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Sports Law 2022

Contributing Editors
Jamie Singer
Onside Law

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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 third *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 5,000 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 *Lex Sportiva*, a distinct international body of law specific to sport.

This Guide summarises the key principles of sports law in ten jurisdictions. Each jurisdiction is reviewed following the same 11-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

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*Contributed by: Jamie Singer, Harriet Leach, Sophie Wilkinson and Ross Brown, **Onside Law***

enforced in much the same way across the globe through the WADA Code. The Code was revised in 2009, 2015 and 2021, providing a robust and uniform set of anti-doping rules applied by all 206 nations comprising the Olympic movement.

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 20 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. 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 eight of the 20 shirt sponsors in the English Premier League. However, as the USA and France liberalise sports betting, the UK is reviewing the Gambling Act 2005, with early indications that betting companies' ability to sponsor sport will be restricted in some manner. Meanwhile, jurisdictions such as India continue to treat sport 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 last 25 years or so. In 2020, the sports industry was worth nearly USD400 billion according to

the Business Research Company, a staggering increase since the turn of the millennium.

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 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.

In early 2022, termination of commercial agreements in particular has been a subject of significant debate. The Ukraine crisis has led many rightsholders to consider whether contracts can be terminated where brands are simply based in or linked to Russia. Conversely, sponsors of Chelsea FC have sought to terminate on the basis that the imposition of sanctions on the club's owner damages their reputation. Adjacently, some sponsors argued that Kurt Zouma's mistreatment of a cat entitled them 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. In both cases, these 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.

At the time of writing, the sports industry is recovering from the effects of the COVID-19 pandemic. As organisers of live events, sports rights-holders have faced unprecedented challenges. 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.

In January, we saw terms of participation, vaccination requirements and immigration law under scrutiny in Australia as the Djokovic vaccination controversy placed sport once again on the front pages. 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 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 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.

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 European Union 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.

Early 2022 has seen the devastating consequences of the war in Ukraine also affect sport. Initially, this has led to many federations banning Russian teams from competition and withdrawing hosting rights. Already Russia has launched numerous appeals at 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 last few years will have seen significant additions to the Lex Sportiva. It appears that 2022 will see sport emerge from the current crisis, 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.

INTRODUCTION

Contributed by: Jamie Singer, Harriet Leach, Sophie Wilkinson and Ross Brown, Onside Law

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. 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 sportsmen and sportswomen 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.

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AUSTRALIA

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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 that constitute 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 criminalise 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 up to 1,000 penalty units in Australia.

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 Sport Australia 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 Regulations 2020 (in particular, Schedule 2 – the National Anti-Doping Scheme).

Sports 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. As recently as 15 December 2020, the Sports Integrity Australia Act 2020 was amended to implement revisions to the World Anti-Doping Code.

Australian Sports Anti-Doping Authority

Further to the legislative measures outlined above, doping in Australian sport in particular is regulated by ASADA. Its purpose is to protect the health of Australian athletes and the integrity of Australian sport.

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.

A prominent example of misconduct of players in Australian sport is the 2018 Cricket Australia ball-tampering scandal, in which a number of Australian cricket players were found to have "roughed-up" a ball with sandpaper in a test match against South Africa, in order to manipulate the ball's direction in flight. In response, Cricket Australia suspended three players, including the Australian captain and vice-captain, and the Australian coach subsequently handed in his resignation.

1.3 Betting

No National Authority Regulating Sports Betting in Australia

Sports betting is not illegal in Australia, but there is no single overarching statute or authority reg-

ulating 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 Commission for Gambling and Liquor Regulation Act 2011 provides for the creation of the Victorian Commission for Gambling and Liquor Regulation (VCGLR), 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 recently fined a player AUD20,000 and banned him from playing for 22 matches after he placed three, same-game multi-bets in three matches in which he played in 2019.

Protecting the Integrity of Sport – Information Sharing

In some Australian states, approval by regulators (such as the Victorian Commission for Gambling and Liquor Regulation) 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 have developed and implemented their 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 differs amongst 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 companies, to purchase tickets to a sporting event and on-sell them to their customers;
- ticket scalping, whereby ticket scalpers resell tickets at an elevated price.

Scalping

There is no federal legislation making scalping illegal in Australia. However, the Australian Senate has recently passed an amended motion for the Australian federal government to introduce new legislation to combat the issue. Further, some Australian states do regulate the manner and terms on which tickets can be resold, and have legislated to restrict, or even prohibit, scalping in that jurisdiction.

By way of example, in Victoria, the Major Events Act 2009 provides that where an event is the subject of a major event ticketing declaration, it is an offence to resell a ticket to that event for more than 10% above the original face value of the ticket.

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. More recently, 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

By way of a brief summary, 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 – for example, as a result of any COVID-19-related suspensions of sport events;
- 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 broad-

casting 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 currently has broadcasting rights agreements in place with both Channel 7, which is a commercial free-to-air television channel in Australia, and Foxtel, which is a subscription-style pay-TV service. Both television companies exploit the popularity of the AFL amongst viewers in order to generate profits through advertising revenue (in the case of Channel 7) and in the case of Foxtel, 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.

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 steps in proving that a person has been negligent is to prove that the 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 have now legislated (to varying degrees) in relation to the general concept.

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 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).

In some instances, however, governing bodies have imposed a requirement that small local clubs be incorporated. This includes the AFL NSW/ACT, the state body responsible for the growth of the AFL in those states, who do so to ensure that the legal rights and obligations of football clubs do not fall on the members.

4.2 Corporate Governance

Sports Governance Principles

In March 2020, the Australian Sports Commission (now Sport Australia) released an updated 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 is made up of:

- Sport Australia, which is responsible for driving the broader sport sector, including participation in sports, supporting activities linked

to sport and the growth of the sports industry more generally; and

- the Australian Institute of Sport (AIS), a high-performance sports training institute.

The ASC distributes the funds it receives from the Australian government amongst sport at all levels. Some sporting organisations in Australia are also funded by way of private investment.

Whilst there has previously been government financial support for small businesses (including eligible community sporting organisations), in the wake of the COVID-19 pandemic, this support is being progressively phased out as social restrictions ease. However, it is possible that further government funding and support programmes may be considered in future following further engagement between government and industry stakeholders.

4.4 Recent Deals/Trends

Rugby Australia (rugby union's national governing body) is reportedly interested in exploring equity investment into the Australian sport, and has been in ongoing talks regarding this.

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.

New Zealand Rugby recently secured a near NZD200 million investment from Silver Lake, a US private equity investor, and Rugby Australia has reportedly been aiming to gauge New Zealand Rugby's view on and experience of private equity investment. It looks likely that Rugby Australia will wait until the 2027 Rugby World Cup host is announced in May 2022.

Another recent deal involved the sale of the entire V8 Supercars business to a private consortium for a reputed AUD80 million; it promised to further boost the growth of the Supercars Championship through increased focus and investment as well as a number of diversification options.

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;
- 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;

- 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), will be automatically protected by copyright under the Copyright Act.

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 authorizes 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 to 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

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 or 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 deed of agreement. The ownership and intellectual property rights in an unregistered trade mark can only be assigned with the goodwill of a business. Under Australian law, a collective trade mark cannot be assigned or transmitted.

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 under-

stand the key factors that contributed to their winning or losing any given 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 to increase the value in 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.

It is still unclear whether metadata, cookies and IP addresses fall within the definition of personal information pursuant to the Australian Privacy Act. However, it is expected that Australia will eventually align with the position under the EU’s GDPR and determine that metadata, cookies and IP addresses should be specifically regulated as personal information under the Privacy Act.

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 also 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 other 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 do 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 – a relationship of employer and employee 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 which 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 (i) workers engaged, or caused to be engaged, by the person, and (ii) 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 Australia 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 Overview of Esports

The popularity of esports within Australia has grown significantly over the last few years, accelerated further by the COVID-19 pandemic, as spectators sought to satisfy their love of sport during periods of suspension of traditional sporting matches.

