on a club), the disciplinary court understood that it could punish the club based on moral conviction – ie, it had the moral conviction that the person who had attempted the bribe was a club official (albeit one who was never identified), and therefore decided to sanction the club. In this case, there was only a disciplinary sanction, and no criminal sanctions were brought.

Another case of bribery occurred in basketball, linked to clandestine gambling, which did reach the criminal justice system. In 2019, a player from one team attempted to offer an incentive to members of the opposing team to alter their performance and let his team win. Although the unsportsmanlike conduct had no effect, as the team that was meant to lose actually won, the Sports Federation sanctioned several athletes with suspensions lasting two years or longer. In addition, the players were subject to an expedited procedure by the criminal justice system,

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which ultimately resulted in a six-month community service sentence.

## 1.3 Betting

### Sports Betting in Uruguay

Sports betting is permitted in Uruguay, but under strict regulations that grant a monopoly to the National Directorate of Lotteries and Quinielas (*Dirección Nacional de Loterías y Quinielas* or DNLQ), under the Ministry of Economy.

However, the DNLQ authorises private companies known as Official Quiniela Agents (*Agentes Oficiales de Quinielas*) to operate sports-betting games.

#### *Legislation governing betting in Uruguay*

The main law governing betting is Law No 15,959 of 16 December 1882, which prohibits games of chance or fortune, with the exception of the lottery and public raffles authorised by the Administrative Economic Boards.

The DNLQ was granted the monopoly in gambling by Law No 15,716 in 1985, which allowed it to authorise Official Agents to operate.

The DNLQ was further empowered to organise international sports prediction and online gambling competitions by Law No 17453 in 2002. Decree 175/2002 gave the DNLQ the authority to regulate sports betting and internet games. “Supermatch” is currently the main sports-betting game in Uruguay.

There are no regulations from sports federations stipulating betting as a punishable offence, and there is no system by which sports federations share information with authorised betting operators.

### *Examples of recent noteworthy sports-betting cases*

There are no known cases of violations of betting rules for which athletes have faced either disciplinary or criminal sanctions. However, see **1.2 Integrity** regarding the basketball players who were charged for an unsportsmanlike pact related to illegal betting.

Furthermore, two administrative proceedings have been initiated by the DNLQ against Conmebol for broadcasting football matches in the Copa Conmebol Libertadores de América and Copa Conmebol Sudamericana that displayed advertising in stadiums from international sports-betting houses not authorised by the DNLQ. In the first case, Conmebol was ordered to cease advertising; while in the second, a significant fine was imposed, which Conmebol has appealed. The outcome of the appeal remains pending.

Conmebol filed a motion of unconstitutionality against the decree on which the DNLQ based its administrative proceedings. This motion was brought before the Supreme Court of Justice of Uruguay, which has yet to issue a decision.

## 1.4 Disciplinary Proceedings

### Disciplinary Proceedings in Uruguayan Football

According to the Disciplinary Code of the AUF, there are two types of disciplinary proceedings in Uruguayan football.

#### *Expedited procedure*

The expedited procedure is a short process used for minor cases, such as sanctions of no more than two matches of suspension, fines of less than UYU150, and others. In these cases, a decision is made in a single session, and once adopted, the file and the decision are made available to interested parties. These parties have

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two days to request a review of the decision by providing new evidence. If necessary, a hearing is held where the decision will be issued. If a hearing is not necessary, the court shall adopt the new decision within three days after the above-mentioned two-day period. A decision made under this procedure is not appealable.

### *Ordinary procedure*

The ordinary procedure, on the other hand, offers more guarantees than the expedited procedure for cases of sanctions greater than those mentioned above.

Once the matter has been reported to the court, a resolution will be issued where the court will order the investigation of the case, along with procedural measures and processing of relevant evidence. The court could decide that the case file be made confidential. It may also order the preventative suspension of the accused, by means of a resolution substantiated in accordance with the Disciplinary Code.

The case file is made available to interested parties for four working days, during which they can file their comments in writing and propose evidence. This is the only opportunity to request and offer evidence.

Once the parties have filed their comments, the court convenes a hearing within two working days, where it hears the parties, takes into account the relevant evidence, and considers their arguments. At the conclusion of the hearing, the court issues a decision. If necessary owing to the complexity of the case, the court may issue its decision within two working days after the hearing. If the parties fail to file their comments, the court will issue a decision within two working days after the expiration of the period in which the parties could file comments.

An example of the above procedure is the claim made by Club Nacional de Football against Club Atlético Cerro Largo. The claim was made because the trainer of Cerro Largo, who was given a suspension, gave instructions via his mobile phone during half-time. The Disciplinary Committee ruled in favour of Club Nacional de Football and declared them the winner of the match. However, Cerro Largo appealed the decision to the AUF Appeal Commission, which overturned the decision. Finally, the CAS admitted the appeal issued by Club Nacional de Football and declared them the winner of the match.

### **Disciplinary Proceedings in Doping Cases**

The Anti-Doping Code of the ONAU outlines the disciplinary proceedings against athletes.

#### *Notification of a potential anti-doping rule violation*

The ONAU is responsible for preventing and controlling doping in the country. If the ONAU suspects an athlete of violating the anti-doping rules, it will conduct a review and provide notification accordingly. However, before notifying the athlete of the potential violation, the ONAU must determine whether any prior anti-doping rule violations are on record.

#### *Provisional suspensions*

According to the Anti-Doping Code, if the ONAU receives an adverse analytical finding or an adverse passport finding for a prohibited substance that is not a specified substance, they will impose a provisional suspension on the athlete promptly after the review and notification. However, if the athlete can prove that the adverse analytical finding resulted from a contaminated product or a substance of abuse used outside the sports field, the mandatory provisional suspension may be lifted. The ONAU cannot impose a provisional suspension if the prohibited sub-



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stance found is a specified substance. In the event of provisional suspensions, the athlete is entitled to a hearing, and the decision may be appealed through an expedited process.

### *A fair hearing*

For any athlete accused of violating anti-doping rules, the ONAU must provide a fair hearing within a reasonable time by a fair, impartial and independent hearing panel in compliance with the Anti-Doping Code.

### *Notice of decisions*

At the end of the hearing, the Disciplinary Tribunal issues a written decision that includes the reasons for the decision, the sanction and the disqualification of results. If the severest consequences were not imposed, the decision must include a justification for this. The ONAU will notify the athlete and other relevant anti-doping organisations of the decision, which may be appealed. An example of this process is the case of Uruguayan athlete Andrés Silva, who was given a six-month suspension by the ONAU owing to an adverse analytical finding resulting from a contaminated product. Despite this sanction, he was able to participate in the Rio de Janeiro 2016 Olympic Games.

## 2. Commercial Rights

### 2.1 Available Sports-Related Rights

#### Commercial Rights Related to Sport

In Uruguay, as in the rest of the world, the commercial rights associated with sport include:

- merchandising;
- sponsorship and advertising;
- broadcasting;
- image rights;
- ticket sales;

- social membership fees; and
- especially in football, the federative and economic rights of players.

However, the secondary sale of tickets for public shows is prohibited in Uruguay, and is considered a criminal offence under Article 360 of the Criminal Code. The penalty for this offence is seven to 30 days of community work.

In terms of player's federative and economic rights, Law No 14,996 prohibits the assignment of athletes' rights to natural or legal persons that are not sports entities. This type of transfer is what FIFA refers to as TPO (third-party ownership) and is considered a civil offence rather than a criminal one. Most Uruguayan courts interpret this offence as making the assignment contract null and void.

### 2.2 Sponsorship

Sponsorship is a vital source of funding for sports in Uruguay. However, obtaining sponsorship is not an easy task for clubs and athletes owing to the country's small population of only 3.5 million people. The country's main sport is football, and there are numerous clubs in Montevideo, many of which have small numbers of members or supporters. For example, in some neighbourhoods, there are three different clubs playing in the same division within a span of just six blocks. While it is a challenge for smaller clubs to secure sponsors, it is relatively easy for big clubs such as Club Atlético Peñarol and Club Nacional de Football as they have over 90,000 members.

Similarly, athletes also face difficulties in securing sponsors owing to the small size of the country. However, it is relatively easier for international athletes to obtain sponsorship, as many receive funding from state-owned companies such as

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Ancap, Antel and Banco de Seguros del Estado. Some well-known athletes who have received sponsorship from these companies include:

- Santiago Urrutia (a driver competing in the World Touring Car Cup);
- Deborah Rodríguez and Andrés Silva (athletes);
- Facundo Llambías (a superbike racer); and
- Pablo Cuevas (a tennis player).

Overall, owing to the small size of the country and the saturation of sports clubs, it is not very enticing for companies to sponsor most clubs or athletes in Uruguay.

Sponsorship contracts establish:

- the period of the contract;
- the contribution;
- the rights of the company; and
- the obligations of the athlete or club.

## 2.3 Broadcasting

In Uruguay, broadcasting and particularly television rights are among the primary sources of income, especially in football. In the past, television rights related to Uruguayan football were not individually negotiated by clubs. Instead, the AUF negotiated for all clubs, ensuring that smaller clubs were also part of the global negotiations and benefitted from them.

However, three or four major clubs started negotiating independently to earn greater profits. In 2022, the Uruguayan Professional Football League was established in order to have greater autonomy from the AUF, especially from a financial perspective, such as in relation to broadcasting rights.

Since 1998, Tenfield, a Uruguayan company, has held television rights. However, in recent years, there has been a significant dispute between the AUF and Tenfield over these rights. The AUF has launched a private channel called AUF TV, where competitions or matches that Tenfield does not have the right to broadcast (such as women's football, national team matches, and news) are shown.

## 3. Sports Events

### 3.1 Relationships

#### Proprietary Rights in Sports Events

In Uruguay, the organiser of a sports event holds the rights generated by it, although in some cases these rights may be delegated to sports institutions who ultimately end up organising the event.

For instance, in football, the AUF Statute states that the AUF is the organiser of sports events related to international football (FIFA and CONMEBOL) that take place in Uruguay, as well as national competitions. However, Article 76 of the Statute allows the AUF Executive Council to delegate the organisation to its members or the respective leagues, which is usually the case. In practice, the clubs organise football matches, and therefore set ticket prices and benefit from the revenue.

Regarding consumers, Law No 17,250 grants rights and benefits to consumers that also apply to spectators who attend sports events. The government is also involved in events, as it is responsible for ensuring the safety and conditions of the stadiums where they take place. The government may also prohibit the use of a stadium for a given event until certain conditions are met.

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## 3.2 Liability

### Liability of Sports Event Organisers

Organisers of sporting events have a legal responsibility for any damages that occur during the event, bearing both civil and criminal liability depending on the situation. In football, Article 5 of the Disciplinary Code of the AUF sets out strict liability for sports institutions that organise events. They are responsible for any punishable acts that occur in the stadium or sports venue before, during and after the match. This includes incidents of any nature that disrupt the normal development of the event or result in aggression towards referees, technicians, other officials, club authorities, journalists, police officers or members of the public. The liability also extends to:

- damage caused to facilities;
- destruction of emblems of institutions;
- the throwing of certain objects;
- the use of unauthorised pyrotechnics; or
- any attempt to invade the playing field.

Athletes can also be held liable to spectators or other athletes for any damage they cause directly, and this is without prejudice to the liability of the event organiser.

Law 17,951 regulates violence in sports events, setting out measures aimed at the prevention, control and eradication of violence, and establishes an Honorary Commission for this purpose. This law also provides for:

- the prohibiting of alcoholic beverages at events;
- the inclusion of certain violations and criminal offences related to violence in sports in the Criminal Code; and
- the establishing of a registry of people that have committed these types of crimes.

Facial recognition cameras have also been implemented in stadiums, and spectators are required to provide their ID number when purchasing tickets.

## 4. Corporate

### 4.1 Legal Sporting Structures

#### Legal Forms of Sporting Bodies

In Uruguay, sports institutions can take the legal form of a non-profit civil association or a sports limited company (SAD), according to Law No 19,828. However, SADs, despite having a profit-oriented purpose, are subject to certain special conditions as outlined in Article 70 of Law No 17292 and Regulatory Decree 486/001. These conditions include having:

- a special object linked to competition in sports;
- nominative shares;
- a minimum and maximum number of board members; and
- registration with the National Sports Secretariat.

In recent years, SADs have become a popular legal form for the acquisition of football clubs, particularly since FIFA banned TPOs in 2015 (as stated in Article 18 of the Regulations on the Status and Transfer of Players). This is owing to several factors, such as the ability to attract investments, assign economic rights of players and enable the SADs' boards (which typically consists of a few members) to make decisions rather than the members of a civil association.

### 4.2 Corporate Governance

#### Sport-Specific Corporate Governance

In Uruguay, each sports federation has its own regulations that govern the participation of clubs

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and athletes, as well as the relationship between the federation and the clubs. Matters relating to statutes and compliance with them are overseen by public bodies. For example, the Ministry of Education and Culture regulates and controls matters related to civil associations in sport, including elections and compliance with statutes. The National Sports Secretariat also regulates these civil associations, especially SADs, which are also regulated by the National Internal Audit Office (*Auditoría Interna de la Nación*).

In the event of insolvency, SADs are subject to Uruguay's bankruptcy laws. However, football clubs that owe salaries to players, coaches or physical trainers, per final decisions of the AUF's courts, cannot participate in any new competitions until such debts are paid or a payment agreement is reached with creditors.

### 4.3 Funding of Sport

#### Central Government Resource

The National Secretariat of Sport, which falls under the jurisdiction of the Presidency of the Republic, offers an economic support programme for athletes and sports institutions. To access this programme, interested parties must submit a request, along with an explanation of their reasons for seeking support, endorsement from the corresponding federation or sports institution, and all the required documentation as specified by the Secretariat.

Additionally, the Sports Promotion Law No 18,833 allows sports institutions to obtain tax benefits by presenting a project aimed at improving the training conditions of athletes (especially youths), infrastructure for sports activities and the performance of federated athletes, among other things. Beneficiaries may include sports federations, professional football and basketball clubs, and even sponsors. Projects must

be submitted during certain periods of the year, and the benefits, which are limited, come in the form of tax exemptions.

It is worth noting that, currently, sports institutions do not receive any economic support related to COVID-19.

### 4.4 Recent Deals/Trends

One of the most innovative developments in recent years in Uruguay's football scene was the temporary acquisition of the Civil Association Club Atlético Torque by an SAD managed by City Football Group, which owns Manchester City. This happened when the team was in the second division, and since then, Montevideo City Torque (the team was renamed in 2020) has become one of the most well-developed teams in Uruguay. The club now boasts an excellent sports complex, and in recent years has participated in international championships organised by CONMEBOL.

Although other SADs have attempted to replicate this model, they have not achieved the same level of success as Montevideo City Torque.

## 5. Intellectual Property, Data and Data Protection

### 5.1 Trade Marks

Trade marks can be registered with the National Directorate of Industrial Property of the Ministry of Industry, Energy and Mining. The registration procedure can be done online, but a user account must be created first. It is also recommended to conduct a search about the trade mark intended to be registered, which is free of cost.

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In Uruguay, this topic is regulated by Law No 17011. Article 4 sets up different elements that cannot be registered, such as the name of a country, national symbols, signs similar to coins, techniques, etc.

While registering a trade mark is not mandatory in Uruguay, it is highly recommended. This is because the registration provides the benefit of legal presumption about the property of the trade mark, which is fundamental in the case of infringement or undue trade mark use by third parties.

## 5.2 Copyright/Database Rights

Uruguay's national constitution and specific laws (Nos 9739, 17,616 and 19,857) guarantee copyright and database rights to authors, recognising their intellectual property in the form of their thoughts, creations, scientific works or artistic expressions. The authors have the power to dispose of their intellectual property as they see fit. The legal regulations do not require any formalities or registration to enjoy or exercise copyright, only that the author's name appears on their creation in order to claim ownership. The authors have the authority to prohibit the use of their creations and receive economic compensation for their use. These kinds of issues are generally resolved on a case-by-case basis, without a common defence.

Although the National Library is responsible for the copyright register, registration is not mandatory. Even without registration, authors can still enjoy and exercise their copyright rights. Additionally, a legal database right is established under Law No 18,331, with Article 37 granting individuals the right to initiate legal proceedings to obtain information about themselves from public or private databases.

## 5.3 Image Rights and Other IP Laws That Recognise Image Rights in Uruguay

In Uruguay, there are limited regulations that protect image rights. Law No 9739 of 17 December 1937, which deals with literary and artistic property, regulates image rights in Articles 20 and 21. Similarly, Law No 17011 of 25 September 1998, which pertains to trade marks, also touches on image rights in so far as an image cannot be registered. Article 11 of the Children and Adolescents Code safeguards the privacy and images of minors, prohibiting the harmful use of their images or publication of information that could harm them.

Although a bill has been passed by parliament to regulate commercial exploitation of sports events, including the so-called Sand's Right, it has yet to be enacted.

### How Image Rights Are Protected

The protection of image rights is granted by Articles 20 and 21 of Law No 9739. Article 20 states that photographs, statues, paintings and other artistic forms representing a person belong to the individual they portray, along with the right to reproduce the image, as long as the artwork is made to order and is not the result of a spontaneous work of the artist, and provided authorisation of the person represented has been given. However, the rights to an artwork that is the spontaneous work of the artist belong to the artist.

Article 21 provides that the portrait (image) of a person cannot be marketed without their express consent or, in the case of death, without the express consent of their spouse, children or parents. The person who gave consent has the right to revoke it, but must compensate for any damages incurred by revoking it. Article 21 does

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not prescribe any formalities for consent, requiring only that it be given expressly. Even verbal consent is valid as long as it is expressed.

However, Article 21 provides exceptions to the requirement of express consent to publish an image. The image may be published without express consent if it is for scientific and didactic purposes and, in general, when it relates to cultural purposes or to facts or events that are of public interest or that have been carried out in public. In these cases, the image (portrait) may be published freely, without the need for express consent.

## 5.4 Licensing

### Transfer or Assignment of the Right to Exploit Image Rights

To exploit an image, the owner of the image rights must expressly grant consent, but there is no requirement for any particular formality or written agreement. In the context of sport, and football in particular, there are three types of image rights to consider.

#### *Collective image rights*

These are the image rights of athletes that are reproduced in sports events. Professional athletes typically transfer these image rights to their sports institutions through their employment contracts, even if the transfer is not explicitly written. If they did not transfer these rights, the athletes would be unable to fulfil their obligations under their employment contracts, which involve providing sports services in public sports events.

#### *Image rights linked to the sports institution*

The second type is image rights linked to the sports institution. These are image rights that are connected to the sports institution that hired the athlete, such as social responsibility or marketing actions featuring the athlete's image. Although these rights may be linked to the employment

relationship, they are not part of the sporting event and therefore cannot be assumed to be included in the employment contract. Express written agreement is required to assign them.

#### *Image rights of an athlete or public person not linked to the sports institution*

The third type is image rights of players as athletes or public figures that are independent of and unrelated to their employment relationship with the sports institution. For example, these would be the image rights associated with commercial contracts that players might enter into with brands or companies, without any link to the club. These rights are not included in the employment contract and therefore require express written consent to assign them to a third party.

It is important to note that there are generally no restrictions on assigning image rights, unless they have already been transferred to third parties.

Currently, there are two cases before national courts where football players and referees are claiming damages against the AUF and Tenfield (the company that owns the television rights) for improper use of their respective images in television broadcasts of matches and other sporting events.

## 5.5 Sports Data

In the Uruguayan jurisdiction, the sports data of spectators is usually used for security and (in some cases) for commercial opportunities, especially regarding clubs that have all the information and data related to their members.

## 5.6 Data Protection

Uruguay recognises the protection of personal data as an inherent human right in Article 72 of its Constitution. Moreover, Law No 18,331

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regulates the protection of personal data and the action of habeas data, which is regulated by Decree No 664/2008 and No 414/009.

These rules have subsequently been supplemented by Law No 19,670 and Decree 64/020, which have contributed to further adapting the country's personal data protection standards to those of the European Union.

## 6. Dispute Resolution

### 6.1 National Court System

#### The Role of the National Courts in Sport

Although the statutes of sports federations in Uruguay prohibit parties from resorting to national courts (either explicitly or through arbitration clauses included in the statutes), it is not uncommon for individuals to seek the assistance of courts to address sports-related issues. In football, for instance, FIFA allows claims related to the employment relationship to be brought before national labour courts. Claims by agents against players or for damages suffered in sports are also sometimes heard in national courts.

In cases where a sports institution argues that the national court lacks jurisdiction owing to the prohibition established by the federation's statutes, the national court has sometimes disregarded the prohibition and asserted jurisdiction over the case.

It is important to note that internal dispute resolution mechanisms do not need to be exhausted before national courts can be deemed competent to hear a case.

### 6.2 ADR (Including Arbitration)

#### Jurisdictional Bodies of the Federations

Sports federations typically have their own jurisdictional bodies for handling conflicts among

their members. In this sense, the AUF is the most advanced federation, and has a very good judicial system, although there is room for improvement in the selection and training of some of its court members.

The AUF has several courts, as follows.

- The Professional Football Arbitration Tribunal is an independent court that deals with labour disputes involving players, coaches, physical trainers and clubs. It consists of representatives from players' unions, coaches and physical trainers' unions (elected by those unions) and representatives from clubs (elected by the AUF). Decisions made by this court are final and cannot be appealed.
- The Dispute Resolution Chamber has the authority to decide economic conflicts between clubs. Its decisions can be appealed to the Appeals Committee.
- The Disciplinary Committee handles disciplinary issues, and its decisions can be appealed to the Appeals Commission.
- The Appeals Commission hears appeals against decisions made by the Dispute Resolution Chamber and the Disciplinary Committee. Its decisions can be appealed to the Chamber of Arbitration for Sport, an independent court that is not part of the AUF. However, since this chamber has not yet been constituted, decisions made by the Appeals Commission can be appealed to the Court of Arbitration for Sport (CAS).

### 6.3 Challenging Sports Governing Bodies

#### Enforceability of Decisions

The decisions of the AUF's courts on economic matters are primarily enforced by preventing sports institutions from participating in new championships or tournaments.

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For example, if a first division club has debts to players, coaches or physical trainers, they cannot participate in a tournament or championship unless they resolve those debts or reach a payment agreement beforehand. If the debts are not resolved by the day before the start of the tournament, the club will automatically be relegated from the division and will also not be able to participate in the second division until they settle their debts; failure to do so will result in relegation to the amateur division.

Regarding debts between clubs, there is a debate about whether the debtor can participate in championships or tournaments. The general consensus is that they can, as there is no express rule prohibiting clubs with debts from taking part in championships or tournaments (the General Regulations of the AUF previously contained such a rule, but it was later removed).

## 7. Employment

### 7.1 Sports-Related Contracts of Employment

#### The Employment Relationship Between Athletes and Sports Institutions

The relationship between an athlete and their sports institution can vary greatly depending on the sport. For example, the relationship between a football or basketball player and their club is quite different from that of a boxer, cyclist or tennis player with their respective institutions.

In the case of football, the relationship between the player and the club is considered a special employment relationship – some argue this is governed by labour law, while others argue it falls under a separate sports law. The Player Statute serves as the collective bargaining agreement that regulates the relationship between players

and clubs. It outlines the benefits afforded to players and sets minimum salaries based on age and division. For instance, the minimum salary for a football player over the age of 21 who plays in a first division club is currently the equivalent of USD1,500.

### 7.2 Employer/Employee Rights Application of Labour Law by the AUF's Courts

When it comes to labour disputes between football players, coaches, physical trainers and clubs, the Professional Football Arbitration Tribunal – the AUF's jurisdictional body – generally does not apply labour law in its entirety. Instead, it applies the collective agreements that govern each respective group (Uruguayan Football Player Statute, Coach Statute and Physical Trainer Statute).

The tribunal's President, who casts the deciding vote in the case of a tie, proceeds on the basis that the principle of autonomy of the will governs the employment relationship between football players and clubs. This is because the rules of sports law apply to these relationships, not labour standards.

As a result, the tribunal does not recognise certain benefits granted by labour law, such as the right to overtime pay, extra month's salary and holiday pay, in favour of football players, trainers and physical trainers. On the other hand, Article 34 of the Player Statute grants in favour of players 20% of their national or foreign transfer fee.

However, in many cases clubs, or even agents or representatives, require football players to waive this 20% in order to complete the transfer. Some claims have been brought before the tribunal arguing that such a waiver is not valid, given the public policy nature of labour law. However, the



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court, with the vote of the President, has rejected these claims, maintaining that the principle of autonomy of the will applies, while sports law rather than labour law applies.

## 7.3 Free Movement of Athletes

### Number of Foreign Athletes

While there are no laws that specifically limit the number of foreigners that can compete in sports tournaments, many sports federations have their own regulations in place governing the involvement of foreign athletes.

For instance, the Uruguayan Football Player Statute stipulates that each club may only register a maximum of six foreign players per season, and that no more than three foreign players can be on the field of play at any given time.

In basketball, the Regulations of the Uruguayan Basketball League state that each club is allowed to have two registered foreign players, as well as one foreigner who, after some years playing in Uruguay, has applied to become a Uruguayan citizen.

## 8. Esports

### 8.1 Esports Overview

Esports are rapidly gaining ground in Uruguay, with the creation of the Uruguay Esports Association (AESU) on 28 February 2019. The AESU was established with the goal of improving, promoting and regulating esports in all its forms, while upholding values of sportsmanship, fairness and sustainability.

The AESU is made up of a group of young professionals who share a passion for esports.

Currently, the AESU boasts a total of 15 teams, some more professional than others, competing in various leagues such as the Liga Uruguaya Pubg Mobile, Liga Uruguaya de Free Fire and Liga AESU Clash Royale.

There is also a strong virtual football scene in Uruguay. The Uruguayan Virtual Football Federation organises the Uruguayan Cup, which sees the participation of numerous teams, including professional ones such as Peñarol, Nacional, Wanderers and Atenas Progreso. The Federation also runs the Super League, featuring all the main professional clubs in Uruguay.

## 9. Women's Sport

### 9.1 Women's Sport Overview

Women's football in Uruguay dates back to 1996, but only in recent years have most clubs started to incorporate it into their organisations. In the past season, 24 teams participated in AUF tournaments, while many others competed in tournaments organised in different regions of the country. It is fair to say that there has also been a significant increase in the number of clubs involved in women's grassroots football.

This year, the AUF women's football tournament will be broadcast live for free on AUF TV, featuring pre- and post-match interviews with players. The most representative organisation in Uruguayan football is the Players' Union (*Mutual Uruguaya de Futbolistas Profesionales*). Last year, the Union launched its women's football department, intended to improve and encourage the practice of women's football by providing the best labour conditions for its players. While most women's teams are currently amateur, some such as Club Nacional de Football have professional players.

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Other women's sports are also rapidly developing in Uruguay. Women's basketball, for instance, is seeing growth not only in clubs but also in national teams. Women's field hockey is also gaining popularity, with the junior national team participating in the last World Championship in South Africa in 2022.

Uruguay has produced several well-known women athletes, including Deborah Rodríguez and María Pía Fernandez, the sailor Dolores Moreira, and boxers Cris Namus and Cecilia Comunales.

## 10. Non-fungible Tokens (NFTs)

### 10.1 Non-fungible Tokens (NFTs)

Currently, Uruguay does not have specific regulations regarding virtual assets, including non-fungible tokens (NFTs). As these assets are relatively new in the country, there is not yet an experienced market in this regard.

However, recently Uruguay's national football team signed an agreement with the platform Bitici.com to launch its own tokens and NFTs. These kinds of assets present a good opportunity for providing financial support to sports institutions.

It is crucial to seek legal advice, especially related to consumer law, before deciding to use these assets, in order to avoid potential risks.

## 11. Regional Issues

### 11.1 Regional Issues Overview

There is no applicable information for this jurisdiction.

## 12. Artificial Intelligence (AI)

### 12.1 AI Overview

There is no applicable information for this jurisdiction.

## 13. The Metaverse

### 13.1 Metaverse Overview

There is no applicable information for this jurisdiction.

# USA



## Law and Practice

### Contributed by:

Irwin A Kishner, Daniel A Etna, Joel Wagman  
and Barry Werbin

**Herrick, Feinstein LLP**

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Herrick, Feinstein LLP provides a full range of legal services to its clients worldwide from its offices in New York City, Newark, New Jersey and Pittsburgh, Pennsylvania. Herrick's Sports Law Group works in conjunction with the firm's complementary practice groups on corporate, real estate, tax, IP, restructuring, employment, government relations and litigation aspects of sports law. Its attorneys have guided stakeholders in professional sports as they have entered into transactions to access capital, invested in professional sports teams, entered into concession services agreements and invested in mixed-used developments. Herrick's work

spans league and team formation and operation, arena and stadium financing and development, naming rights, sponsorships, media rights, team acquisitions and investments and more. Herrick has represented major athletic teams and affiliated entities in transactions totalling over USD125 billion.

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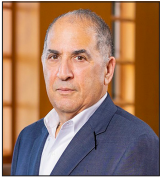
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**HERRICK**

## 1. Regulatory

### 1.1 Anti-doping

Doping is a criminal offence in the USA. On 4 December 2020, the Rodchenkov Act was enacted, which enables US authorities to pursue criminal penalties against those involved in doping conspiracies at international events involving American athletes, sponsors or broadcasters. The Rodchenkov Act gives prosecutors the power to seek fines of up to USD1 million and prison time of up to ten years, as well as restitution to victims.

The World Anti-Doping Agency (WADA) expressed concern that the Rodchenkov Act would destabilise the global anti-doping effort by extending US jurisdiction beyond its own borders. Now, the Department of Justice (DOJ) must develop a robust programme, co-operating with the US Anti-Doping Agency (USADA) and international law enforcement.

Eric Lira, a “naturopathic” therapist, was the first person charged under the Rodchenkov Act. Lira was charged by the DOJ with obtaining and distributing various performance-enhancing drugs to athletes in advance of the 2020 Olympic Games in Tokyo – which convened in the summer of 2021. The case was investigated by the FBI’s Integrity in Sports and Gaming Initiative. Lira pleaded guilty in May 2023 and was sentenced on 21 February 2024. Although the maximum term of imprisonment under the Rodchenkov Act is ten years, Lira was only sentenced to three months’ imprisonment and one year of probation. Lira was also to forfeit the USD16,410 that he received in connection with the violation. In December 2023, two track and field coaches, O’Neil Wright and Dewayne Barrett, were charged as Lira’s co-conspirators.