Esports in Australia have been forecast for major growth from AUD6 million in revenue during 2020 to a projected revenue of AUD16 million by 2025. However, the size of the esports market in Australia is still relatively small compared to the global market.

Whilst the Australian esports market continues to take shape, Australian players appear to have been utilising the international market. Notably, in 2018 an Australian teenager won USD3 million at the International Dota 2 Championships in Canada.

9. WOMEN'S SPORT

9.1 Overview of Women's Sport

Women's Sport Landscape and Growth in Australia

Australia has made significant progress in developing and growing its women's sporting industry in recent years, and it is expected that women's sports will continue to grow in the years to come. In the 2021 predictions report, Deloitte Australia (one of the country's largest accounting organisations) anticipated that women's sport sponsorship in Australia will grow to 20% of total sponsorship value by 2025; for further details, see [Women's sports get down to business: on track for rising monetisation](#).

There has also been significant investment in Australia into increasing the commercialisation of

women's sport, with the Australian government announcing AUD17 million of funding towards hosting two major international women's sporting events within the next two years. While this will certainly draw more attention to women's sport in Australia, it is fair to say that there is still a long way to go to bring women's sport in line with the men's market.

Notable Statistics

Whilst women's sporting sponsorships are expected to grow substantially by 2025, in 2021 sponsorship agreements with female athletes were reported to account for only 8% of sporting sponsorship deals in Australia. As of May 2020, it was reported that only 7.6% of broadcast coverage was allocated to women's sports, although this is also expected to increase to 25% by 2025.

New Competitions

The Australian Rules 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. We will shortly enter the 2022 season with 14 teams in the league.

Developing Women's Sport 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.

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. These number are expected to increase in the coming years, with Australia hosting the 2023 Women's World Cup.

Further, 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.

There is optimism that the significant growth of the AFLW and women's cricket in Australia, paired with Australia playing host to the FIBA Women's Basketball World Cup in 2022 and the FIFA Women's World Cup in 2023, will encourage broadcasters to give women's sport more coverage in Australia in future and that the women's sporting industry will continue to grow.

10. NON-FUNGIBLE TOKENS (NFTS)

10.1 Overview of NFTs

Notable Usage of NFTs in Australia's Sport Industry

Cricket Australia (the national governing body for cricket in Australia) in conjunction with the Australian Cricketers Association is reportedly in talks regarding the creation of an online platform for the trading and sales of NFTs, in particular "digital memorabilia". Any such venture would, Cricket Australia hopes, create a lucrative new

revenue stream for the governing body. These hopes may be linked to the US National Basketball Association's recent success in the NFT market with selling basketball's greatest "moments" as NFTs, known as "NBA Top Shots".

While the AFL and National Basketball League are sitting behind Cricket Australia, who appears to be leading the charge with entering the NFT market, it has been reported that the AFL and NBL are also considering entering the NFT market and an announcement in this regard can be expected later in 2022.

Risks in NFTs in the Sports Industry in Australia

Some commentators hold concerns that the NFT market, including as it exists within the sporting industry in Australia, may be a rapidly expanding "bubble" that will eventually burst. Whilst sports fans may be soon scrambling to secure an NFT of their favourite sports team's memorabilia in the hope that the NFT will increase in value, there is no guarantee that sports-related NFTs will experience the same growth in value as other digital assets or currencies. This uncertainty and potential risk associated with investment in NFTs is certainly not unique to the sports industry.

11. REGIONAL ISSUES

11.1 Overview of Regional Issues

The strict vaccine mandates within the Australian states and territories continue to have an impact on the sporting industry. Whilst there is no federal requirement for players to be vaccinated to participate in sporting activities/events, some states and territories have taken a strong stance on mandatory vaccinations, which may prevent some athletes from participating in sporting events. In addition, each sporting code may also specify their own requirements for athletes to comply with mandatory vaccination policies in order to compete in major sporting events.

This interaction between mandatory vaccinations and sporting events has been thrust into the spotlight recently, notably in respect of the recent Novak Djokovic case. This issue is discussed further in the firm's adjacent **Global Practice Guide: Sports Law 2022, Australia – Trends and Developments** chapter.

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Brigid Virtue provides legal advice to local and international businesses, including in the sporting industry. Brigid has experience preparing and advising on brand-licensing

agreements, privacy and the protection of personal information, and preparing and negotiating commercial contracts. She has a strong understanding of the disruption that COVID-19 has caused in sport, and the commercial realities of force majeure clauses. Brigid is a member of ANZSLA, the Australian New Zealand Sports Law Association.



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 Intalex sports law team.

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Trends and Developments

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Introduction

For almost two years now, Australians (along with the rest of the globe) have been thrust in and out of pandemic-related government lockdowns and restrictions. Since March 2020 and throughout the COVID-19 crisis, the Australian sports industry has adapted time and time again to the ever-changing landscape of social restrictions, including the postponement and/or cancellation of major sporting events.

There is no doubt that the Australian sports industry has suffered throughout the pandemic, but what remains clear is that Australians' love for sport is unwavering. The Australian government's appreciation of the importance of the sporting industry has been evidenced by their willingness to often allow major sporting events to go ahead even during the height of social restrictions, albeit without crowds. While only very few Australians (as compared to pre-pandemic numbers) have been able to attend live sporting events in the country in recent years, it is reported that television ratings for major sporting events have increased significantly.

Now that we are seeing the light at the end of the pandemic tunnel, we are able to turn our minds to (for the most part, and with the important exception of athlete vaccinations) some of the non-pandemic-related trends and developments in the Australian sports industry and sport-related laws.

Broadcasting

Over the last 12 months, there have been significant developments in the Australian sports broadcasting market. Looking ahead, we antici-

pate that a number of major broadcasting deals will be re-negotiated. We also anticipate that movement in the market will continue throughout the course of 2022.

Throughout 2020, a number of major Australian broadcasters exercised their contractual rights to reduce the sums payable by them to sporting leagues for broadcasting rights. This was due to the pandemic forcing cancellations and postponements of major (and lucrative) sporting events. In some cases, this led to disputes. One of the most significant of those disputes was between one of the country's biggest television broadcasters (Channel 7) and the governing body for professional and amateur cricket in Australia, Cricket Australia.

However, it seems that this trend may not have continued throughout 2021, with some sporting leagues reportedly securing deals which reflect pre-pandemic sums. They have done so, in large part, by taking advantage of a rapidly growing aspect of the broadcasting market – sports streaming services. By way of example, in the past year Australia's elite professional netball league (Super Netball) and National Basketball League (NBL) both signed deals with Australian pay-TV provider, Foxtel Group. Both of these agreements reportedly require that a minimum number of matches are to be made available on Kayo Sports – Foxtel's sports streaming service.

This is an interesting development in the Australian sports broadcasting market, given Australia's unique anti-siphoning laws. Anti-siphoning legislation in Australia is aimed at preventing broadcasters from buying monopoly rights to

televised important and culturally significant events (including sporting events), and to ensure that all members of the public have access to view those events for free. Under anti-siphoning laws, pay-TV broadcasters cannot restrict public access to view certain events by requiring viewers to pay a subscription fee or similar, unless a free-to-air alternative is available.

Traditionally, streaming service providers have required that their customers pay a fee in order to access their service. However, despite this tradition, and despite Australia's strict anti-siphoning laws, pay-TV broadcasters are now opting to purchase the rights to televise sports events, which they can only offer for free.

Event Planning and Athlete COVID-19 Vaccinations

2022 marks the beginning of a decade in which Australia will host an array of major international sporting events. These include:

- FIBA Women's Basketball World Cup, taking place this year;
- ICC Men's T20 World Cup, taking place this year;
- FIFA Women's World Cup, taking place in 2023, and which Australia will co-host with our neighbour, New Zealand;
- UCI BMX World Championships, taking place in 2026;
- Netball World Cup, taking place in 2027; and
- Olympic and Paralympic Games, taking place in Brisbane in 2032.