### WADA

Since 2004, WADA has published an annual list of prohibited substances and methods (the Prohibited List), which is updated at least annually, with the new list taking effect on 1 January of each year. The list identifies the substances and methods prohibited in and out of competition, and for particular sports. The list is divided into two sets of substances and methods.

- Those that are prohibited at all times (including but not limited to):
  - (a) substances such as hormones, anabolics, EPO, beta-2 agonists, masking agents and diuretics, and any pharmacological substance not currently approved for human therapeutic use; and
  - (b) methods such as blood transfusion or manipulation, gene editing or intravenous injections in some situations.
- Those that are prohibited only in competition, including but not limited to stimulants, marijuana, narcotics, glucocorticosteroids, and, in particular sports, beta-blockers.

A substance or method can be added to the Prohibited List if it is deemed to meet two of the following three criteria:

- it has the potential to enhance or enhances sporting performance;
- use of the substance or method represents an actual or potential health risk to the athlete; and
- use of the substance or method violates the spirit of sport.

Athletes are responsible for knowing what substances and methods are considered banned by the Prohibited List. Under World Athletics Rules, the presence of a prohibited substance in an athlete’s sample, or the use of a prohibited

substance or prohibited method, constitutes a doping offence. WADA's Code provides a global framework for the anti-doping policies, rules, and regulations within sports organisations and among public authorities. USADA, the national anti-doping organisation in the USA for Olympic, Paralympic, Pan American, and Parapan American sports, is a signatory to the Code. USADA is charged with managing the anti-doping programme including testing both in and out of competition.

## US Professional Sports Leagues

With respect to individual sports leagues in the USA, doping matters are generally handled internally by the leagues. Each league, through collective bargaining with players' associations, implements procedures and guidelines for the administration of drug testing and the determination of banned substances. Pursuant to its recent collective bargaining agreement, the National Basketball Association (NBA) has removed marijuana from its drug testing programme. These procedures usually consist of collecting random blood or urine samples that are tested by an independent laboratory.

## 1.2 Integrity

In May 2018, the US Supreme Court struck down the federal Professional and Amateur Sports Protection Act (PASPA), which had effectively prohibited individual states from legalising sports betting, with a few exemptions. The ruling provided a pathway for individual states to legalise sports gambling. More than 30 states have legalised sports betting, with many others introducing proposed legislation.

With the legalisation of sports betting, there is an increased risk of match-fixing and in-play manipulation. The legislation that has emerged, however, does not include provisions criminalis-

ing match-fixing. In large part, both states and the federal government appear to be relying on existing penal code provisions to preserve the integrity of athletic competition.

The Sports Bribery Act is the federal criminal law that targets the manipulation of athletic competition. The act makes it a felony to "... influence, in any way, by bribery any sporting contest, with knowledge that the purpose of such scheme is to influence by bribery that contest".

This act does not cover other non-bribery concerns such as extortion, blackmail, tipping of inside information, or betting on games by someone who can affect the outcome. Private sanctions for misconduct also exist.

## 1.3 Betting

Across the USA, sports betting is part of popular sports culture and many states have passed, and are continuing to pass, legislation to legalise sports betting in varying forms. Such forms include mobile sports betting with multiple sportsbooks options, one mobile betting option, in-person online betting (ie, proximity to brick-and-mortar sportsbooks) and only physical sportsbooks. Some states restrict sports betting to only in-person betting, while others allow both in-person and mobile betting options. Currently, almost 40 states allow sports betting in some form, with over half of states allowing mobile betting. While the legalisation of sports gambling is still growing in the USA, it has solidified as a new norm. In 2023, the amount wagered in the USA on sports increased by approximately 25% year over year.

## Sports Governing Bodies Sharing Information With Betting Operators

US sports leagues license their data to sports betting operators via exclusive or co-exclusive



distributors to provide accurate, real-time data for an agreed upon fee. Sportsbooks operate outside of the sports, but often license from the sports organisations, as opposed to a third-party organisation. Sports organisations enjoy the win-win of earning fees for the data collection already underway and protecting the integrity of the sports wagers by ensuring accurate results. Certain states (eg, Illinois and Tennessee) require that operators use official data for certain sports wagers, namely props or in-play betting.

## Recent Noteworthy Betting Cases/ Disciplinary Actions

There are few examples of disciplinary action for sports betting violations. The most notable actions are the disciplining of former baseball player Shoeless Joe Jackson and former baseball player and manager Pete Rose. However, in 2019, for the first time since the 1980s, the National Football League (NFL) disciplined a player for wagering on NFL games. Josh Shaw, an Arizona Cardinals cornerback, was indefinitely suspended for betting on multiple NFL games. Jacksonville Jaguars wide receiver Calvin Ridley (at the time a member of the Atlanta Falcons) became the first NFL player to be suspended since Shaw. Ridley was suspended for the 2022 season after placing a legal mobile bet in Florida in 2021 that included a bet on the Falcons to win, but has since been reinstated for the 2023 season. Since then, the NFL has suspended a total of ten players for betting on NFL games over the last two years, a marked increase in these types of violations and corresponding punishment.

### 1.4 Disciplinary Proceedings

The steps taken by the different governing bodies of sports with respect to doping, integrity, and betting offences vary by sport and violation. For example, pursuant to MLB's Joint Drug Prevention and Treatment Program (the JDPT

Program), a player who tests positive for a performance-enhancing substance is subject to an 80-game suspension for a first violation, a 162-game suspension with 183 days of pay suspension for a second violation, and potential permanent suspension from major and minor league baseball for a third violation. This contrasts with other sporting bodies, such as the NFL which, although having a shorter season, has slightly different punishments for similar violations. For example, a player who violates the NFL's policy on performance-enhancing substances can be penalised, depending on the consumed substance, from anywhere between two and eight regular and/or postseason games for a first violation, between five and 17 regular and/or postseason games for a second violation, and with a multiple-season suspension for a third violation.

With respect to gambling and integrity violations, Major League Baseball (MLB) has – in effect – clear guidance, through MLB Rule 21, which can provide, depending on the offence, for up to permanent ineligibility based on a single offence. The MLB's clear guidance on the penalties' specific offences contrasts with other leagues' guidelines, such as the NFL's, where the league or the Commissioner may analyse violations on a case-by-case basis, with the resulting disciplinary actions including severe penalties, up to and including a fine, termination of employment and/or banishment from the NFL for life.

## 2. Commercial Rights

### 2.1 Available Sports-Related Rights

Aside from sponsorship and broadcasting rights (discussed elsewhere in **2.2 Sponsorship** and **2.3 Broadcasting**), key sports-related rights include merchandising, hospitality, events and ticketing. While these rights all involve sports

teams' licensing, they primarily relate to the use of a team's stadium or third-party facilities.

Commercial rights to merchandising most commonly relate to retail sales of a wide variety of products, including team logos and player references. To make use of these rights, teams or leagues will typically enter into agreements with retail goods companies for design and production of gear. Those contracts often include intellectual property licences of team trade marks and copyrights, in exchange for a fee or percentage of sales. Teams and players may also engage in more specialised merchandising, including sales of memorabilia used in-game at pivotal or record-setting moments, often by way of auction or private sales to collectors.

Use of stadiums and sports facilities can be a significant commercial right that sports organisations monetise, which includes provision of hospitality services and concessions. To provide concessions at their facilities, sports organisations contract with suppliers. Alternatively, some teams form their own hospitality organisations to control both the quality of the concessions available at their events, and the profits to be made therefrom.

Teams also monetise unique offerings in their stadiums and facilities, including specialty seating for games or higher-end restaurants. Sports organisations may even use their facilities for special events such as concerts, either charging a fee for use of the space or including some split of ticketing profits in agreements with event organisers.

Teams profit from the sales of tickets and the accompanying sales of concessions and merchandise. Increasingly, sports organisations are facilitating secondary ticket sales and combat-

ting illegal sales through e-ticketing and apps dedicated to purchasing, storing and producing tickets for safer access to games.

## 2.2 Sponsorship

Sponsors use sport to enhance and promote their brand primarily through advertising and title rights. Sports organisations attract sponsors through the creation of advertising space and marketing title rights. The primary contract terms typically revolve around payments and intellectual property rights.

Sports organisations provide sponsors with a wide variety of opportunities for advertising, including on billboards, on the field or court, or even on the players' uniforms. Broadcast of events provides an advertising opportunity by promoting different brands through commercial segments between periods of play. Additionally, sports organisations can provide sponsors with title rights as the "official" service provider of the team in the sponsor's industry, complete with in-game announcements or broadcasting tie-ins. Title rights may even extend all the way up to the large-scale sponsorship right over naming a stadium. For food and drink sponsors, stadium advertisement can be tied to exclusive sales of sponsors' products in concessions at the team's stadium or facility.

Contracts between sports organisations and sponsors inevitably focus on payment and intellectual property rights. Sports organisations will often have some input on the advertising material that may be displayed by the sponsor, as well as some level of veto or control over the material displayed. Sponsors will look for strict intellectual property rights reservations and controls, to ensure ownership over all trade marks, copyrights, or other intellectual properties of the sponsor displayed by the sports organisation.

## 2.3 Broadcasting

Holders of sports rights will package broadcasting rights for broadcasters, and broadcasters in turn monetise their broadcasts of games and other content. Wrapped up in these arrangements are agreements for broadcasting regionally versus nationally, licensing interactive media, and rights to access venues by broadcasters.

Broadcasters use the broadcasting rights they receive through advertising, subscription services, and licensing previously broadcast games for future programmes. The primary exploitation of broadcast rights comes through advertising. Broadcasters sell airtime to a variety of sponsors for advertising during live sporting events. Increasingly, broadcasters leverage their rights to provide content through streaming platforms, deriving subscription income from viewers. Additionally, subject to compliance with any applicable league copyright regulations, broadcasters can license out their previously recorded broadcasts for use in replays, future programming and content.

Sports rights-holders traditionally package their broadcast rights by the season. Within each season, different broadcasters will pay for the right to broadcast a certain number of games. In many sports, packages are split between regional and national broadcasters. In such a split, regional broadcasters will purchase rights to a larger number of games, with a smaller select number of games going to national broadcasters. Increasingly, sports rights-holders package these television rights while still reserving the right to broadcast games over the internet and through interactive media, to increase both the audience for their games and their ability to profit from selling broadcast rights for different distribution mediums. While teams have made use of broadcasting rights for league-specific broadcast services for a more extended period

of time (for example, NFL teams broadcasting via NFL Game Pass), teams are increasingly providing broadcasting rights to other television streaming services, such as Hulu, Apple TV+ and Amazon Prime, to increase the fees received for broadcasting rights and audience accessibility. More tangible examples of this trend have recently emerged, with Apple TV acquiring the exclusive rights to certain Friday Night Baseball games from MLB, Amazon Prime and Paramount Plus broadcasting NFL games, and NBA games being broadcast on certain premium Hulu packages. Continuing the expansion into this territory, 2024 saw the first ever NFL play-off game broadcast exclusively on a streaming platform through Peacock.

Broadcasting arrangements provide not only for fees, but also for certain access rights and intellectual property concerns. Broadcasters need to bargain for the rights to access venues where sports occur, to ensure that their cameras and media equipment are present, alongside their announcers and commentators in commentary booths and on the field or court. Intellectual property rights are a large concern in these arrangements, as broadcasters retain rights over their final broadcasts while using them to showcase trade marks and other intellectual property of the sports rights-holders.

## 3. Sports Events

### 3.1 Relationships

There are multiple proprietary rights in a sports event. These include:

- copyrights in the actual broadcasts (TV, cable, streaming, download, pay-per-view, etc);
- athletes' individual rights of publicity, including sponsorships and depiction of sponsor

names/logos in association with individual players; and

- trade mark rights in teams and leagues' names, logos and other marks, and trade mark rights in the names of certain sports events themselves.

In addition, any music or other third-party content that will be played at an event must be properly licensed by the team, league and/or venue.

Under US copyright law, sporting events in themselves are deemed to be performances that are not protected by copyright in the absence of such events being “fixed” in some media, including by digital means. Accordingly, US broadcasts of college and professional sporting events are therefore simultaneously recorded.

Physical spectator access to event venues is controlled by ticketing, which creates a contract with the ticket purchaser. Tickets typically contain printed restrictions on filming and photography. An increasing number of US sporting events are broadcast over cable TV channels and through dedicated streaming apps and web channels, where user access is controlled through service subscription and terms of use agreements.

Sporting event organisers/leagues are significantly concerned about illegal streaming/pirating of sporting events. This is addressed through copyright and trade mark enforcement proceedings, including copyright “take down” notices issued to internet service providers under the Digital Millennium Copyright Act.

### 3.2 Liability

Sports events organisers generally owe a duty of care to both participants and spectators to ensure that the stadium and playing field are

reasonably safe and to avoid creating dangerous conditions.

Holding certain sporting events during the COVID-19 pandemic involved additional potential liability exposure for event organisers. For example, claimants might allege that they became infected with COVID-19 while attending a particular event due to the organiser's non-compliance with certain safety or mitigation requirements. Such claims might be difficult to prove given the prevalence of the virus, but any person who entered a venue, including athletes, staff, spectators and vendors, were potential claimants. If a person is injured at a sporting event, whether that person has a valid cause of action against the organiser will depend on whether they can prove all of the following three elements:

- the person was owed a duty of care by the organiser;
- the organiser breached this duty of care; and
- the injury resulted from that breach.

To determine whether the event organiser breached its duty of care, a court will apply a test of “reasonableness”. A court may consider whether the organiser implemented risk management policies and procedures to minimise risks and/or maintained its facility at reasonably expected standards.

### How Can Liability Be Limited?

Courts have repeatedly emphasised that event organisers are not required to guarantee the total safety of guests.

The most common argument used in defending negligence claims involving injuries at sporting events is the “assumption of risk” doctrine. This doctrine can preclude recovery for injuries resulting from an activity in which the plaintiff realised

the risks, and nevertheless voluntarily participated in and accepted those risks. Assumption of risk can be express (eg, a waiver signed by the plaintiff), or it can be implied from the voluntary participation in the activity.

To prevail on the assumption of risk defence in a spectator's personal injury action, the defendant is required to demonstrate that the injury-causing events were known, apparent, or reasonably foreseeable consequences of attending the game.

It is not uncommon for event organisers to include disclaimer language in small print on the reverse of the ticket. Whether these disclaimers are valid is an issue of state law, and states differ as to the enforceability of these waivers.

MLB and its clubs have largely avoided financial responsibility for foul ball accidents, since every MLB ticket contains a disclaimer that fans enter at their own risk. US courts have generally upheld the "Baseball Rule", which provides that a baseball facility has met its duty of care to spectators by providing seating that is protected from projectiles that leave the field of play.

Another reason why an owner's liability may be limited is the requirement that the owner's negligence must be the cause of the injury.

### What Liability Cannot Be Excluded?

While disclaimers and waivers are valid in many states, they do not necessarily protect facility owners from their own negligence. Despite the disclaimers on the reverse of ticket stubs, stadium owners still have an obligation to act reasonably to minimise the risk of injury to spectators. Waivers are also not effective if the sports organiser is found to be grossly negligent or to have intentionally harmed the claimant.

### How Can Athletes Be Liable to Spectators?

Athletes who engage in typical activities associated with a sport will not usually face liability for any resulting injuries that occur during the game. However, in limited cases, an athlete may bear liability for a spectator's injury where, for example, an athlete behaves aggressively or fails to act according to the rules of the game.

### How Are Sporting Events Kept Safe From Violence and Disorder?

Sports organisers have a duty to keep the sporting stadium/facility reasonably safe, which may include a duty to take precautions if it is foreseeable that a third party will commit a criminal or violent act causing injury to a player or spectator. There are certain steps that can be taken to reduce that risk and potential liability:

- adopt and enforce internal disciplinary policies for players and coaches setting forth standards of conduct and impose penalties for violations which are applied consistently;
- review and strengthen, if necessary, policies and local laws on the serving and consumption of alcoholic beverages;
- work closely with police and security to identify and deter the potential for violence and other unruly behaviour, and to implement a plan to discourage and respond to spectator violence if it occurs, including a strong, visible police presence;
- install video equipment in the seating area to help deter misconduct and identify spectators in the event of fan violence;
- have a designated area in the stadium for visiting team's spectators; and
- make public announcements before and during the game emphasising standards of spectator behaviour.

Each sporting institution should review and examine its culture, prior experiences and resources to prepare for sporting events and to reasonably ensure their safety.

## 4. Corporate

### 4.1 Legal Sporting Structures

Entity selection is an important concern that must be addressed early in connection with formation of any professional and non-professional sports clubs (amateur athletics) and sports governing bodies. In all instances, limiting liability against legal claims will be of paramount importance and in the USA will be provided for by resorting, basically, to use of any of the following entities:

- limited liability company;
- limited partnership; and
- corporation (publicly or privately owned).

Each of these types of entities are presently represented in all areas of professional and non-professional sports.

In the absence of ownership by persons or entities that are non-resident in the USA, the limited liability company form is likely the prevailing form of ownership and operation. These are frequently referred to as “pass-through entities” for purposes of taxation, providing for a single level of income taxation while affording their owners the ability to construct creative and sometimes unusual distribution “waterfalls”, directing how various revenue-streams are distributed. The limited liability company is governed by a limited liability company operating agreement and the state laws where that entity has been formed. Essentially, the operating agreement is a contract that provides for nearly unlimited variations

of rights and remedies among its owners, which may consist of traditional common equity investors, those with preferred equity investments, and those holding hybrid securities (which may be combinations of debt and equity securities). The applicable state law statutes are structured to defer to contractual rights of ownership and operation negotiated by the owners.

### 4.2 Corporate Governance

Governance in sports spans many participants, including players, clubs, local, national and international organisations, spectators, the media, commercial (sponsors), non-commercial interests, and educational and training bodies. Enhancing governance in sports has undoubtedly been a priority in response to the public scandals at the highest levels and bears similarities to the evolved corporate governance standards and expectations applicable to business corporations in the public capital markets. However, in the USA there is no “one size fits all” approach recommending or prescribing governing principles and, as a result, codes of conduct abound at all levels (eg, professional, collegiate and youth). This stands in contrast to, for example, the UK’s Code for Sports Governance, with broad application to all that seek government and lottery funding.

These governance codes must be updated to address ever-changing matters, such as laws governing online gambling, the ongoing debate over compensation for college athletes, and the increasing number of substances banned for use by athletes.

In the USA, sports leagues are most often governed according to rules and internal regulatory procedures set forth in league organising documents. Most typically, these consist of league constitutions and by-laws and agree-

ments between the sports league and member teams. Transfers of ownership interests in teams, with or without changes in control, are often scrutinised, requiring prior approval. In many cases, these documents establish a board of governors comprising team owners or their representatives. These documents provide for establishing and managing league governance and regulatory policies and typically provide for appointing a league commissioner. The league commissioner serves as a chief executive officer and is typically responsible for overseeing the day-to-day league operations. League organisational documents and collective bargaining agreements (CBAs) set forth player and coach codes of conduct.

### 4.3 Funding of Sport

Federal agencies and state and local governments often turn to public-private partnerships to structure and execute the development of stadiums and other sports-related facilities. Often this is done in conjunction with redevelopment of real estate located in areas qualifying for tax status as a Qualified Opportunity Business Zone with special tax advantaged attributes.

In connection with professional stadium finance projects, separate private revenue streams are identified and evaluated. They consist of and include the following: ticket sales, personal seat licences, club seats, luxury seats, stadium tours, concessions, merchandise sales, advertising (including signage, virtual advertising, sponsorships, naming rights and pouring rights), parking, and other exclusive arrangements.

Stable revenue streams are of paramount importance to funding transactions. Declines in event attendance during COVID-19 were due to capacity and social distance restraints imposed by governments rather than a decline

in measured demand for tickets. While there is some uncertainty about the pace at which the live events industry will recover, the shift in consumer spending from product to experience is increasing and is expected to be robust in the medium to long term.

### 4.4 Recent Deals/Trends

US leagues have begun to modify ownership regulations to allow new investment opportunities for funds to acquire minority interests in multiple clubs. In 2019, MLB modified its rules to allow such funds to acquire a passive minority stake in multiple clubs. Similarly, the NBA approved a plan to allow investment firms to own interests in teams. As many sports properties confront long-term cash flow and capital shortfalls, new variations on investment funds are likely to continue to develop.

In addition, sports and entertainment venues have, in recent years, paired with and become integral components of mixed-use development projects. These projects often take the form of public-private partnerships revitalising downtown areas and have resulted in the rehabilitation or creation of entertainment spaces, hospitality ventures (including hotels, bars and restaurants), residential projects (including affordable housing), and office and innovation workplace lab spaces, tailored for changing modern workplace norms. While diminishing as a tax benefit incentive, many urban projects were subject to special federal income tax benefits if the projects were located within qualified opportunity zones, often associated with urban renewal projects. This was particularly useful as direct taxpayer support for new stadiums and arenas has been waning.

College athletes are now able to exploit their own name, image and likeness (NIL). This is the result

of some new state laws, as well as a change to the National Collegiate Athletic Association (NCAA) rules providing collegiate athletes for the first time with the right to profit by licensing their NIL rights. This monumental change for college athletes has raised burgeoning issues and opportunities. (see **5.3 Image Rights and Other IP** and **9.1 Women's Sport Overview**).

## 5. Intellectual Property, Data and Data Protection

### 5.1 Trade Marks

Trade mark rights in the US are based on use of a mark (be it text, designs/logo, slogans, or a combination thereof) in US commerce for specific goods/services. Registration is therefore not necessary to protect and enforce trade mark rights, although registration provides certain meaningful benefits (discussed below) and enhanced litigation remedies. Unregistered but otherwise protectable marks (ie, common law use) may be enforced against junior users of the same or confusingly similar marks for the same or closely related goods/services.

Registration is available at the federal level for marks that are used in US interstate commerce. All 50 states also have state trade mark registrations for marks used only within their respective states. The US is also party to the Madrid Protocol and accepts WIPO international applications designating the US.

Word marks that are generic can never be registered. Marks that are merely descriptive also cannot be registered on the Principal Register or enforced until, and if, they obtain secondary meaning (also known as acquired distinctiveness). Marks cannot be registered if they are confusingly similar to any prior filed application or issued registration for related goods/services.

While registration is not necessary to enforce valid trade mark rights, under the US Trademark Act (also known as the Lanham Act), the advantages of federal registration include:

- legal presumption of validity of the mark and its ownership;
- constructive nationwide notice of registration; and
- potential for enhanced damages in infringement cases, especially for counterfeit merchandise.

### Changing Controversial Team Names

Of interest is the recent trend for sports teams to change their names where the names reflect historical bias or racist content that is offensive to one or more societal groups. For example, in 2020, the professional NFL Washington Football Team (an interim name used until early 2022) dropped its long-standing "Redskins" name and all related marketing and merchandising in deference to Native Americans, who, along with many other groups, for many years had viewed the "Redskins" name as highly offensive. After soliciting fan suggestions for new names and conducting thorough trade mark clearance searches, in early 2022 the team was formally re-named the "Washington Commanders". In December 2020, the Cleveland Indians professional baseball team announced they would do the same, following decades of opposition to the "Indians" name; in July 2021, the team rebranded as the "Cleveland Guardians".

### 5.2 Copyright/Database Rights

US copyright law is exclusively governed by the 1976 Copyright Act, which is a very lengthy and complex statute with additional enabling regulations. The USA is a member of the Berne Convention. Registration is not required to protect copyright, which exists from the moment of



creation of an original work of authorship that is otherwise protectable by copyright.

However, except for non-US Berne Convention works, registration is still required as a prerequisite to sue for copyright infringement in the USA. In addition, if a registration is issued within three months of a work's first publication, in a subsequent infringement action the copyright owner may seek both statutory damages (in lieu of a need to prove actual damages or an infringer's profits) and legal fees if successful. Although non-US Berne Convention country copyright owners are exempt from the registration requirement as a pre-condition of suing for infringement, they cannot seek statutory damages or legal fees unless a US registration is effective before an act of infringement begins.

Common defences include lack of personal jurisdiction, statute of limitations, absence of infringement based on non-substantial similarity of copyright-protectible elements, public domain, lack of copyrightable subject matter, *scènes à faire*, idea-expression merger, and statutory fair use.

The applicability of the Copyright Act's three-year statute of limitations will be addressed for the first time by the US Supreme Court in 2024, in a case that will assess the length of time over which a plaintiff may seek copyright damages where the plaintiff first discovered an infringement more than three years after it first occurred.

Databases can be protected by copyright and/or trade secret laws under both state and federal laws. Trade secrets are typically protected by confidentiality and non-disclosure agreements. Copyright does not protect facts, such that factual data within a database cannot be protected; however, the original structure, sequence and

organisation of a database (ie, the schema) can be protected if it is original.

## 5.3 Image Rights and Other IP

There is legal recognition for image rights for individual athletes, but generally only at the state level under statutory and common law rights of publicity. As this is governed by the laws of 50 individual states, it is a complex area of US law. Some states do not recognise a right of publicity, while many others recognise such right by statute and/or common law. Some states also recognise a post-mortem right of publicity that extends beyond a person's death and which can be enforced by the deceased person's heirs.

The rights of college athletes to be able to financially exploit their own name, image and likeness (NIL) experienced a ground-breaking moment in 2021, when some new state laws and National Collegiate Athletic Association (NCAA) rules changes provided such athletes, for the first time, with the right to profit by licensing their NIL rights. In the past, NCAA rules prohibited college athletes from accepting any such compensation as a condition of being able to compete as an "amateur".

In addition to publicity rights, well-known and famous athletes may develop trade mark rights in their names and persona, providing additional intellectual property protection under federal and state law. The concept of "passing off" is a form of trade mark infringement and unfair competition under the federal Trademark (Lanham) Act and state laws, regardless of whether an athlete's rights are registered. However, athletes would only have enforceable trade mark rights in their names or other aspects of their persona if such persona were in fact used as a brand to market and sell goods/services in the USA.

## 5.4 Licensing

Licensing is a primary revenue generator of team and league revenues. In the USA, the professional major sports leagues generally control and administer all member team trade mark rights and the licensing thereof (see **2.1 Available Sports-Related Rights**). Licensing revenues are shared with teams based on contractual formulas.

Athletes are generally free to enter into direct sponsorship and licensing agreements, typically through their agents, provided such acts do not otherwise violate their team and league policies and any player contract provisions.

There are no legal restrictions on assigning IP rights to third parties, with the only statutory exception that an “intent to use” federal trade mark application can only be assigned to a successor of the underlying business. Restrictions on assignment of IP rights to third parties is generally a matter of contract. In the absence of any such restriction, contractual rights may generally be assigned except for personal service contracts; however, this is a matter of state law and is therefore subject to specific applicable laws of the 50 states.

## 5.5 Sports Data

Sports in the USA are heavily reliant on massive amounts of data and statistics respecting players’ performance and health, training, competitive team positions and information, scouting reports, team competition, and fans. Major sports leagues and their teams employ sophisticated technology to capture real-time game data, such as MLB’s StatCast system, an artificial intelligence (AI) tool that uses radar and high-speed cameras to record all movements made by players and tracks the flight and velocity of baseballs. Similar systems are installed in NFL

and NBA arenas, and are being implemented by the National Hockey League (NHL). The NFL, in collaboration with Amazon Web Services, has created the Digital Athlete, an AI tool that creates a virtual representation of an NFL player, using TV footage and sensors in football gear, to enhance player safety and better predict and prevent player injuries.

There are many commercial opportunities presented by sports data, particularly for third-party developers who create and license sports-related applications and application programming interfaces (APIs) using data that focus on a myriad of sports-related uses, such as athletes’ health and nutrition, athletes’ performance, training regimens, scouting reports, player-trading decisions, statistics for game broadcasts, fantasy sports, sports betting, video gaming, e-sports competitions, and predictive modelling.

## 5.6 Data Protection

In the USA, there are no specific data protection laws at the federal level regarding sports. However, various states have enacted data protection and security laws that protect personally identifiable information. The California Privacy Rights Act (which became effective on 1 July 2023 and amended the pre-existing California Consumer Privacy Act) is currently the most extensive consumer data privacy law in the US and is modelled in part on concepts included in the GDPR. In addition, all 50 states have data breach-reporting laws, which require formal notice to be given to consumers impacted by data breaches that compromise their personal data.

There have been multiple cyber-attacks on sports leagues and teams, which remain vulnerable. For example, in 2021, Major League Baseball’s computer system was hacked. In 2022, a

major ransomware attack hit the San Francisco 49's NFL football franchise, targeting financial information.

If personal health-related information of individual athletes is collected, maintained or provided by medical practitioners, healthcare institutions or their business associates, such data is protected under the federal Health Information Portability and Accountability Act (HIPAA).

In one notable example, in 2015–16, the FBI investigated MLB allegations that the St Louis Cardinals hacked into the internal networks of the Houston Astros, including the baseball club's proprietary competitive databases of scouting reports, trades and proprietary statistics. A Cardinals' scouting director ultimately pleaded guilty to unauthorised access to an Astros computer.

## 6. Dispute Resolution

### 6.1 National Court System Internal Regulation and Arbitration

US sports leagues are typically governed according to rules and internal regulatory procedures set forth in league constitutions and by-laws. In many cases, a league commissioner serves as a chief executive officer and is responsible for overseeing the day-to-day operation of the league. Although the organisational structure of each league differs, the commissioner generally has plenary authority to enforce league rules.

Jurisdiction over sports-related disputes depends on the nature of the dispute. In professional sports, an arbitration clause is often found in a CBA between a players' association and the league or team. Under most CBAs, it is common for grievance, salary, and contract disputes to be resolved through binding arbi-

tration. League constitutions and by-laws often require that disputes between the league, players, member teams, officials, or shareholders be resolved through arbitration, with the league commissioner serving as arbitrator.

### Dispute Resolution Before the Courts

It is a common requirement under most governing documents that the internal arbitration process be exhausted before a dispute can be heard in court. While it is unusual for a player to appeal their suspension, the most well-known and highly publicised example of this process is the "Deflategate" scandal. Following the 2015 AFC Championship game, the NFL investigated claims that the New England Patriots and quarterback Tom Brady deflated footballs. Following the investigation, NFL Commissioner, Roger Goodell suspended Brady for four games. Under the terms of the NFL CBA, before Tom Brady could bring an appeal of his suspension to federal court, he was required to exhaust his internal NFL appeals. After the NFL Commissioner, Roger Goodell heard Brady's appeal and upheld his suspension, Brady then appealed to federal court. After a lengthy appeal process at the league level and in federal court, the suspension was upheld, and Brady served the suspension.