The vaccination of athletes has been a topic of great discussion amongst Australian sports industry stakeholders of late. We hope that event organisers will not be burdened by pandemic-related variables by the time the Olympics make its way to Australia. Although the issue is likely to play a role (at the very least) at the sporting

events scheduled to take place in Australia this year.

The issue of athlete vaccinations became headline news early this year when the tennis player Novak Djokovic applied for an exemption to play at the Australian Open in Melbourne, despite a vaccine mandate in place for the tournament. By way of background, in late 2021, the world No 1 was informed by Tennis Australia that he had been granted a temporary medical exemption to play at the Grand Slam tournament. However, when Djokovic arrived in Melbourne in January 2022 for the tournament, Australia's Border Force denied him permission to enter the country, and notified him of their intention to remove him. He was detained and spent 72 hours in a hotel for asylum seekers. His visa was cancelled because, according to the Australian government, he failed to provide appropriate evidence to meet the entry requirements to Australia.

Djokovic appealed the decision to cancel his visa and was freed from detention when the judge hearing the appeal quashed the government's decision on the grounds that it was unreasonable. Australian Immigration Minister, Alexander Hawke, then used his personal powers to deport him anyway. Djokovic appealed again, but a three-judge panel of the Federal Court of Australia dismissed the appeal in a unanimous, final ruling and Djokovic was forced to leave the country. He could not participate in the Australian Open.

There is a complex set of Australian laws and regulations which relate to the requirement for athletes to be vaccinated before they enter Australia and/or before they are permitted to play at particular sporting events, including:

- the public health orders which are currently in place in each Australian state and territory and are applicable to certain workers to

prevent the transmission of COVID-19 in their populations;

- federal laws requiring entrants and visitors with eligible visas to declare their vaccination status and which provide that, generally, travellers will need to show that they cannot be vaccinated in order to receive an exemption; and
- event organisers' policies.

Athletes and entourages seeking to enter Australia and participate in the array of sports events set to run over the next few years will likely need to be vaccinated to do so, and event organisers should consider whether any of their drawcards will be absent for this reason.

Anti-doping

In June 2019, Shayna Jack (an Australian World Championship swimmer and Commonwealth Games gold medallist), returned a low-level positive result for a banned substance known as Ligandrol after being subject to an out-of-competition drug test. Ligandrol is included on the list of prohibited substances in the World Anti-Doping Code 2015 (the "Code"), which is also replicated in the Swimming Australia Limited Anti-Doping Policy 2015 (the "Policy"). As a result, Shayna was found to have committed an "anti-doping rule violation".

The relevant articles of the Code and the Policy provide that an athlete will receive a four-year ban from competing and training with other athletes if they cannot demonstrate that an anti-doping rule violation was unintentional.

In January 2020, Shayna Jack brought proceedings before the Court of Arbitration of Sport on the basis that she had not intentionally ingested Ligandrol and therefore her ban should be reduced. The hearing was conducted by a sole arbitrator who found that Shayna's anti-doping rule violation was indeed unintentional and sup-

ported her claim by reducing her ban to two years.

Both Sport Integrity Australia and the World Anti-Doping Authority appealed the Court of Arbitration of Sport decision, citing that they were appealing to gain more clarity in relation to anti-doping legal principles.

In September 2021, the World Anti-Doping Agency and Sport Integrity Australia's appeal of Shayna Jack's two-year doping suspension was dismissed by the Court of Arbitration for Sport and Shayna Jack was free to swim again.

The decision is important because, historically, international sports law jurisprudence has taken two competing approaches to the application of anti-doping rule violations. The approaches differ in terms of whether they require that an athlete must establish precisely how the relevant prohibited substance entered their body, as well as the level of evidence required to demonstrate that they did not intentionally ingest the substance.

Shayna Jack was unable to prove how the substance entered her body, but her appeal nonetheless was upheld. This appears to support the approach that, in certain circumstances, an athlete may not be required to establish exactly how the prohibited substance entered their body.

Conclusion

There have been a number of significant trends and developments emerge in the sports industry in Australia in the past year, and a number which we anticipate may become relevant in the not-so-distant future.

The value in live broadcasting of sport in Australia is making a comeback following a significant hit during the pandemic. Throughout 2020, broadcasting deals became, in some cases, far

AUSTRALIA TRENDS AND DEVELOPMENTS

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less lucrative than in the years prior to the pandemic. This is in large part due to the fact that sporting event organisers have been subject to ever-changing public health orders that require them to reschedule and even cancel planned events. In the last year, however, broadcasting deals are looking more and more like they did pre-pandemic. Leagues are managing to negotiate deals with sums payable that are far closer to what they were receiving before the outbreak of COVID-19. Interestingly, many of those deals now include provision for streaming services.

Hopefully, we are past the worst of it in relation to COVID-19. However, a significant issue which remains relevant is athlete vaccinations. Event organisers should consider, and account for, the financial impact which they may suffer if a drawcard athlete such as Novak Djokovic is unable to participate in their event due to their vaccination status.

Finally, the Court of Arbitration for Sport's recent decision to maintain the two-year sanction imposed on Shayna Jack following an anti-doping rule violation has provided some clarity for athletes and regulators in relation to the application of anti-doping legal principles. The decision demonstrates that, in certain circumstances, athletes may not need to demonstrate how a banned substance entered their body in order to prove that their ingesting of that substance was unintentional.

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1. REGULATORY

1.1 Anti-doping

Doping as a Criminal Offence

The central legal anti-doping framework is the Austrian Federal Anti-Doping Act 2021 (*Anti-Doping-Bundesgesetz 2021*, or ADBG 2021). Section 28 of the ADBG 2021 contains a comprehensive criminal-law provision, under which anyone who, for the purpose of doping in connection with any sporting activity, puts into circulation or applies to athletes active substances prohibited under the WADA prohibited substances list (WADA Prohibited List), or applies to athletes or others prohibited methods for artificially increasing oxygen transfer (blood doping) or gene doping specified in the WADA Prohibited List, shall be punished with imprisonment of up to six months or a fine of up to 360 daily rates (the amount of these rates is determined by a court depending on the personal circumstances and the financial capacity of the offender).

Under certain conditions, even the mere possession of certain prohibited substances is prohibited, with imprisonment for up to six months or a fine of up to 360 daily rates.

Section 28 of the ADBG 2021 also contains further qualifications with regard to particularly vulnerable or underage persons or a repeated offence. In such cases, a prison sentence of up to five years may be imposed.

However, it is necessary that the substance in question must have been on the WADA Prohibited List at the time of the offence and the time of judgment for Section 28 of the ADBG 2021 to apply; otherwise, the offender is not to be punished.

In addition to the judicial criminal provisions regulated in the ADBG 2021, doping may be qualified as serious fraud under the Austrian Crimi-

nal Code (*Strafgesetzbuch*, or StGB), which is punishable by up to ten years' imprisonment. Accordingly, anyone who commits fraud involving more than minor damage by deception regarding the use of a prohibited substance or method for the purpose of doping in sport is to be punished.

If doping treatment results in damage to the athlete's health, the perpetrator may also be liable to prosecution for bodily injury.

The National Anti-Doping Agency

Austria's National Anti-Doping Agency (*Nationale Anti-Doping Agentur GmbH*, NADA Austria) was established on 1 July 2008 as a company with limited liability (*Gesellschaft mit beschränkter Haftung*). NADA Austria is a non-profit, independent anti-doping organisation and has its headquarters in Vienna.

As an independent doping control agency, it has the task of comprehensive anti-doping work in sport. The basis of the preventive and repressive activities are the ADBG 2021 and the World Anti-Doping Code (WADC). The goal of NADA Austria is to protect clean athletes with an efficient, state-of-the-art doping control system and investigations, as well as prevention through education, information and awareness-raising programmes.

Implementation of the World Anti-Doping Code

In Austria, the WADC was implemented for the first time in 2007 through the adoption of the Federal Anti-Doping Act 2007. As a result, the WADC became binding for the individual national sports federations and their athletes in Austria. The law has been amended several times in the past.

With the ADBG 2021, which came into force on 1 January 2021, Austria has fulfilled its obligation to implement the (new) WADC 2021.

Anti-Doping Cases – “Operation Aderlass” (literally “Operation Bloodletting”)

In 2019, police raided the Nordic Ski World Championships in Austria and arrested athletes just hours before the start of an event. The so-called “Operation Bloodletting” uncovered a globally operating doping network around a famous sports physician. Numerous arrests and house searches were carried out. The blood-doping ring mostly involved cross-country skiers and cyclists. Among those arrested were several Austrian athletes.

In 16 cases, NADA Austria sent an investigation request to the independent Anti-Doping Legal Commission (ÖADR) for the imposition of disciplinary measures. The majority of these proceedings have already been legally concluded, with sanctions ranging from three years to lifetime bans for all sports.

In addition to these disciplinary proceedings, there were also criminal proceedings against domestic defendants. Depending on the individual case, fines and prison sentences ranging from five months conditional to 24 months, of which eight months were unconditional, were imposed. In addition, a total of more than EUR450,000 was declared forfeited.

1.2 Integrity

Legislation on Match-Fixing

The StGB does not contain any sports-specific criminal offences relating to match-fixing. However, from a criminal law perspective, match-fixing can be qualified as the criminal offence of fraud according to Sections 146 et seq of the StGB. In a nutshell, those fraud sections punish fraudulent behaviour when it can be shown that financial losses by betting operators are attribut-

able to the use of insider information or corrupt athletes.

The StGB also contains corruption and bribery offences, but these only have limited application to the world of sport.

Besides criminal law, several sports associations in Austria have placed a strong focus on consequences of match-fixing in their disciplinary regulations (see **1.4 Disciplinary Proceedings**). The Austrian Football Association (ÖFB), for example, has implemented regulations with regard to sports betting.

Measures Taken by Sports Governing Bodies regarding Integrity Offences

Various sports governing bodies have taken many different measures to deal with integrity offences. Those measures range from reporting obligations to sanctioning and monitoring regimes. The following are only a few of such measures.

- In June 2016, Austria signed the Council of Europe Convention against Manipulation of Sports Competitions, and took the measures against betting fraud to an international level.
- The Federal Criminal Police Office (*Bundeskriminalamt*) has its own reporting office to co-ordinate measures against betting fraud in sports. It co-operates with Interpol and sports associations such as FIFA, UEFA and the ÖFB.
- The Association for the Preservation of Integrity in Sport (*Verein zur Wahrung der Integrität im Sport*, or VWIS), or better known under its brand name “Play Fair Code”, has taken over prevention work in Austria and conducts training courses throughout the country, for example in football, ice hockey and skiing. Currently, the Play Fair Code is “merely” an association under the Austrian Association Act (*Vereinsgesetz 2002*, or VerG); however,

there are efforts to lift the Play Fair Code into an authority-like function (similar to NADA Austria).

Case Law – the Dominique Taboga Case

In 2013, Austria's Federal Criminal Police Office succeeded in striking the most significant blow to date against organised crime in betting. Dominique Taboga, a former professional football player in the Austrian football Bundesliga, was found guilty of fixing games or actions during games. He was ultimately found guilty of fraud and sentenced to three years in prison. Furthermore, his lifetime ban was reduced to a five-year ban from all playing activities and a ten-year ban from all official activities in Austrian football. Sanel Kuljic, a former Austrian international, was also involved and acted as an intermediary between Dominique Taboga and the criminals. In addition to Sanel Kuljic and Dominique Taboga, six others received prison sentences.

1.3 Betting Sports Betting Legislation

Austria distinguishes between gambling and sports betting. Gambling in the meaning of the Austrian Gambling Act (*Glücksspielgesetz*, GSpG) is a "game in which the decision on the outcome of the game depends exclusively or predominantly on chance". It is within the legislative competence of the federal government. Sports betting, on the other hand, is considered a "game of skill" and falls within the competence of the federal states (*Bundesländer*).

Hence, each of Austria's nine federal states has its own local (sports) betting act and its own competent regulatory authority. In addition, all nine federal states' betting laws include their own provisions on administrative criminal offences and prohibitions. In Salzburg, for example, betting is forbidden on any games below

the third national league and games involving amateurs and youths (under the age of 18).

Protective Measures to Maintain Integrity

Many top sports associations as well as sports betting operators work closely together with the Play Fair Code mentioned in **1.2 Integrity**. The aim of this collaboration is to achieve clean and manipulation-free competitions together with athletes, coaches, support staff and club managers as well as referees through prevention measures, awareness-raising training and education.

The Austrian Football Federation and the Austrian Ice Hockey League co-operate with Sportradar, which uses its Universal Fraud Detection System (UFDS) to monitor matches with regard to match-fixing and analyse any irregular betting patterns.

Match-Fixing Scandal in the Third-Highest Football League in 2021

Match-fixing is alleged to have occurred in the third-highest football league (*Regionalliga Ost*) in 2021. The investigations for serious commercial fraud are still ongoing. So far, there have been numerous arrests and four defendants have been remanded in custody, but the exact consequences of this scandal are not yet known. The remarkable thing about this scandal is that Sportradar, a company that specialises in sports integrity solutions for sports governing bodies, helped uncover the scandal.

1.4 Disciplinary Proceedings

All sports associations are committed to maintaining the integrity of their sports competitions. The ÖFB, for example, has placed a strong focus on prohibiting and punishing match-fixing and inadmissible sports betting in their disciplinary regulations.

For example, a person (i) placing bets on matches in which their own club or a club active in the same class is involved, (ii) designating third parties to do so, or (iii) passing on non-public information to third parties which could be used in such bets, may be subject to severe punishments as a warning. These punishments might include a ban, a fine of up to three times the amount of the bet placed or winnings paid out, a deduction of points, and exclusion from competition or the relevant sporting association.

In addition, each of Austria's nine federal states' betting laws include their own provisions on administrative criminal offences and prohibitions.

2. COMMERCIAL RIGHTS

2.1 Available Sports-Related Rights

Merchandising

Merchandising refers to secondary marketing that runs parallel to the primary marketing of various merchandising objects. It is irrelevant whether the marketing is carried out by the entitled party or, by way of granting a licence, by a third party. The legal protection depends on the merchandising object. In addition to the general protection under the Austrian Unfair Competition Act, (*Bundesgesetz gegen den unlauteren Wettbewerb*, or UWG), there is also protection under personality law in the case of personality features, protection under trade mark law in the case of brand merchandising, and protection under copyright law in the case of graphics and photographs.

In the sports sector, personality merchandising and brand merchandising play a particularly important role. The former exists when a real person is the focus of the marketing. In the latter case, the brand (eg, the sports club) is the object of merchandising.

In principle, the rights holder itself grants licences. This allows a third party or specialised exploitation agencies to use such merchandising properties.

Hospitality

Hospitality as a corporate communication measure plays a particularly important role in sponsorship activities. It is an instrument for attracting, maintaining and retaining customers. This special business-to-business communication is a significant source of income for sports event organisers. The subject of such hospitality offers is the marketing of business seats, VIP tickets and boxes.

Ticketing

Ticketing involves concluding a spectator contract and paying a fee in return for access to and a seat at the event.

In this context, there is the issue of secondary ticket sales, where ticket trading takes place on an unauthorised secondary ticket market. The term unauthorised secondary market is used when third parties make ticket sales without the control and consent of the organisers, by re-selling the initially purchased ticket from the organiser of the event at least once. Since the sales prices are exposed to the unauthorised market, they are regularly higher than the original ticket price. For this reason, legal disputes take place between the organisers of events and the unauthorised secondary market.