There are cases in which disputes involving leagues or teams may be heard initially in state or federal court. This usually occurs when a litigant is not party to the league's operating agreements and is not bound by an arbitration provision contained in those governing documents.

### 6.2 ADR (Including Arbitration)

League constitutions and by-laws typically require that disputes between the league, players, member teams, officials or other internal league stakeholders be resolved through arbi-

tration, in many cases before the league commissioner as arbitrator.

## MLB

One type of arbitration is the “baseball arbitration”, which originates from a methodology that was used to resolve baseball players’ salary disputes. In this type of arbitration, each party submits to an arbitrator an amount that represents the party’s last, best offer. The arbitrator then must pick one of the submitted figures. MLB CBA still requires “last, best offer” arbitration. This system usually causes good faith bargaining and results in a high percentage of settlements.

## NBA

The NBA utilises arbitration to resolve issues pertaining to the CBA. The CBA provides for arbitration of disputes relating to player grievance and selected articles within the CBA. Issues involving income, salary cap, and minimum team salary are subject to arbitration under the CBA. Some disciplinary determinations issued by the NBA commissioner are binding upon the player. If the disciplinary determination meets certain criteria, it may be appealed to a grievance arbitrator for a final determination.

## NFL

The NFL CBA provides for arbitration of what are essentially labour disputes between the team and a player including salaries and whether an injury that precluded a player from performing was sustained as a result of play.

## 6.3 Challenging Sports Governing Bodies

Following a league-issued decision, there is typically an internal appeals process that is set forth in league-governing documents. This internal appeals process is typically the final adjudica-

tory step available at the league level. After an arbitration award is issued, a party seeking to enforce the award must file a petition in federal court to confirm such award within one year of the date the award was issued. As noted in **6.1 National Court System**, after exhausting their appeal options at the league level, players or teams may appeal the league’s determination in federal court under a narrow set of circumstances set forth in the Federal Arbitration Act (FAA) or under the Labor Management Relations Act (LMRA). An appeal sought from an arbitration award in the labour and employment context will result in an appeal under the LMRA. Otherwise, the FAA’s appeal procedures are likely to apply.

The standard for vacating an arbitration decision is high and courts are generally deferential to arbitration decisions since the parties agreed to arbitration in lieu of using a court to settle the dispute. Courts will generally uphold the decision unless the arbitrator acted with bias, corruption or fraud, or exceeded their authority under the terms of the CBA. Similarly, under the FAA, a party may seek to vacate an arbitration award where:

- the award was procured through corruption or undue means;
- there was evident partiality or corruption among the arbitrators;
- the arbitrators were guilty of misconduct and the rights of a party was prejudiced; or
- the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

## 7. Employment

### 7.1 Sports-Related Contracts of Employment

Relationships between athletes and sports organisations in football, basketball, baseball, hockey, and soccer are typically handled by employment contracts, commonly referred to as Standard Player Contracts or Uniform Player Contracts (SPK). An SPK is typically a form document which has been negotiated between the league and the players' union pursuant to a CBA. Most CBAs require that the league does not approve an individual player's SPK unless it has been negotiated with an agent registered with the player's union or the player has negotiated the contract themselves. Generally, the Commissioner of the league has the power to reject an SPK if the agreement violates any provision of the CBA, including its salary cap and registered agent provisions.

#### Typical Terms of the SPK

The standard SPK typically requires the player to:

- participate in meetings, training camps, workouts, practice sessions, regular season games, exhibition games, and postseason games;
- license the player's name(s), image, likeness, and other identifying information and characteristics to the team for promotional purposes and seek the team's consent before engaging in any media or public appearances;
- participate in reasonable activities promoting the team and league as directed;
- maintain good moral character, good citizenship, good sportsmanship, and integrity, including by not betting on games, accepting anything of value to attempt to fix a game, or using or providing others with prohibited substances;

- maintain good physical condition and notify the team of injuries and illness, including notifying the team of injuries incurred as a result of the player's employment with the team;
- abstain from playing other sports or engaging in activities that may involve a substantial risk of personal injury without the consent of the team; and
- accept an assignment of the SPK in the event the team trades the player to another team, and faithfully perform the duties as required by the SPK for the new team.

While CBAs may restrict the subjects on which teams and individual players may negotiate in an SPK, the parties are generally permitted to negotiate the player's signing bonuses, contract restrictions on trading the player, and compensation in the event of injury, among other provisions. The SPK may also specify the team's option to retain a player for another year after the conclusion of the SPK, or the player's option to become an unrestricted or restricted free agent. As an unrestricted free agent, the player may opt to remain with their current team for another year or accept offers from other teams. As a restricted free agent, the player may receive offers from other teams, but must allow their original team an opportunity to meet or exceed any offers.

CBAs between players' unions and sports organisations also typically require the league and teams to spend a guaranteed amount on player compensation.

#### Antitrust and Anti-competitive Concerns

Employment contracts between sports teams and players requiring loyalty to the player's team and league do not unreasonably restrain competition. Additionally, the non-statutory labour exemption to antitrust laws insulates agreements in the CBA from antitrust challenges. In particular, anti-competitive provisions in a CBA

may be entitled to the non-statutory labour exemption where:

- “the restraint on trade primarily affects only the parties to the collective bargaining relationship”;
- “the agreement sought to be exempted concerns a mandatory subject of collective bargaining”; and
- “the agreement sought to be exempted is the product of bona fide arm’s-length bargaining”.

Such protections may not extend to league-wide rules having an anti-competitive effect that have not been negotiated between the players’ union and the sports organisation. One case ruled that the non-statutory labour exemption does not apply to the National Women’s Soccer League age rule – requiring players to be at least 18 – because it was not the result of collective bargaining negotiations.

With respect to student athletes, NCAA rules limiting education-related benefits, such as scholarships for graduate school, payments for academic tutoring, or paid post-eligibility internships, violate the Federal Antitrust Act.

## 7.2 Employer/Employee Rights Anti-discrimination Protections

Under Title VII of the Civil Rights Act of 1964 (Title VII), Title I of the Americans with Disabilities Act of 1990 (ADA), the Age Discrimination in Employment Act (ADEA), Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), and analogous state and local laws, sports organisations are prohibited from discriminating against or harassing their athlete-employees on the basis of race, colour, religion, national origin, sex, sexual orientation, disability, age, and genetic information. Generally, player-

employees are also protected against retaliation for engaging in protected activities, such as complaining of unlawful discrimination; filing a charge of discrimination; and/or participating in an investigation, lawsuit, or other proceeding concerning discrimination. State and local laws may provide protections based on additional protected characteristics.

### Americans With Disabilities Act

Pursuant to Title I of the ADA, and state and local disability laws, employer sports organisations have a duty to not discriminate against player-employees on the basis of disability, to keep player-employees’ medical information confidential, and to provide a reasonable accommodation to player-employees with disabilities absent an undue hardship. The extent to which player-employees may be entitled to reasonable accommodations in a profession based on physical ability and competition has not yet been outlined by the courts.

Sports organisations may also have a duty to not discriminate against players on the basis of disability if they are public accommodations. See *PGA Tour, Inc v Martin*, 532 US 661, 681 (2001).

### Age Discrimination

The ADEA and state and local counterparts prohibit discrimination on the basis of age, with the ADEA and many states protecting individuals aged 40 and above. However, sports organisations should ensure that their practices are compliant with the requirements of an applicable state and/or local laws with a lower protected age or which does not specify an age threshold.

### Gender Discrimination

Recently, disparities in pay and working conditions between men and women athletes has become the subject of significant public atten-

tion and litigation. See, *Morgan v United States Soccer Fed'n, Inc* granting soccer federation summary judgment on women soccer players' discrimination claims as to pay under the Equal Pay Act and Title VII and as to field surfaces under Title VII, and denying summary judgment on their claim of discrimination in the provision of charter flights. Following this litigation, the US Soccer Federation reached a settlement to pay the US Men's National Team and the US Women's National Team equally, along with other considerations. However, claims of gender discrimination in employment by athletes are rare because a prima facie case of discrimination requires a showing of different treatment between the sexes by a singular employer, and most sports organisations employ players of the same sex.

### Race, Colour, and National Origin Discrimination

Under Title VII and analogous state and local laws, employer sports teams are prohibited from discriminating against players on the basis of their race, colour, and national origin, among other protected characteristics. However, where a sports organisation acts on the basis of a protected characteristic with the goal of remedying its past discrimination, there is generally no violation of Title VII.

### Protection of Genetic Information

Oftentimes, and as directed by the terms of a CBA, employer sports organisations have a role in managing player-employees' health and collecting their medical information. Pursuant to Title II of GINA, employer sports organisations are prohibited from discriminating against player-employees on the basis of their genetic information; requesting, requiring, or purchasing genetic information about player-employees; disclosing genetic information about player-

employees, subject to limited exceptions; or retaliating against player-employees for protected conduct under GINA. GINA also requires that employer sports organisations keep player-employees' genetic information confidential. Employer sports organisations seeking to take advantage of increased accessibility of genetic testing and advancement of wearable technologies may be limited by GINA's requirements.

### Wage and Hour Law

The Fair Labor Standards Act of 1938 (FLSA) and state and local wage and hour laws require that employer sports organisations pay all players the minimum wage and most players overtime premiums for hours worked over 40. Although there is no explicit exemption from the FLSA's overtime provisions for athletes generally, the FLSA carves out an exemption for baseball players during the regular championship season as long as they are paid at least the minimum wage for 40 hours weekly.

### Collective Bargaining

Under the National Labor Relations Act of 1935 (NLRA), player-employees are entitled to unionise, collectively bargain with their employer sports organisations, and participate in protected concerted activity. Under the NLRA, a sports organisation may not take unilateral action on terms affecting "wages, hours, and other terms and conditions of employment", such as free agency, first refusal provisions, salary arbitration, the college draft, salary caps, minimum individual salaries, and fringe benefits, because these are mandatory subjects of bargaining. See 29 USC § 158(d).

Despite student athletes not being classified as employees, in late 2023, the Service Employees International Union filed a petition with the National Labor Relations Board (NLRB) seeking

to represent members of the Dartmouth College men's basketball team in collective bargaining, which action was challenged by the college. In 2024, a regional director of the NLRB issued a decision determining that all basketball players on the men's varsity basketball team constituted a unit appropriate for collective bargaining. Earlier in 2023, following the filing of an unfair labour practice charge, the NLRB issued a complaint alleging that the University of California, the Pac-12 Conference, and the NCAA misclassified student athletes as non-employees, in order to intentionally deprive the student athletes of their rights under the NLRA. Further legislation has been proposed to define student athletes as employees entitled to protections under the NLRA; similar prior legislative efforts have been unsuccessful.

### Unemployment Benefits

The Federal Unemployment Tax Act requires the Secretary of Labor to reject any state's unemployment programme if it provides unemployment benefits to professional athletes who are not playing between seasons if they are expected to play the next season. See 26 USC § 3304(a)(13).

### Workers' Compensation

Whether and the extent to which a professional athlete is entitled to workers' compensation for injuries sustained while working varies from state to state.

### Worker Adjustment Retraining Notification Act of 1988 (WARN Act)

The WARN Act and its state analogues require employer sports organisations to provide employees, their representatives, and certain governmental officials with advance notice of closings and layoffs affecting a threshold number of employees. Under federal law, and in many

states, employers including sports organisations are not required to provide WARN notices for lockouts during labour disputes.

## 7.3 Free Movement of Athletes

### The IRCA

The Immigration Reform and Control Act (IRCA) prohibits employers from discriminating on the basis of an individual's real or perceived citizenship or national origin. These IRCA protections do not apply to employers with three or fewer employees, to claims already under consideration with the Equal Employment Opportunity Commission under Title VII, or to situations where citizenship status is required by law or by government contract. The IRCA protects citizens and aliens actively pursuing citizenship and prohibits employers from enacting blanket hiring policies restricting employment to US citizens. The IRCA preserves employers' rights to prefer citizens over equally qualified aliens.

### Immigration and Visas

The Immigration and Nationality Act (INA) governs immigration laws as they pertain to professional athletes. There are both immigrant and non-immigrant options for foreign athletes seeking entry to the United States. Some of these are discussed below.

### *EB-1 – employment-based first preference immigration*

A professional athlete who can demonstrate, by extensive documentation, extraordinary ability in athletics through sustained national or international acclaim may apply for an EB-1 Visa. While an employment offer is not required, the athlete must provide evidence showing they seek entry to the USA to continue to work in their field of expertise.



## *B-1 – temporary business visitor*

An athlete visiting for a professional or commercial purpose may apply for a B-1 Visa. This visa generally limits the visitor to a six-month period (with the opportunity to apply to extend the stay to a maximum of one year), and prohibits the visitor from engaging in productive labour and employment while in the USA. Types of foreign national athletes that can enter the United States using a B-1 Visa include individual professional athletes who will receive no salary, other than prize money, and athletes of foreign-based teams that belong to international leagues or competitions, whose salaries are principally earned in the foreign country.

## *O-1A – individuals with extraordinary ability or achievement*

An athlete who possesses extraordinary ability and has been recognised nationally or internationally for those achievements may be eligible for an O-1A non-immigrant visa. The initial period of stay granted under an O-1A visa is three years.

## *P-1A – athlete*

A foreign athlete seeking temporary entry to the USA for the sole purpose of competing at a specific athletic event may seek entry under the P-1A Visa. To qualify, the individual must be an individual or part of a team at an internationally recognised level of performance or a professional athlete. The INA defines a professional athlete as one employed by a team that belongs to an association of six or more teams whose total combined revenues exceed USD10 million per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage, or any minor league affiliated with such an association.

## **Impact of COVID-19**

Non-citizens who are non-immigrants travelling to the USA by air are currently required to establish proof of full vaccination with a Centers for Disease Control and Prevention-approved vaccine, with some limited exceptions. This requirement was contained in a Presidential Proclamation on 25 October 2021, and took effect on 8 November 2021.

## **8. Esports**

### **8.1 Esports Overview**

The Esports industry continues to suffer some growing pains as part of a maturation phase since the end of the COVID-19 pandemic. In 2023, esports leagues, such as the Overwatch League, ended while other esports organisations were acquired, resulting in lay-offs across the industry. Driving these changes is the inability of the industry to meet the lofty expectations that were set when esports was being touted to potential investors as a revenue opportunity on par with traditional sports. It has become clear that this prediction is either not attainable, or at the very least, the esports industry revenue models are not developed enough to measure up to traditional sports.

Investors continued to tighten the purse strings in 2023 due to lack of bottom-line profitability. Traditionally, the revenue model for esports has relied heavily on sponsorship dollars. However, as sponsorship brands realised that they were not getting the return on investment that was expected, they began turning to other platforms such as TikTok to reach the same demographic, putting further pressure on the cash flow being generated from esports organisations. As a result, even the most popular esports titles, such as League of Legends, have not yet turned a profit.

Due to these financial struggles, and the resulting lower valuations of esports industry assets, many esports teams have become attractive candidates for acquisition. Microsoft's USD68.7 billion acquisition of Activision Blizzard closed in October 2023. Mid-sized esports organisations such as Version1 actively sought to be purchased this year. After laying off all its staff, Counter Logic Gaming (one of the most popular North American esports organisations) was purchased by NRG.Esports. Faced with a collapsing share price, FaZe Clan was purchased by GameSquire, the Texas-based esports company backed by Dallas Cowboys' owner Jerry Jones. As the esports industry faces some tougher times, there will be pressure to consolidate, as the industry players that can weather the more challenging financial environment and growing pains of a young industry buy up those industry players that cannot withstand such conditions.