Case law – secondary ticket selling

A recent decision of the Austrian Supreme Court refers to such a secondary ticket-selling platform. As a result, secondary sellers must disclose whether the ticket is freely transferable or personalised. In addition, the identity of the seller must be stated. The original price of the ticket does not have to be displayed.

LASK's fight against the black market during the Europa League season 2019/20

In the run-up to the UEFA Europa League match against Manchester United, there had been attempts to resell tickets for profit. Austrian football team LASK therefore blocked all tickets that had been traded at increased prices without exception. Season tickets of persons who had offered tickets at increased prices were blocked without replacement.

2.2 Sponsorship

Ways Sponsors Use Sports to Promote Their Brands

Advertising measures during the sports event itself are of particular importance. The use of brand images or slogans as perimeter advertising (in the stadium or in a finisher area) are visible to visitors in the stadium as well as to television viewers. Video screens in the stadium or along the race also allow advertising videos and acoustic advertising during breaks.

In addition, tickets and programmes provide space to mention sponsor websites or simply their name and logo.

Athletes' caps, helmets, uniforms and their sports equipment usually bear the brand or logo of the sponsor and – depending on their visibility during the performance or in interviews – allow a considerable marketing effect for the sponsor.

Key Terms of a Standard Sponsorship

Contract

The sponsorship agreement provides the basis for the sponsor to give money (and/or benefits in kind) in exchange for the sponsor recipient making themselves available to the sponsor as an advertising tool.

Key terms that can be included in sponsorship agreements are obligations and rights of the sponsor, the duration of the agreement,

the sponsor's services, the costs of advertising materials as well as early termination of the agreement and extension options.

In order for a sponsorship agreement to be concluded, the sponsor recipient as well as the sponsor shall obtain the right to use protected personal rights from the players and support staff. This applies in particular to image rights, namely the right to one's own image (Section 78, Austrian Copy Right Act (*Urheberrechtsgesetz*, or *UrhG*)) and the right to a name (Section 43, Austrian General Civil Code (*Allgemeines Bürgerliches Gesetzbuch*, *ABGB*)).

2.3 Broadcasting

Public Broadcasting

The public broadcasting company (ORF) is supported by compulsory fees to be paid for any receiver (TV set, radio, computer or laptop with TV card or DVB-T stick). In addition, income is generated through advertising.

Packages of Broadcasting Rights

Winter sport is of particular importance in Austria. There is a long tradition of exclusive broadcasting rights for the ORF. In 2021, it acquired the exclusive broadcasting rights for winter sport events on television, radio and online reports, valid until the season 2026/27. For the first time, a private broadcasting company acquired a package of highlight rights and near-live-clip rights.

Advertising rights generate high revenues due to the high interest in the various sports sectors. Lately, this was also the case for broadcasting the 2022 Winter Olympics.

3. SPORTS EVENTS

3.1 Relationships

Domiciliary Right of the Organising Associations

Even though in Austria there are no proprietary rights to sports events, the organising associations have the so-called “domiciliary right” (*Hausrecht*), which is derived from the ownership or the lease of the property or the building in which the sport event will be taking place.

Within the scope of this “domiciliary right”, the organising association has the right to exclude other persons from the sports event or to make their visit/access dependent on conditions, such as purchase of the tickets or registration for the event as well as conclusion of a certain contract with the respective organising association. Within these agreements, the concrete conditions are usually set, under which access to the sporting event is permitted as well as the (legal) consequences in the event of a violation of such conditions.

However, it should be noted that admission to an event may only be denied for objectively justified reasons based on the domiciliary right.

Organisation of Sports Events

The law on the organisation of sports events falls within the competence of the nine Austrian federal states (*Bundesländer*). For this reason, the rules and requirements for the organisation may differ depending on the relevant State Act (so-called Events Act or *Veranstaltungsgesetz*).

Most (larger) events usually require a concession issued by the competent authority based on the relevant State Act, which defines conditions and safety rules in respect to the event in question. While the concrete requirements may differ, each organiser has to implement necessary precautionary measures in any case.

3.2 Liability

Safety Duty of the Organiser

Sport event organisers have a general duty to ensure safety (so-called *allgemeine Verkehrssicherungspflicht*). Accordingly, they must take the necessary precautions in the interest of the safety of participants and spectators. If there is a possibility that an event may result in dangers for others, organisers must also take appropriate measures against such possible dangers within the reasonable framework.

Furthermore, the organiser must inform the participants about unavoidable safety risks and take preventive measures against foreseeable hazards. Continuous adaptation to the highest possible safety standard is not generally owed, but failure to adapt to new safety standards may give rise to liability.

For the sports organiser, the relevant guidelines and rules under association law serve as minimum requirements for concretising the standard of duty of care. In individual cases, however, the obligations of the sports organiser to ensure safety can go beyond the obligations set out in the guidelines/rules of the sports associations.

Liability Limitations

An organiser’s liability for injuries or damages caused within the framework of a sports event can arise, for example, against the performing athletes, spectators or other uninvolved third parties.

However, the liability can generally be limited or excluded by contract, provided that limitation or exclusion does not violate the law or is not immoral. For example, exclusion or limitation of liability for personal injury is in any case not permissible. Furthermore, exclusions of liability for damage to property caused by intent or, in the case of a contract with a consumer, by gross negligence are also not permissible. However,

limitation of liability for property damage caused by slight negligence is possible.

Contractual clauses that still exclude or limit the liability beyond the extent permitted by law are void and unenforceable.

Liability of Athletes towards Spectators

Since spectators only conclude agreements with the respective organising associations, there are no contractual obligations/liabilities of the athletes towards them. There is also generally no consent on the part of spectators to the increased risk posed by the sport. The athlete cannot therefore refer to a liability-excluding “acting at their own risk” in the case of damage.

Athletes and spectators are therefore generally not in any special relationship because of the sporting activity. The general rules of tort law apply.

How Sport Events are Kept Safe from Violence and Disorder

In addition to the general provisions, the relevant State Act also contains some special obligations that are important for the smooth and safe running of the event in question. The authorities are also authorised to impose further conditions by means of a notice in order to ensure the proper running of sporting events.

Furthermore, the competent authority as well as the police are entitled to control observance of the aforementioned provisions as well as the general safety of an event, and are obliged to remove any potential danger and cancel the event if there is no other possibility of keeping the audience safe.

4. CORPORATE

4.1 Legal Sporting Structures

The Association as the Prevailing Legal Form

The majority of sports clubs and sports bodies in Austria are organised in the form of a legal association (*Verein*) within the meaning of the Austrian Law on Associations (*Vereinsgesetz 2002, VerG*). This is true at both the professional and amateur levels.

An association is a voluntary, permanent organisation of at least two persons, organised on the basis of articles of association, for the pursuit of a specific, common purpose.

Compared to other legal forms an association can be interesting from a sports perspective for the following reasons in particular:

- simple formation;
- no minimum share capital;
- no personal liability of members;
- no accounting or publication obligations; and
- tax benefits – if certain criteria of the VerG and obligations under tax law are met, associations are treated preferentially in relation to certain tax matters (eg, associations can be exempt from corporate income tax (*Körperschaftsteuer*) and from value added tax (*Umsatzsteuer*)).

Corporations as an “Ally” in Professional Sports

A club in the form of an association can be economically active as long as the revenues serve the (idealistic) purpose of the club. Many sports clubs are now highly profitable commercial enterprises. The idealistic objective required by law for associations then often exists only on the margins.

This can be problematic from a tax perspective. The tax authorities used to apply the tax benefits

very generously to professional sports organisations. However, the tax authorities have – more or less – abandoned this practice. In order to continue to claim the tax benefits, it was necessary for the sports club to establish a subsidiary and outsource the professional operations to a subsidiary particularly in the form of a corporation with limited liability (*Gesellschaft mit beschränkter Haftung*, GmbH) or a stock corporation (*Aktiengesellschaft*, AG).

Other from tax reasons, professional sports organisations also require a different legal form for other reasons (eg, installation of a professional management, risk management or simpler investor intake). Hence, at the level of professional sports organisations, clubs often establish subsidiaries in the form of corporations, which then take over the game operation and/or other business activities.

Specifics in Football

In the realm of football, the aforementioned reasons also required clubs to transfer their professional teams to a corporation. However, they have to observe the so-called “50+1 rule” (for further discussion of which, please see **4.4 Recent Deals/Trends**). This means that it is not possible for investors to take over the majority of the voting rights in corporations into which soccer clubs have outsourced their professional teams.

4.2 Corporate Governance

National Corporate Law

Depending on which legal form is chosen for a sports organisation or club, the national laws that apply to these legal forms must be complied with. There are no sport-specific corporate governance codes.

Management and Officer’s Liability

Following on from the above, the legal questions concerning the management and liability of cor-

porate officers are also – depending on the legal form of the sports organisation – governed by the different relevant laws.

Regarding the liabilities of the association/corporation, the association/corporation is liable for its own assets. If a member of the management board of an association/corporation breaches the duty of care required by law, they shall be liable to the association/corporation in accordance with general principles of tort law. The applicable standard of liability is measured by the care, skills and knowledge that can usually be expected from a member of the board in the relevant “line of business” and according to the size of the association/corporation.

Insolvency

The sports governing bodies typically provide for specific regulations in the case of an insolvency of its member clubs. For example, the Austrian Football Bundesliga also provides for corresponding regulations in its licensing terms (*Lizenzbestimmungen*): if insolvency proceedings are opened or if an application for insolvency proceedings is rejected due to a lack of assets to cover costs, the club may lose or not be granted a licence and may also be subject to mandatory relegation.

4.3 Funding of Sport

Professional Sports v Amateur Sports

Sport receives funding from a range of sources. While professional athletes and sports teams can rely on revenues from advertising, ticket sales, sponsorships, transfers and many other sources, amateur athletes and teams do not have access to these. Grassroots sports instead have to rely on funding programmes provided by the government or membership fees.

Sports Funding Landscape in Austria and Distribution of Funds

The sports funding landscape in Austria is extremely complex and is a thicket of different federal and state funding regulations.

Traditionally in Austria, a large part of the funds for federal sports funding is raised through gambling revenues. Article 20 of the Austrian Gaming Act (*Glücksspielgesetz*, GSpG) defines a figure of at least EUR80 million for sports funding each year. The *Bundes-Sportförderungsfonds* (BSFF) administrates and distributes the funds according to a pre-defined allocation formula. Beneficiaries include ASKÖ (*Arbeitsgemeinschaft für Sport und Körperkultur in Österreich*), ASVÖ (*Allgemeiner Sportverband Österreichs*), SPOR-TUNION, the Austrian Football Association (ÖFB), the Austrian Olympic Committee, as well as numerous other professional associations.

The Federal Sports Funding Act 2017 (BSFG) established the *Bundes-Sport GmbH* (BSG) as a funding agency owned by the federal government.

Several other sources of federal and state funding are used to finance and promote sports organisations, athletes, initiatives for equality between men and women, youth sports, sports science, federal sports facilities and different events.

In addition, there are a large number of state-specific sports funding laws and programmes.

Alternative forms of financing are also becoming increasingly popular. An example is the crowd-funding platform “I believe in you”, which has created another possibility for athletes and clubs to raise money.

COVID-19

Support for non-profit organisations

Since June 2020, there has been a support fund for non-profit organisations, including sports clubs. Upon request, this fund is intended to compensate for the losses of the clubs due to COVID-19.

The sports bonus

For the 2021/2022 season, the 2022 calendar year or the 2022/23 season, the Federal Ministry of Arts, Culture, Public Service and Sports covers 75% of the membership fees. Members pay only 25% of the membership fees and the rest is compensated.

4.4 Recent Deals/Trends

Recent Trends – Reform Plans for the 50+1 Rule

The so-called “50+1 rule” is the subject of ongoing reform efforts in the Austrian Football Bundesliga (the association of the two highest division in Austrian football). According to this 50+1 rule, a Bundesliga football club must hold a majority of its own voting rights in order to obtain a licence to compete in the Bundesliga. In other words: Bundesliga clubs will not be allowed to participate in the Bundesliga if commercial investors have more than 49% of the voting rights.

Whether this regulation is compatible with anti-trust law or EU law is the subject of ongoing debate. This is why the Austrian Bundesliga is currently considering new ways to regulate investments and to reshape the rule.

Recent Deals – Investment in Football Club Austria Wien

The Viola Investment group acquired a 40% stake in the FK Austria Vienna football club. As part of the transaction, Viola Investment retains an option to further increase its stake in FK Austria Vienna with an additional 10.1%. Accord-

ing to an Austrian daily newspaper, the deal is expected to bring the club around EUR11 million.

5. INTELLECTUAL PROPERTY, DATA AND DATA PROTECTION

5.1 Trade Marks

Trade Mark Registration

Trade marks are registered with the Austrian Patent Office (*Patentamt*) and regulated under the Austrian trade mark Protection Act (*Markenschutzgesetz*, MSchG). State emblems, state flags or national badges are exempt from registration. The same applies to purely descriptive signs or signs lacking distinctiveness (eg, tennis balls).

Trade marks only exist upon registration in the public register (*Markenregister*); the principle of priority provides major advantages, since in a conflict situation the older registration enjoys the better rights.

The owner of a registered trade mark can prevent third parties from using a sign, which is identical or similar to the registered trade mark, for the same or similar goods and services.

Recent Cases

In the “SPORT+” decision the Austrian courts confirmed the similarity of the younger combined word and sign trade mark “ORF SPORT+” with the prior EU combined word and sign trade mark “SPORT+”. The opposition procedure against the registration of the younger trade mark was successful.

In a further recent decision, the owner of the trade mark rights of ABSOLUT Vodka succeeded over a ski and snowboard sports venue, which used the term “ABSOLUT” in creations

like Absolut Park, Absolut School and other. The graphic presentation was similar to the registered trade mark and considered an infringement of the trade mark owner’s exclusive rights.

5.2 Copyright/Database Rights

Austrian Law of Copyright

The Austrian Copyright Act (*Urheberrechtsgesetz*, UrhG) covers works of literature and art, music, photographs, film works, computer programs and databases.

Author’s rights are not registered, they exist upon creation. The right to file an action for injunction protects author’s rights. The courts may impose interim measures of protection to secure an author’s rights or pieces of evidence. In the case of an ascertained infringement, authors are entitled to claim removal of infringing goods from the market, payment of adequate compensation and – in cases of fault – also the payment of damages; ie, loss of profit.

Databases

Databases only enjoy protection if they qualify as a work “as a result of the selection and compilation” of their content. There must be some creative element in the collection, assessment and evaluation of data. Telephone registers, for example, cannot enjoy protection.

5.3 Image Rights and Other IP

Image Rights

The Austrian Copyright Act protects the author of the image (eg, the photographer) as well as the image rights of the pictured person. The Austrian General Civil Code (*Allgemeines Bürgerliches Gesetzbuch*, ABGB) also protects personality rights.

In this context, the Austrian Supreme Court (OGH) recognised in its recent decisions that athletes do not have to accept publication of images of a merely voyeuristic nature or taken

out of curiosity, since such publication infringes the athlete's personal rights.

The Austrian Supreme Court's long standing jurisprudence also refers to the fact that athletes usually have commercial interests in the publication of their images. Sponsoring agreements containing exclusivity rights for specific fields of industry and non-competing clauses are in their vital interest. Therefore, using their image without consent – and without monetary remuneration – infringes their personal rights.