Despite some of the immediate challenges, the long-term prospects for esports are still seen by most industry experts as positive. Industry consolidation and challenges will force the esports organisations that survive to be more efficient and to adjust their strategies to be more sustainable over time. Additionally, the esports player base is still growing worldwide. For example, Counter-Strike; Global Offensive hit a record 1.3 million concurrent players in 2023. Although the next three to five years may still see some high volatility in the esports market, many investors believe the industry has the fundamentals to pull through as macro trends such as virtual reality, the metaverse and digital asset valuation continue to take hold globally.

## 9. Women's Sport

### 9.1 Women's Sport Overview

The continuing evolution of the sports business and media landscape has created new opportunities for women athletes as well as for women's sports generally.

The recent ability of college athletes to monetise their name, image and likeness (NIL) has provided new opportunities for women athletes. NCAA women's basketball remains one of the top collegiate sports in generating NIL revenue.

Professionally, investment in women's sports properties continues to grow. In 2022, the Women's National Basketball Association (WNBA), a high-profile professional women's athletic league, completed one of the largest ever capital raises for a women's sports property. The league has continued to focus on modernising its distribution and merchandising strategies and securing new partnerships to continue to grow the sport. The ongoing trend of appreciating franchise valuations has also carried over to women's sports, as two franchises in the National Women's Soccer League (NWSL) were sold in 2024 for record valuations.

The ongoing competition for sports programming has also created opportunities for women's sports content. The Women's Sports Network, a streaming service which debuted in 2022, provides continuous coverage of female athletes on and off the field along with original programming, live sporting events competitions and studio shows modelled after ESPN's SportsCenter. Media rights for women's sports have also increased significantly in value. In 2023 the NWSL announced a multi-year media deal with CBS Sports, ESPN and Amazon Prime Video for USD240 million, representing a 40-times multiple of the NWSL's previous agreement.

Despite these new opportunities, several challenges remain for women in sports. The participation of transgender women in women's sports has driven conversation regarding maintaining competitive balance while respecting and recognizing transgender rights. Funding discrepancies and disparate treatment at universities continue to be a source of controversy. Professionally, the salary gap between male and female athletes remains. The recent settlement agreement to establish equal pay for the men's and women's US national soccer teams in the new CBAs represents an important step towards equality.

## 10. Non-fungible Tokens (NFTs)

### 10.1 Non-fungible Tokens (NFTs)

Non-fungible tokens (NFTs) are unique digital assets that use blockchain technology to record ownership. Each NFT has a unique identifier that is recorded on a blockchain database, which acts as a public ledger to verify ownership and transfers. NFTs can reflect a variety of tangible and intangible objects, such as images, videos, songs and art. NFTs are distinguished from other digital assets that use blockchain technology, such as cryptocurrencies, by the "non-fungible" nature of NFTs. Each NFT represents a specific and unique item and is not valued on a one-for-one basis.

In sports, NFTs have been created for the ownership of video clips, highlights, images of iconic moments and player trading cards. One of the earliest and most significant NFT ventures in sports is the NBA's Top Shot product. Top Shot is an NFT marketplace for digitised NBA-related content. The NBA licenses highlights and images to a third party which digitises the footage and creates NFTs, each with its own blockchain authenticity. Fans can then buy and sell the NFTs,

and transfers are recorded on a blockchain ledger for verification. The NFL's NFL All-Day product and the Ultimate Fighting Championship's UFC Strike product are additional examples of sports leagues creating officially licensed NFTs to be sold on similar marketplaces.

NFTs also provide teams and leagues with additional opportunities to enhance fan relationships, and allow for real-world applications beyond investment. For example, holders of NFTs may be granted special in-person experiences or discounts on merchandise. In another example, a European soccer league established an NFT market for fantasy sports, enabling fans to create fantasy line-ups using NFTs they own. Holders of NFTs have also been able to vote on governance and other team decisions such as player awards.

NFTs also provide individual athletes with ways to reach a broad consumer base with their own licensed NFTs, such as athlete designed artwork or images. Players have paired the sale of their own NFTs with the opportunity to meet them in person and attend games. The ability of athletes to continue marketing their own individual NFTs may become a point of further discussion with leagues and teams going forward.

The NFT market poses significant risks for both investors and creators. Little regulation currently exists, and it remains to be seen how regulatory authorities will look to assert control over the market. Class action lawsuits have been filed, including against Top Shot, alleging that the products sold on its marketplace are unregistered securities. Furthermore, investing in NFTs is speculative in nature with limited historical information to make informed decisions. Trading volume and valuations, based heavily on demand and scarcity, have fluctuated widely,

even on established NFT marketplaces. Finally, many NFT purchases are made with cryptocurrency, which imposes risks of its own including price volatility, security risk and high transaction fees. The developing security and valuation issues in the broader cryptocurrency market may also cause teams, leagues and other players to reassess their use of NFT, given cryptocurrency's status as a common currency for NFT purchases and the overlapping use of blockchain technology in both cryptocurrency and NFTs.

## 11. Regional Issues

### 11.1 Regional Issues Overview

There are no relevant issues in US sports law not already covered in this chapter.

## 12. Artificial Intelligence (AI)

### 12.1 AI Overview

While the AI landscape has been rapidly evolving, the regulatory framework in the USA remains in its early stages. AI has proved to have many applications in athletics already, with infinite possibilities on the horizon.

#### Federal AI Guidance

As of January 2024, there was no formal, dedicated federal AI legislation. However, some preliminary guidance has emerged at the federal level.

#### *The Blueprint for an AI Bill of Rights*

In October of 2022, the White House Office of Science and Technology Policy (OSTP) published a white paper titled the "Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People". This paper notes that its principles do not constitute binding US

government policy or guidance on the public or federal agencies. The document proffers five key principles:

- You should be protected from unsafe or ineffective systems.
- You should not face discrimination by algorithms, and systems should be used and designed in an equitable way.
- You should be protected from abusive data practices via built-in protections and you should have agency over how data about you is used.
- You should know that an automated system is being used and understand how and why it contributes to outcomes that impact you.
- You should be able to opt out, where appropriate, and have access to a person who can quickly consider and remedy problems you encounter.

#### *The AI Risk Management Framework*

In January 2023, the US Department of Commerce's National Institute of Standards and Technology (NIST) published the "AI Risk Management Framework" (AI RMF). In March of 2023, it launched the Trustworthy and Responsible AI Resource Center, which aims "to offer a resource to the organisations designing, developing, deploying, or using AI systems to help manage the many risks of AI and promote trustworthy and responsible development and use of AI systems".

#### *October 30, 2023 Executive Order*

On 30 October 2023, President Biden issued an executive order on the safe, secure, and trustworthy development and deployment of AI. The order cited both the OSTP's Blueprint for an AI Bill of Rights and the NIST's AI RMF and requires certain federal agencies (including the Departments of Commerce, Energy, and Homeland

Security) to issue standards and guidance. It also requires certain agencies to use their existing authorities to police the use of AI. The primary topics of the executive order are:

- safety and security;
- equity and civil rights;
- privacy;
- promoting innovation; and
- industry-specific impacts including health-care.

## State AI Regulation

A number of states have begun to enact measures aimed at a better understanding and regulation of AI. Certain states (including Alabama, California, Colorado, Connecticut, Illinois, Louisiana, New Jersey, New York, North Dakota, Texas, Vermont and Washington) have implemented legislation aimed at researching AI to better understand its possible consequences. Other states (including California, Colorado, Connecticut, Delaware, Indiana, Iowa, Montana, Nevada, Oregon, Tennessee, Texas and Virginia) have regulated how entities can use automated processing systems to utilise customers' personal data. A couple of other states (Colorado and New York) have enacted legislation aimed at preventing discrimination through automated or algorithmic decision-making tools. Many more states are in the process of introducing proposed legislation aimed at further regulating AI.

## Applications of AI in Sports

While regulation remains in the early stages, AI has already found many applications in the professional sports world. Generative AI (eg, ChatGPT) in particular, has been seen to play a role in content creation, maximising athlete performance, advertising and marketing, and operational efficiency.

In content creation, AI has been used to automate the generation of highlight reels by ingesting footage and identifying portions with action or excitement that match the user's prompts. Another use case is exemplified by the PGA Tour, which began harnessing AI in 2018 to create automated recaps for each player. The PGA Tour's AI collaborations have evolved over the past several years, yielding AI-produced video highlights, the tour's "Every Shot live" feature, and a chatbot that can answer questions about golf history, betting odds, and tournament logistics. Further opportunities exist to develop automated commentary, which could even adopt cloned voices of celebrities, athletes, or existing newscasters – subject to licensing and/or data privacy restrictions.

AI has also been harnessed to maximise performance within the sports arena, where it is used (in some cases, embedded, into shoes, rackets, clubs or other equipment) to analyse athletes' biomechanics to optimise performance, and it has even been used to develop predictive modelling programmes to forecast (and therefore help prevent) injuries. It can also simulate game scenarios, allowing coaches to better plan training programmes and develop play strategies. AI has also been utilised to help many MLB franchises ingest large amounts of player data to generate reports, thereby helping to automate the talent acquisition process, provide analytics for sports betting, and offer comprehensive data to players, coaches and fans. It has also found applications in game analytics; for example, umpire and judge assistance in order to make more accurate decisions during play and competitions.

AI has also presented new opportunities for sports advertising. AI powered a viral advertisement engineered by a French marketing com-

pany in anticipation of the 2023 FIFA Women's World Cup; the ad used AI to generate the likenesses of France's male players over real footage of their female counterparts, demonstrating that highlight-worthy plays are not gender specific, and prompting viewers to confront their subconscious (or conscious) gender bias. AI has also been leveraged to deliver more relevant advertising to specific demographics by personalising content.

AI also promises enhanced efficiency within stadiums. Facial recognition AI has already been introduced to streamline ticketless entry features. Other current applications, such as automated checkout experiences employed by some retailers, might be utilised in sports arenas to facilitate sales of merchandise, food and beverages.

### Opportunities and Risks

As with any new technology, AI presents opportunities for further evaluation and has already revealed certain risks. For example, certain generative AI tools have been reported to "hallucinate" data, meaning that they respond to prompts with invented information. Other potential stumbling blocks include licensing and other intellectual property concerns. Another main concern around AI is its potential to render the human workforce obsolete – although, as with prior industrial revolutions, it is likely that existing jobs will evolve and there will be an emergence of new job opportunities. As opportunities unfold, the regulatory framework will likely be bolstered in response.

## 13. The Metaverse

### 13.1 Metaverse Overview

The metaverse represents a tremendous development in how we interact with technology. With

the use of virtual reality and augmented reality, the metaverse is a digital world that will allow people to have fully immersive lifelike experiences. As Mark Zuckerberg said, the metaverse is "the embodiment of the web where you are part of the experience yourself, not just looking at it..."

### Sports Teams

Sports teams are beginning to explore the metaverse, revolutionising the way in which we consume sports. Clubs and teams are creating virtual sports arenas where spectators can come together with their virtual avatars and watch the games and events. Through multi-view camera technology and AI, spectators will be able watch the game from anywhere in the stadium, even on the field of play itself, all from the comfort of their own home. Manchester United has virtually recreated Etihad Stadium. Sky soccer is recording soccer games with a 360-degree camera, allowing fans to enter the metaverse and have an immersive viewing experience. Last year, the NFL partnered with Roblox to create a series of virtual reality experiences ahead of Super Bowl LVII, including hosting a virtual concert for the NFL's Super Bowl LVII pregame.

### Sponsors

Sponsors are also seeking to leverage the sports metaverse to drive engagement in the virtual realm. For example, the NBA 2K League partnered with Intel to create a virtual tournament for fans of the series. Furthermore, Formula E created the "Race at Home Challenge" where fans can use virtual reality to race in their own home against real race car drivers. Sponsors are also using augmented reality to switch out ad overlays in stadiums according to viewing location and real-time action (as opposed, or as a supplement, to static traditional billboards).

## Legal Aspects

From a legal standpoint, one of the main challenges of the metaverse is the lack of clear legal frameworks and precedent. Aspects of the metaverse, such as virtual currencies, digital property and user-generated content are innovations to which the legal world is catching up. Sports organisations and companies, such as Nike and NASCAR, are filing trade mark applications covering virtual goods to protect their intellectual property. There has already been a lawsuit between French luxury fashion house Hermes and NFT creator Mason Rothschild, who marketed a line of NFTs digitally duplicating the Hermes Birkin bag. Hermes alleged trade mark infringement and dilutive use of the Birkin name and won in a jury trial in January 2022.

## Trends and Developments

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**Rifkin Weiner Livingston LLC (RWL)** was established in 1989 and is the go-to firm for complex legal problems, with an experienced team of attorneys who thrive on pursuing challenging cases. Where law, government and business converge, and where public policy and public opinion intersect, RWL assists its clients using a “team approach” to navigate through the maze of Maryland laws, regulations and government institutions. Practice areas include business and commercial transactions, administrative law, healthcare law, government relations, sports law, procurement law, and complex litigation.

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## Introduction

Tommy Lasorda famously said: “In baseball and business, there are three types of people. Those who make it happen, those who watch it happen, and those who wonder what happened.”

All these types of people must have marvelled at the trending developments in sports law during 2023. The business of sports continues to explode, as can be seen from the record-setting prices of sports franchises in 2023. In February, the Phoenix Suns sold for USD4 billion; in July, the Washington Commanders sold for USD6.05 billion; and in July 2023, the Charlot Hornets were sold for USD3 billion. On 27 March 2024, Major League Baseball approved the sale of the Baltimore Orioles for USD1.725 billion to a group including David Rubenstein, David Bloomberg, Cal Ripken and others.

Last year, this ever-evolving practice area saw continuing legal fallout from the ongoing changes in the sports world over the past several years. These have included:

- the ongoing consequences of the National Collegiate Athletic Association (NCAA) decision to allow college athletes to profit from their name, image and likeness (NIL) in the wake of the Supreme Court’s decision in *Alston v NCAA*;
- major antitrust cases in golf and baseball, questioning the applicability and parameters of sports-related exemptions;
- the implications of the changing landscape of sports broadcasting, “cord cutting” and streaming video services;
- the continuing legal wrangling related to FIFA telecast rights and corruption matters; and
- an ever-growing emphasis on property development rights associated with stadium facilities projects.

## NIL and College Athlete Employment– The New Frontier

The year 2023 saw student athletes’ earnings top more than USD1 billion collectively, as athletes have taken advantage of the NCAA decision in 2021 to lift restrictions on NIL in the wake of the *Alston* decision. As the riches for student athletes grow, so have their efforts to gain even more rights and opportunities. Concurrent with the development of NIL rights, student athletes in 2023 also sought in the courts and legislative arenas: employment status for the purposes of wage payment and labour laws, recovery from losses due to prior and certain continuing NIL prohibitions, and fewer restrictions on their right to change schools.