The unlawful use of athletes' images not only infringes personal rights of athletes, but also constitutes a breach of law under the Austrian Act against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb*, UWG). Recent decisions confirm that such breach entitles competitors of the infringer to claim for an injunction.

5.4 Licensing

Licensing Agreements

Licensing agreements are concluded based on private law and copyright law. Sports bodies, which organise sports events and competitions conclude marketing and sponsor agreements and market their own name. The Austrian Football Association (ÖFB) and Austrian Ski Association (ÖSV) are of particular public interest and use their own brands.

Co-operation Agreements

The right to use image and name rights of athletes are of particular importance. Such rights are conferred by marketing co-operations with athletes. They also cover the social media activities of the athlete promoting the brand of the co-operation partner. Image rights and the use of images may also refer to the right to show body tattoos. Obligations that violate public policy are inadmissible and ineffective.

5.5 Sports Data

Athlete Data

Sports associations register and use the personal data of athletes upon their membership registration. Data also cover special categories of data (eg, health data, body weight and height). Therefore, athletes shall give explicit consent to the use of that data. Results of competitions also qualify as personal data; their publication is necessarily of interest to the public and also covered by privacy policy.

Spectator Data

Ticket sales contain General Terms and Conditions also covering the use of image rights (photos, videos) of spectators. Hence, the use and commercialisation of images taken during competition, which show spectators, is lawful.

5.6 Data Protection

Applicability of the GDPR

The Austrian Data Protection Act (*Datenschutzgesetz*, DSG) was thoroughly revised upon the entry into force of the EU General Data Protection Regulation (GDPR). This (EU) Regulation is directly applicable in Austria, like in any other EU member state. Some provisions in the Austrian Data Protection Act that specifically refer to image rights, are of great significance for the athlete's personal rights. Under such provisions, no image and sound recording is admissible in the personal sphere without consent.

In a recent decision against a golf association the Data Protection Authority (*Datenschutzbehörde*, DSB) decided that golf athletes must give consent specifically to the use of images and their publication; the respective clause in the general terms and conditions alone was not sufficient.

6. DISPUTE RESOLUTION

6.1 National Court System

National Courts and Exhausting Internal Dispute Resolution Mechanisms

In principle, Austrian courts – under the general legal framework – also have jurisdiction over disputes relating to sports law.

However, in certain cases national courts will not have jurisdiction unless the parties to the dispute have exhausted any internal dispute resolution procedures required by applicable law or the rules of the respective association or federation, such as, for example, by the Austrian law governing associations (*Vereine*), namely the Austrian Act on Associations (*Vereinsgesetz 2002*, VerG 2002) (see **6.2 ADR, including Arbitration**).

Furthermore, the ordinary court procedures do not apply if the parties have agreed on the decision by an arbitral tribunal (*Schiedsgericht*) (see **6.2 ADR, including Arbitration**). In such case, an action brought before an ordinary national court notwithstanding the arbitration clause may be dismissed.

6.2 ADR, including Arbitration

Alternative Dispute Resolution Mechanisms for Associations (*Vereine*)

Sports clubs in the legal form of (private) associations (*Vereine*) shall be registered with the register on associations (*Vereinsregister*) and shall have a minimum set of rules. Pursuant to Section 3 in conjunction with Section 8 of the VerG 2002, the articles of association must contain a mandatory provision on the settlement of disputes and a mediation body (*Schlichtungseinrichtung*).

If a dispute is not settled internally before the mediation body within a period of six months, each party in dispute may file a claim before an

ordinary national court (*ordentliche Gerichtsbarkeit*).

Recourse to the ordinary courts may be excluded only to the extent that an arbitral tribunal (*Schiedsgericht*) is established pursuant to Sections 577 et seq of the Austrian Code of Civil Procedure (*Zivilprozessordnung*, ZPO).

Alternative dispute resolution as illustrated by the example of the Austrian Ski Association

Sports governing bodies regularly set out their own mediation and alternative dispute resolution rules that must be observed prior to involving the national courts.

In this sense, Article 8 of the Code of Conduct of the Austrian Ski Association (ÖSV) also requires that the internal legal procedure of the association is to be exhausted before the ordinary courts can be called upon.

Court of Arbitration

Under the Austrian Code of Civil Procedure, a valid arbitration agreement or arbitration clause in the articles of association excludes the competence of national courts. In addition, a pending arbitration procedure excludes competence of national courts.

Decisions of arbitration courts (so-called awards) have the same effect as a judgment by an ordinary civil court.

Generally, no appeal to ordinary national courts is possible. Only an action for judicial annulment of the arbitrations' court decision (*Aufhebung des Schiedsspruchs*) to the Austrian Supreme Court can be made in the case of serious defects in the arbitration proceedings or the arbitral award.

6.3 Challenging Sports Governing Bodies

Disciplinary Authority

In Austria, it is recognised that the disciplinary authority (*Disziplinargewalt*) is vested in the associations and federations on the basis of private-law self-administration and, as such, is also subject to judicial review.

Sanctions

Internal rules of sports governing bodies provide for various sanctions and financial fines. Internal bodies and bodies of appeal can also impose fines on parties, who do not comply with the sanctions. As a last consequence, there is also the possibility of a final exclusion from the association.

According to the Code of Conduct of the Austrian Ski Federation, the following penalties in particular can be considered: a warning, a written reprimand, suspension of the payment of costs for training or a temporary exclusion from training, or a ban from competition. In general, when selecting the penalty to be imposed, a comprehensive consideration must be made, which is similar overall to that used when assessing penalties in criminal cases. Decisions on imposed punishments must be made in writing and must not be unfounded. The person concerned shall be given the opportunity to comment orally or in writing on the accusation made, which includes the possibility of consulting a legal representative.

Judicial Review of Internal Sanctions

Parties may challenge decisions of sports bodies by way of an internal appeal and, as a last redress, to an arbitration or an ordinary court, as provided for in the internal rules.

7. EMPLOYMENT

7.1 Sports-Related Contracts of Employment

Relationship between Sports Associations and Players from a Legal Point of View

Depending on the actual structuring of the relationship between the sports associations and players, the latter may be classified as employees, freelancers or independent contractors, each of which is subject to different legal regulations.

In Austria, professional players in team sports are generally considered employees, as they are usually integrated into the organisation of the club and work based on the club's instructions and are thus personally dependent.

The player's personal and economic dependence on the club is therefore a decisive factor when assessing their status. The greater the personal dependence of a player on their club and the more they earn, the more likely it is that the player qualifies as an employee.

Players' Contracts

The Austrian Football Bundesliga provides a model player's contract, which contains certain contractual clauses relevant for regulating the relationship between clubs and players, including those on the personal rights and obligations of the individual player. As a model contract, it is, however, non-binding and can be adapted depending on the individual needs.

Salary caps, however, do not exist in Austria.

7.2 Employer/Employee Rights Austrian Labour Law

Regarding professional players in team sports who are qualified as employees, Austrian labour law is applicable to their employment relationship with the clubs without restriction. However,

this repeatedly leads to unsatisfactory results, since Austrian labour law does not usually take into account the specific circumstances that a sports profession may entail, which is why some labour law provisions are hard to enforce.

For example, normal daily working hours are often exceeded in the sports industry, rest breaks cannot be observed due to competitions and the termination of sports contracts repeatedly raises legal questions. In addition, divergences between the clubs' provisions and statutory labour law cannot be ruled out. Attempts have been made to resolve these discrepancies by means of a separate Sports Labour Act, which, however, has not (yet) progressed beyond a draft stage.

However, a small milestone in this regard was made with the collective agreement between the Austrian Football League and the Austrian Trade Union Federation, which takes into account the specific circumstances of the sports industry and creates legal certainty – at least for football players working for the clubs of the Austrian Football League.

7.3 Free Movement of Athletes **Capping the Number of Foreign Athletes**

Within the EU, professional players are able to compete without any restrictions due to the Bosman ruling of the European Court of Justice (ECJ) in 1995, which granted professional players the customary freedom of movement for workers within the EU.