The longest standing of these efforts, *Johnson v NCAA*, saw little movement in 2023. That case was initiated in 2019 when student athletes from several colleges and universities sued under the Fair Labor Standards Act. The federal trial court has certified a single issue to the Third Circuit for decision – that being whether college athletes are employees of the colleges and universities for which they play. Should the Third Circuit rule that they are, then a split of opinions would arise from the Seventh and Ninth Circuits, meaning that the case could go to the Supreme Court for final resolution.

While collegiate student wage payment issues may have sat relatively dormant in 2023, collective bargaining, NIL and antitrust issues have accelerated. In May of 2023, the Los Angeles region of the National Labor Relations Board (NLRB) filed a complaint against the University of Southern California, the Pac-12 Conference, and the NCAA alleging that student-athletes in the revenue-generating sports of football and men’s and women’s basketball are school employees and demanding that the respondents

“cease and desist from misclassifying” players as student-athletes. The administrative hearing in this matter began on 7 November 2023 and has extended into 2024. During the pendency of this case, on 5 February 2024, another region of the NLRB ruled that members of the men’s basketball team at Dartmouth College were eligible to unionise. On 15 March 2024, the team voted to do just that. The college has vowed to fight this decision in federal court.

On the NIL front, student athletes sought recovery for past and ongoing NIL losses in the case of College Athlete NIL Litigation. In September 2023, US District Judge Claudia Wilken, the same federal judge in California who ruled against the NCAA in the seminal cases of O’Bannon v NCAA and Alston v NCAA, certified a class of 184,000 college athletes for the purposes of injunctive relief. In November 2023, Judge Wilken divided the students into three classes for damage purposes. The students can claim losses from video games, college sports broadcasts and other lost revenues resulting from the restrictions that the NCAA and Power Five Conferences historically have placed, and continue to place, on NIL earnings. If successful, damages could be in the several billions of dollars. The trial is scheduled for January 2025. In December 2023, the NCAA further loosened its restrictions on NIL by proposing rules allowing schools and athletes to enter directly into NIL deals unrelated to educational resources.

Also in 2023, college athletes continued their antitrust assault on the NCAA – this time against the requirement that certain athletes who transfer schools (on multiple occasions) must wait a year before competing in games. In December 2023, a federal judge in West Virginia issued a temporary restraining order restricting the NCAA from enforcing the transfer rule. Days later, the

NCAA agreed to a preliminary injunction. The transfer rule will therefore not be enforced until the matter can be decided some time after “the last day of competition in the 2023–24 winter and spring sports seasons and sanctioned tournament play,” as the court ruled.

For its part, the NCAA continues to seek guidance and assistance from Congress to unify the rules for college athletes and allow the NCAA to gain certainty in its management of intercollegiate athletics. But Congress is as divided as the public on this issue. In 2023, no fewer than five separate and competing bills were introduced with varying and sometimes conflicting provisions on employment status, collective bargaining, NIL rights, revenue sharing, federal regulation, and antitrust exemptions. None have yet to be brought out of committee for a floor vote.

Even as this article is being written, the NCAA is issuing new NIL rules in an attempt to get a grasp on the issue. The NCAA will seek to require registration for those who enter into name, image and likeness deals with athletes, to create a standard NIL contract, and to provide athletes and institutions sufficient education on NIL concerns.

## Sports-Related Antitrust Exemptions Under Review

With the understanding that members of sports associations – like MLB and the Professional Golf Association (PGA) – must engage in some level of economic co-operation, the spectre of antitrust violations is always present. In 2023, the PGA and MLB saw potentially existential antitrust challenges to their sports.

In golf, the Public Investment Fund of the sovereign of Saudi Arabia launched the LIV Golf series in 2023. With its wealth and desire to compete

with the PGA, LIV lured some of the world's best golfers with large, guaranteed payments to play in LIV tournaments. In response, the PGA banned these players from its tour based on its exclusivity rules. LIV and its golfers thus sued, setting up a league-against-league antitrust suit, the likes of which has not been seen since the USFL famously won USD1 from the NFL in a 1986 antitrust verdict.

The lawsuit by LIV and its golfers against the PGA appeared to resolve, like many other league-against-league antitrust suits, with a settlement and merger of the tours. The settlement dismissing the lawsuit was to be completed by 31 December 2023. That agreement has yet to be consummated, and it may face antitrust scrutiny from the US Department of Justice and European Union competition enforcers.

In 2023, MLB, which is famously exempt from federal antitrust laws, fended off one of the greatest challenges to that notorious exemption since it was first judicially granted by the Supreme Court in the 1922 Federal Baseball Club v National League decision. The latest challenge to MLB's exemption arose out of the 2021 decision of Major League Baseball to limit the number of minor league affiliates that clubs may have, causing the termination of affiliation agreements with several minor league teams. These minor league teams brought an antitrust suit in New York federal court and related suits in state court based on New York tort law.

The federal trial court in New York, based on MLB's century-old exemption, dismissed the federal antitrust claims brought by the minor league clubs. In January 2023, the Second Circuit applied the exemption and affirmed the lower court's dismissal. This opened the door for the minor league teams to petition the US

Supreme Court for certiorari. The teams were joined by 18 state attorneys general, the MLB Players Association, and a bipartisan group of Congress members. Instead of leaving the matter to the High Court, and ten days before the state law trial was set to begin, MLB decided to settle the matter with the plaintiffs for an undisclosed amount of money. As such, MLB's antitrust exemption remains in place – for now.

## The Rapidly Evolving Sports Media Landscape

Aside from player salaries, few things affect the annual profits of sports franchises more than telecast rights and revenues. In 2023, the landscape for sports telecasting continued to change as more fans engaged in so-called “cord-cutting” and relied on internet streaming to watch games. As a result, 2023 saw its share of dynamic changes in telecasting.

### *Cord-cutting pressures: Diamond Sports Group, LLC*

The biggest jolt to the sports broadcasting industry in 2023 by far was the bankruptcy of Diamond Sports Group, LLC, a subsidiary of Sinclair Broadcast Group. In March 2023, the operator of 19 regional sports networks in the USA filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas. At the time of filing for bankruptcy protection, Diamond Sports, through its “Bally Sports” network, held the local broadcasting rights to 14 MLB teams, 16 National Basketball Association (NBA) teams and 12 National Hockey League (NHL) teams.

In June and July 2023, Diamond Sports ceased broadcasting games for the San Diego Padres and the Arizona Diamondbacks MLB franchises. MLB stepped in and took over both the produc-

tion and the distribution of those game broadcasts. In October 2023, MLB along with five clubs filed a Motion to Compel in the Bankruptcy Court to force Diamond Sports to accept or reject the broadcast rights agreements with the clubs, so as to not further delay MLB's planning for the 2024 Season. With respect to the remaining 11 MLB franchises (Diamond Sports' rights agreement with the Minnesota Twins reportedly expired at the end of the 2023 season), it was reported that Diamond Sports provided MLB with the names of the MLB franchises it would like to continue broadcasting in the 2024 Baseball Season, along with those clubs it is considering rejecting. At the time of writing of this article, a provisional deal between MLB and Diamond Sports was still being worked out which may include some or all of the 14 MLB teams. In November 2023, Diamond Sports received Bankruptcy Court approval for a deal reached with the NBA. This deal allows Diamond Sports to continue broadcasting games for the rest of the 2023–24 season.

In January 2024, to start off the new year, the Bankruptcy Court approved an agreement for Diamond Sports to continue broadcasting games during the 2023–24 season collectively for the 12 NHL teams. This arrangement is reportedly similar to that with the NBA. Contemporaneously with the NHL agreement approval, rumours surfaced about Amazon's possible interest in Diamond Sports – and later that month, Diamond Sports announced its plan for a restructuring support agreement with creditors which included a minority investment in the company by Amazon which will become its streaming partner for an undisclosed number of MLB 2024 Season games, among other Prime Video access arrangements. Undoubtedly, 2024 will bring some interesting developments affecting the telecast rights and broadcasts of many sports franchises.

As examples of late-year resolutions of ongoing difficulties caused by shifts in broadcasting and streaming, in November, DISH TV reached a multi-year carriage agreement with Hearst to restore carriage in more than 30 television markets. Then, with only days before the end of 2023, Paramount and Comcast reached an agreement to renew their carriage agreement. This agreement avoided interruptions to the remainder of the NFL regular season and the start of the playoffs on CBS for Xfinity subscribers. And, after years of controversy and legal wranglings, the Mid-Atlantic Sports Network seemingly resolved its dispute with the Washington Nationals Baseball Club over the telecast rights fees for the period 2017–2022 with all parties accepting the MLB Revenue Sharing Definitions Committee's determination.

### *Congressional hearings*

Continued disputes between television station broadcasters and regional sports networks against multi-channel video programming distributors (MVPDs), and frequent threats of “blackouts” of sports and entertainment programming, led to Congressional hearings before the House Energy and Commerce Subcommittee in September 2023. At issue were transmission and retransmission consent rights, their application to streaming services (virtual MVPDs or “vMVPDs”), and whether further changes are needed to the Cable Television Consumer Protection and Competition Act of 1992 to address the ongoing difficulties in the changing broadcasting/streaming market.

### *Continuing FIFA Drama*

Drama around the *Federation Internationale de Football Association* (FIFA) continued in 2023. First, in March 2023, a federal jury in New York found former CEO of Fox International Channels, Hernan Lopez, and Argentine sports marketing company, Full Play Group SA, guilty on counts

of wire fraud and money laundering for paying bribes to CONMEBOL (the South American soccer governing body) in exchange for below-market rights to broadcast the Copa Libertadores soccer tournament. In September, however, US District Judge Pamela Chen vacated the convictions based on recent US Supreme Court decisions and ruled that there was no precedent to support the application of the US federal honest services fraud statute (18 U.S.C. §1346) to foreign commercial bribery within CONMEBOL. Federal prosecutors filed notice of appeal followed by a brief with the US Court of Appeals for the Second Circuit in January 2024, seeking to reinstate the jury verdicts against both Lopez and the Argentine marketing company.

On a second front, in August 2023, a New York federal judge granted final approval to a USD95 million securities settlement between Grupo Televisa SAB and a group of investors who claimed they lost money as a result of Grupo Televisa's alleged bribery of FIFA officials for broadcast rights to World Cup Soccer tournament(s).

And on yet another front, in September 2023, the US Department of Justice announced it was developing a strategy with officials from Canada and Mexico to deter collusion and anti-competitive conduct surrounding the 2026 FIFA men's World Cup games which is to be hosted by all three countries.

## Stadium Developments

So many sports stadium development projects proceeded in 2023, it is difficult to list them all. Many of the projects include large public subsidies and a growing footprint to include mixed-use developments and entertainment districts adjacent to sports stadiums to provide additional sources of revenue for the sports teams. With all this development activity, transactional attor-

neys were busy in 2023 in areas such as: facility leasing, construction law, municipal finance, commercial finance, tax, intellectual property, digital and smart technology (including, AI integration), government relations, and many other overlapping disciplines. Stadium development activity in 2023 was robust at the major league level as well as for college stadium construction projects. Below are some highlights of various major league sports stadium projects that captured the news during 2023.

### Major League Baseball

- In January 2023, the Cleveland Guardians announced a number of renovations at Progressive Field estimated to cost USD202.5 million for completion in 2025. These projects were made possible as a result of the 2022 agreement entered into between the Cleveland Guardians and the City of Cleveland to extend their lease at Progressive Field through 2036.
- In April 2023, Oakland Athletics ended its negotiations for a new stadium with the City of Oakland, California and turned its attention to Las Vegas. With a legislative financial package approved during the summer for a new ballpark, MLB approved the relocation of the Oakland A's to Las Vegas in November, 2023. The new ballpark, on the site of the Tropicana Las Vegas, is slated for completion in time for the 2028 MLB Season.
- In September 2023, the Tampa Bay Rays announced an agreement with the City of St Petersburg and Pinellas County to move forward with plans for a new ballpark and surrounding development project on the same site that Tropicana Field currently occupies. The new stadium alone is estimated to cost approximately USD1.3 billion. The public approval process commenced in 2023 and is ongoing. The St Petersburg City Council is

expected to vote on the stadium agreements possibly in May 2024.

- In November 2023, the Wisconsin legislature approved USD500 million in funding for renovations to the Milwaukee Brewers stadium, which was signed into law in December.
- During the 2022 Maryland Legislative Session, lawmakers approved USD1.2 billion in funding for the modernisation of the two stadiums at Camden Yards – M&T Bank Stadium, home to the NFL Baltimore Ravens, and Oriole Park at Camden Yards, home to the MLB Baltimore Orioles. This funding was contingent on each team executing long-term leases for their respective stadium. In December 2023, the Maryland Stadium Authority and the Baltimore Orioles executed an extension to the Oriole Park lease, allowing the Orioles to access their portion of the public funds.

### *National Football League*

- In January 2023, the Baltimore Ravens and the Maryland Stadium Authority entered into a multi-year lease extension and amendment, allowing the team to tap into USD600 million for additions and renovations to M&T Bank Stadium.
- In April 2023, the Nashville Metro Council approved a new lease and financing with the Tennessee Titans for the construction of a new Nissan Stadium. The overall project is expected to cost approximately USD2.1 billion (with USD760 million in funding from bonds issued by the Metro Sports Authority and USD500 million in funding from the State of Tennessee) and be completed in 2027.
- In May 2023, the Erie County Legislature approved a new stadium lease agreement between the Buffalo Bills and Erie County Stadium Corporation for the New Highmark Stadium. The groundbreaking on the USD1.4

billion project occurred shortly thereafter. The new stadium is projected to be completed in time for the 2026 NFL Season.

- With the sale of the Washington Commanders in 2023, and the pending 2027 expiration of the team's lease for FedEx Field in Landover, Maryland, each of the District of Columbia, the State of Maryland and the Commonwealth of Virginia are vying to secure the NFL franchise in their jurisdiction. According to numerous reports, various politicians from each jurisdiction have communicated with Commanders' owners and, in some cases the NFL, regarding relocation of the stadium.

### *National Basketball Association/National Hockey League*

In December 2023 Monumental Sports & Entertainment announced plans to move the NBA Washington Wizards and NHL Washington Capitals from the Capital One Arena in the District of Columbia to a new 20,000-seat arena to be built in Arlington, Virginia. The move is part of a mixed-use development and entertainment district estimated to cost USD2.2 billion. The arrangement is pending approvals from both the Virginia Legislature and the Alexandria City Council. More activity is expected during the Virginia General Assembly's 2024 legislative session.

### *Major League Soccer*

Construction began in August 2023 on the privately funded Miami Freedom Park. This includes a new 25,000-capacity stadium for MLS Inter Miami CF. The opening is planned for 2025.

### *Thoroughbred horse racing*

In early, 2024, the State of Maryland and the Maryland Jockey Club agreed to facilitate a new Pimlico Race Course for the Preakness Stakes®, the middle jewel of the Triple Crown,

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and Maryland's historic horse-racing industry. As this article goes to print, the Maryland General Assembly is considering a USD400 million capital improvements plan for a new Pimlico Race Course and a new offsite training facility. Under the terms of the agreement and proposed legislation, the Maryland Jockey Club, Preakness Stakes® and year-round racing will be licensed to and operated by a state-sponsored nonprofit entity.

## Conclusion

As busy as 2023 was for the sports law industry, 2024 is expected to be even busier with many of the unsettled issues noted above to be addressed by courts and legislatures around the country.



# VENEZUELA



## Trends and Developments

### Contributed by:

Antonio Quintero Rodríguez and Elena Mundaray  
Laurea Lex Sportiva

**Laurea Lex Sportiva** (formerly Carrero & Quintero) is a legal and PR team based in Caracas, Venezuela. The firm comprises three lawyers and two sports journalists. It was created to legally protect and develop sports talents, and

to advise on all sports law-related matters. The firm handles athletes, football players, basketball players, baseball players, coaches, physical trainers, doctors, agents, clubs, sports federations and sports organisations.

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### Background: Recent Developments in Venezuelan Sports

In recent years, sports law developments in Venezuela have moved from an electoral sports organisation field towards a professional sports field. This article will discuss the trends and developments in Venezuelan sports law since 2020.

In the last decade, the legal sports environment in Venezuela saw key developments in sports organisation, specifically in electoral law. This is partly because in 2011 a new Sports Law was enacted, and also partly owing to the many changes in the Ministry of Sports.

The Sports Law and its by-laws created more complex sports organisations, especially for national federations and regional associations. New standards for the composition of general assemblies, boards of directors, disciplinary commissions and auditor commissions were imposed, as were requirements under statutes – for example, when creating a provisional commission to handle the organisation if it does not have any other active body. A national registry was also created for everyone linked to the sports world. Implementation of this law was essentially in complete chaos until 2021–2022.

Since 2010, there have also been many changes regarding the position of the Ministry of Sports. While between 2000 and 2010 there were only three ministers, between 2010 and 2020 there were seven ministers, two of which held the position twice. Every time a Minister of Sports was replaced, national federations' elections were heavily disputed. The interpretation of the new Sports Law changed many times and made the functioning of sports organisations very difficult.

During this decade, many cases involving elections within sporting bodies were brought to the Electoral Chamber of the Supreme Tribunal of Venezuela, resulting in diverse (and in some cases, conflicting) jurisprudence. However, by 2020 all the main legal points were resolved, one way or another. It became clear that political support from the government was the driving force behind the main legal points in the relevant decisions. Thus, there seems to be little point in studying legal issues when the answer depends on which government official supports solving the case.

This trend seems to have reached an end in 2022, with the Vice-President of Venezuela having allies in many sporting bodies, including the

Venezuelan Football Federation (VFF) and the Venezuelan Olympics Committee. However, some sporting bodies are still involved in judicial disputes before the Supreme Justice Tribunal because of elections; though there has been no major development in electoral sports law since 2019 worth studying.

Since 2015 (and in particular after 2017), the USA and the EU have imposed numerous sanctions on Venezuelan officials, the government and PDVSA (the country's main petroleum company). This, together with the lack of maintenance of PDVSA infrastructure, created a problem that affected the country's earnings. For the sports world, this has mainly meant less investment from the government or from people connected to the government. However, means of bypassing these sanctions were later found.

For context, it is important to be familiar with the professional sports environment in Venezuela, which is comprised of three disciplines: baseball, football and basketball.

## *Baseball*

Baseball is the crown jewel of professional sports in Venezuela. It has a huge fan base, and generates revenue mainly from sponsors and ticketing and, in some seasons, from the Venezuelan government. Professional baseball is organised by an independent league, the LVBP, which arranges tournaments and is a winter league in the Caribbean connected to the Caribbean Series Championship. The season is very short, from October to the second week of February. Many players from Major League Baseball (mainly Venezuelan but also other nationalities) are loaned to Venezuelan teams. These loans are made through the Winter League Agreement between the Professional Baseball Confederation of the Caribbean (and its leagues) and Major League Baseball.

## *Football*

Regarding football, Liga FUTVE organises professional tournaments, but is supervised by the VFF. The professional league does not have a massive fan base like baseball, and its season goes generally from February or March until December. However, it does see a lot of investment. While football is a very popular sport in Venezuela, people do not seem to like the national league. Nonetheless, owners' investments in their teams are the main revenue of the sport. Revenues also come from sponsors, from qualification for international tournaments and from player transfers.

## *Basketball*

For basketball, the Professional Super League has within its assembly the Venezuelan Basketball Federation. Over the past few years, political disputes have changed the environment of professional basketball. The Venezuelan Basketball Federation was the subject of a huge dispute between several groups that led to an unbalanced environment until 2019. Because of this, the sports body organising the professional league changed from the LPB to the SNB, and then to the SPB in 2023. This political turmoil, along with COVID-19, made the situation for the basketball season change repeatedly. Thus, every year begins with the uncertainty of when the professional basketball season will begin. Teams normally play for about three to six months, and the changes made to the league expanded the number of teams from ten to nearly 20; though several teams have since left. At the moment, professional basketball is an unstable environment.

## *Finances*

Regarding the issue of lack of income in the professional sports environment, COVID-19 arguably created problems for the finances of professional clubs in Venezuela. This is certainly the

case for some clubs, but, in the authors' opinion, not for all. For baseball and basketball, the government allocates a certain amount of money for teams to function every year. Baseball teams also generate a lot of revenue with ticketing and sponsors. Notwithstanding, several baseball seasons were affected by the sanctions – some players from Major League Baseball did not wish to come to play in Venezuela, owing to fear of sanctions. Specifically, two teams were exposed as having links to the government, rendering them unable to have players from Major League Baseball, and resulting in fewer attendees at stadiums. Basketball also generates revenues from sponsors, though not as much as baseball.

The government does not allocate money for football, but most owners of teams (as with basketball and baseball) are linked to the government and/or are contractors of the government (or in some cases the government itself owns the teams). The reality is that the origin of sports teams' income mostly remains unknown, and it has never been proven that COVID-19 reduced income for clubs.

Nevertheless, during COVID-19, FIFA issued guidelines on how to work in such times, stating the possibility of reducing players' salaries. This led to heavy discussions between clubs and players in football, with players becoming more dependent on clubs and losing bargaining power. Many football and basketball clubs started failing to fulfil their obligations, leading to players (at least in football) claiming money owed by the clubs. However, when the decision came to order the clubs to pay, the huge hyperinflation destroyed players' earnings. As such, players began stipulating their rights according to Venezuelan labour legislation and higher interest rates for the late payments of their salaries.

In the case of baseball, although revenues were low, no such problems occurred as such clubs normally pay their players.

It should be noted that sports clubs have (without legal basis) indicated that they do not need to pay the legal benefits of sports employees, only their salaries. This narrative is only supported by the National Dispute Resolution Chamber of the Venezuela Football Federation, which normally states that it does not have jurisdiction to decide over such legal benefits, as they fall under public policy. However, the same body does render decisions regarding unpaid salaries, which also fall under public policy in Venezuela.

## **Sports Employees' Labour Rights**

Venezuelan labour legislation is very favourable for employees. It establishes many rights for workers, and these rights also apply to professional sports employees.

The Venezuelan Labour Law has a special category concerning sports employees; this category is part of a bigger section titled "Special Modalities of Employment" involving different kinds of employment with special rules.

The sports employees category clarifies that a special professional sports law should be enacted; however, to date (February 2024), such law has not been issued. Consequently, the Labour Law dictates that any lacuna in the "Special Modalities of Employment" section should be filled with the other regulations of the Labour Law. Hence, sports employees have all the same rights as normal employees, except when a special regulation applies.

## ***What is a sports employee?***

Labour law indicates that sports employees are sportsmen, technical directors, coaches and

physical trainers who render services to others different from themselves, under their dependency and for remuneration.

### *What are the special regulations for a sports employee?*

The special regulations can be summarised as follows.

- The right to have a written contract.
- The right to refuse a transfer.
- The right to obtain 25% of the revenue for a sporting organisation for a transfer of which they are part.
- The right to rest at least one day a week, with the understanding that Sunday is not secured as a rest day, as for other employers. This also means that sports employees do not enjoy special payment for extra hours, nocturnal work or transportation time.
- The right to transportation and accommodation.
- There is no right to equal work or equal salary – ie, this is a modality based on the talent of the worker, not on their position.

The other two rights recognised in the special regulations are the same as for normal workers – namely:

- the right to a modality of work established based on seasons, events, tournaments or matches, or indefinitely (if there is no preference); and
- the right to a 40-hour labour week.

### *What are the other rights?*

There are several other rights for normal employees, but this article will focus on the labour benefits of sports employees and termination of contracts.

The following are the main legal benefits of sports employees:

- the right to remunerated vacation days every year;
- the right to a vacation bonus;
- the right to (at least) one month's salary for utilities;
- the right to savings after the termination of the employment contract (*prestaciones sociales*);
- the right to compensation for wrongful termination of the contract; and
- the right to not recognise a termination agreement if it is not properly made.

### *What has been debated?*

Although the VFF's Dispute Resolution Chamber does not grant legal benefits for sports employees, it is now unquestionable that sports employees must be paid.

Ordinary tribunals in different cases have ruled that vacation bonuses, utilities and savings apply to sports employees. Decisions prior to the Labour Law 2012 and after highlight this, such as:

- Second Labour Tribunal of the first instance of Mérida, Pedro Vielma (Football Player) v Estudiantes de Mérida FC, dated 10 May 2005;
- First Labour Tribunal of the first instance of Monagas, Pablo Galavis (Football Player) v Monagas Sport Club SA, dated 7 December 2007;
- First Labour Tribunal of the first instance of Lara Rene Higueta (Football Player) v Guaros de Lara Fútbol Club CA, dated 2 July 2009; and
- First Labour Tribunal of the first instance of Táchira Carlos Becerra (Cyclist) v Loteria del

Táchira and Asociación Civil Sport Táchira, dated 14 January 2015.

However, the most important decision on this topic came from the Supreme Justice Tribunal on 15 December 2022, where (after several years) ex-football player Rafael Castellin finally obtained justice against Asociación Civil Deportivo Lara. This decision confirmed that football players have the right to claim their legal benefits, and that decisions of the VFF's Dispute Resolution Chamber are not valid if they do not concede such right.

Sports Tribunals, as per the Court of Arbitration for Sports (TAS), have resolved this matter in similar ways. The following four decisions linked to Venezuelan football are key on this subject.

- TAS Award 2020/A/6895 was the first decision to recognise the legal benefit of savings (*prestaciones sociales*) for sports employees. The debate concerned whether this could be included in the salary amount and not paid in addition to the salary. Labour jurisprudence states that this concept is separate from the salary and could never be included in the salary amount – as such, it was awarded. The situation is different for other concepts such as bonus vacations and utilities. In those cases, it was established that the salary includes vacation bonuses and utilities (in Venezuela, this is known as “package salary”).
- TAS Award 2021/A/7899 followed the 6895 decision, but in this case the contract did not establish that the salary included the concepts of savings, bonus vacations and utilities. Thus, the TAS granted all the legal benefits requested. It is also worth noting that in this case the claimant was a coach.
- TAS Award 2022/A/8735 confirmed the previous two cases. However, there was an inter-

esting difference regarding the annual interest rate for late payments. In this case it was recognised that, because of Venezuela's record-high inflation, an interest rate of 17% for late payment was appropriate, as opposed to the 5% that Swiss law normally awards. It is also worth noting that in this case the claimant was a physical trainer.

- TAS Award 2023/A/9397 was interesting, as here the appeal came from a FIFA decision, not from the NDRC of the VFF. Despite this, Venezuelan labour law was applicable, as were the criteria of the first three decisions (except regarding the interest rate). It is also worth noting that in this case the subject was a foreign football player, and the rights were still applicable to him.

In summary, sports employees have rights to their legal benefits.

## Compensation for Termination of Employment Contracts

When considering the amount to award in the unilateral termination of a contract in Venezuelan football, the VFF has referred cases to the FIFA Regulations on the Status and Transfer of Players (RSTP), Article 17, which is also recognised as a kind of regulation by Venezuelan labour law. This creates an interesting jurisprudence regarding Venezuelan football, and the following are of note.

- TAS Award 2020/A/6698: in this award, the player's contract was terminated by their club for alleged bad behaviour. He then went to another club where he earned a bigger salary. He made a huge claim, and the TAS did not recognise the bad behaviour as a just cause for terminating the contract; though it only granted compensation for a small amount. In applying Article 17 of the RSTP, the salary

of the new contract had to be deducted from the compensation to be awarded. No other compensation was awarded in this case.

- TAS Award 2020/A/6895: here the club did not pay the player for over nine months. Despite this, the player only terminated the contract with just cause when there were just 15 days remaining on the expiry of the contract. This could have resulted in a situation where the compensation was only 15 days of salary (because of Article 17, RSTP). However, specificity of sport was requested as the player was not paid over 80% of the contractual salary; and this was granted. Thus, the compensation for specificity of sport (taking into consideration that the player did not receive his salary over nine months) was an extra six months' salary.

In summary, the solutions reached by sporting bodies are applicable for the calculation of termination of a contract.

### Compensation for Player Transfer

Venezuelan labour legislation establishes that when transfer of a player occurs and the club receives compensation, the player is entitled to 25% of that compensation. TAS Award 2022/O/8940 addressed numerous issues in this regard. Here, the club argued that national legislation stated that the transfer should produce monetary benefits for the club. It argued that this meant the club had to produce dividends; and in this case it did not produce any dividends in the year the transfer was made (and others). The club presented tax declarations, but ultimately its interpretation was not correct. It was established that, under the regulation, if there are benefits for the club in the transfer of the player, the stated 25% is meant for the player.

### Validity of a Mutual Termination Agreement

It is common to find cases where the sports employee has signed a document resigning rescuing labour rights, or indicating that there are no overdue payables, when there are. This is normally a document of mutual termination. The question is whether this mutual termination is valid; and this formed the discussion in TAS Award 2022/A/8735. Here the arbitrator indicated that, because of the principle that labour rights cannot be renounced, the termination agreement according to Venezuelan labour law must have certain conditions, which in the present case were not met. Of these conditions, the resignation of rights was clearly contrary to what occurred in the case, where there was a general resignation not mentioning any rights in a specific manner. For this reason, the document was not valid for preventing the payment of the legal benefits.

### The Obligation to Pay Where the Creditor Wishes

Another important issue in Venezuela is its control over the exchange of currency and that, since 2018, different nations have imposed sanctions on the country. This has been used by clubs to try to avoid payment, or to justify how difficult it is to make a transfer. However, the truth is that the people who own clubs in Venezuela normally have the means to achieve these payments (even if this takes time). Such people have also proposed paying in cash, without consideration of the risks posed to other parties.

In this regard, TAS Award 2013/A/3323 is important to note, as it establishes that payment must be made where the creditor wishes.

## Other Recent Important Matters: the Recognition of Doping Legislation in Venezuela

In 2016, a famous doping scandal occurred owing to a sanction against baseball player Alex Cabrera (who has close ties to Venezuelan government officials). He challenged the legal procedure in the LVBP. One of his arguments was that the procedure violated his due process right. Consequently, the first-instance Administrative Court not only suspended the sanction during the baseball player's trial, but also suspended the professional league's anti-doping code and the sanctioning procedure. Fortunately, all these measures were eliminated by Constitutional Court Decision No 232 of 11 June 2021, recognising the International Convention Against Doping in Sport as ratified by Venezuela in 2008.

## The Future

For sports employees, there are still many rights to fight for, including compensation for violation of the right to medical care and the right to social security. Discussions regarding a professional sports law seem a distant prospect, even though many sports clubs have deep bonds with government officials. At this time, everything is connected with the presidential elections and the legitimacy that follows; thus, sports law is not currently a priority. Nevertheless, the authors believe that professional sports legislation will continue to develop.



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