Due to the steadily increasing proportion of foreign soccer players in the matches of various Austrian soccer clubs as a result of the Bosman ruling, a so-called *Österreicher-Topf* was introduced in the 2004/2005 season, in order to promote the use of domestic soccer players. *Österreicher-Topf* is basically a kind of bonus system, that provides funding to clubs that use more domestic professional players in matches

in the Austrian Bundesliga. In order to participate at least twelve players must appear on the match report who have Austrian citizenship or were registered in Austria for the first time before reaching the age of 18 and are eligible to play for the under-22 national team.

Requirements for Foreign (Non-EU) Athletes

The situation is different for the professional players from non-EU states, as they have to apply for a visa, which allows residence and participation in sporting events. Even though there is a special type of visa for athletes making it easier for them to obtain one, the requirements of the procedure should not be underestimated.

8. ESPORTS

8.1 Overview of Esports **Austrian Esports Landscape**

A study conducted in 2019 showed that 32% of 15–55 year-old Austrians are interested in esports. Among 14–24 year-olds, this figure was as high as 49%. The data shows that esports is already an established activity in Austria, which is growing steadily. This is also reflected in the number of esports teams, with several hundred already existing in Austria. Tournaments and leagues, such as the eBundesliga and the A1 eSports League Austria, promote the spread of esports.

In 2007 the eSports Association Austria (*eSport Verband Österreich*) was founded, which is committed to the social, media, economic and political advancement of esports.

There is also support for esports from political actors. For example, the Federal Office for Positive Predication of Digital Games (*Bundessstelle für die Positivprädikatisierung von digitalen Spielen*, BuPP) of the Federal Chancellery (*Bundeskanzleramt*) supported the national team at

the World Cyber Games, where it won a silver medal.

No Esports-Specific Legal Framework Yet

Esports involves numerous areas of law, such as labour, association and event law. Nevertheless, it is still not clear whether esports falls under the legal concept of sports, as it is not defined by law in Austria.

However, the Austrian federal government has now also recognised that there is a need for specific laws that lay down special regulations for esports. With this in mind, a working group containing representatives from the esports scene has been set up to develop a legal framework for esports.

Rising Economic Importance and Consequences of the Coronavirus Crisis

Esports is becoming more and more interesting for numerous companies, sponsors, events, teams and individual esports-athletes. In addition, there is increasing movement in the start-up scene, which sees in esports an opportunity for developing innovative business solutions.

Lastly, the esports scene has not been successful in avoiding the coronavirus crisis either. Numerous events had to be cancelled or held without spectators due to the pandemic. At the same time, however, sports have shifted from traditional sports venues – due to lockdown restrictions – to the digital world. While COVID-19 has prevented larger esports events, it has also brought esports further popularity.

9. WOMEN'S SPORT

9.1 Overview of Women's Sport

Women's Sport Landscape

In Austria, the sports landscape is still often male-dominated. Just four female presidents

are represented in the 60 Austrian sports associations (*Sportfachverbände*). Moreover, a massive gender-pay gap can be seen in the field of sports. In addition, the media coverage is in imbalance. Only 4% of sports reporting deals with the sports events of women.

Increasing Importance of Women's Sport

To increase the amount of women in the sports decision-making processes, the Austrian government took further steps by implementing a Gender-Trainee-Programme. In the first round, 15 women were selected to start the four years on-the-job training to later work as coaches, managers or in higher positions. This trainee programme should give women a strong perspective and foster equality in sports.

Furthermore, the Austrian government implemented a Sport Austria Advisory Committee Women in Sports (*Sport Austria-Beirat Frauen im Sport*).

The importance and priority of the topic can also be seen in the fact that “gender diversity” was also the topic of the Sport Austria Summit 2021, an expert conference that covers one important question for the future in the field of sports every year.

Moreover, the sports association “*Wir Frauen im Sport*” (in English: Us Women in Sports) tries to build up a network for women in sports, establishes concepts for improvement and provides experts for advisory.

Another sports association dealing with gender equality and gender mainstreaming is 100% SPORT- *österreichisches Zentrum für Genderkompetenz im Sport*, an association established by the Austrian Ministry of Sports.

Finally, the esports scene is also committed to the topic of diversity. In 2018, the Esports Asso-

ciation Austria brought on board a gender representative and women's spokesperson. Her tasks are to raise awareness of the issue of diversity in gaming and esports and to provide important educational work in the media and the wider esports scene.

10. NON-FUNGIBLE TOKENS (NFTS)

10.1 Overview of NFTs

The NFT Market in Austria

NFT hype has also reached Austria and is already spreading to very different areas and business fields.

In 2019, for example, the Austrian Post (*Österreichische Post*) created the first NFT stamps, which could be bought in their online shop.

One of the most famous examples of NFTs in Austria comes from the art scene. The Belvedere Museum in Vienna is offering Gustav Klimt's famous painting "The Kiss" in the form of NFTs. The museum divided a digital version of the painting into 10,000 parts. Each part was "mined" to an NFT and offered for sale – each for EUR1,850. On the first day of "mining" 1,730 NFTs were sold and the museum has raised EUR3.2 million.

NFTs in Sports

NFT hype has also spilled over into Austrian sports.

The Austrian national football team is also now issuing its players as NFTs. Other football teams, such as Rapid Vienna, are currently thinking about issuing NFTs.

Opportunities and Risks Associated with NFTs

NFTs can lead to a new source of income for sports associations and clubs as well as for the sports business in general.

Despite the ground-breaking innovation and attraction of NFTs, there are also numerous risks associated with them, including legal ones. There are various unresolved legal questions, for example regarding financial obligations, copyright classification, and challenges under civil law, criminal law, and data protection law.

Furthermore, there is a significant risk of cyberattacks and online fraud.

One further problem that cannot be ignored is the NFT industry's unquestionably negative impact on the environment. There is already a lot of discussion about the massive electricity use of NFTs.

11. REGIONAL ISSUES

11.1 Overview of Regional Issues

Brexit still has an impact on athletes and sports clubs in Austria especially when it comes to the transfer business. For example, since Brexit, new transfer regulations are in place in football, this, of course, also affects Austrians and Austrian clubs when they want to process transfers to or from the UK.

Although the consequences for the transfer business are often at the centre of discussions surrounding Brexit, there are a variety of other legal and contractual consequences that impact the sports business as well. Following Brexit, the UK is no longer bound by a range of EU legislation such as the rules with regard to trade marks and with regard to the freedom of movement.

bpv Huegel is a people-driven law firm that stands for a dogged commitment to clients' interest, excellence, integrity and solidarity. It strives to provide the highest standard of advice in each core area. As a result, it has been one of the leading providers in all areas of commercial law and tax law for decades. The firm's interdisciplinary team of experts is the first point of contact for top athletes, sports associations and clubs, companies, financial investors, sponsors, event organisers, media companies and sports agents. It advises clients on player

transfers, marketing deals, media rights, in tax matters and succession planning, as well as on all other commercial transactions. Furthermore, it also represents clients in disputes before courts and arbitration tribunals. bpv Huegel has close contacts and excellent working relationships with key regulators and government agencies in the Republic of Austria, as well as at EU level and across the CEE. Further members of bpv Legal are found in Budapest, Bucharest, Prague and Bratislava.

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Trends and Developments

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How the Sports Community in Austria Is Responding to the War in Ukraine

The world of sports turned on Russia after the country declared war on Ukraine, invading the neighbouring country in February 2022. The reactions of the sports community were mixed. Events (such as the Champions League final, which was supposed to take place in Saint Petersburg) have been moved and changed in response to Russia's invasion of Ukraine. Many federations banned Russian and Belarusian athletes from competing; for example, they were banned from the Beijing Winter Paralympics 2022.

Furthermore, sponsorship activities of Russian companies with European sports clubs have come into focus. The Russian natural gas company Gazprom, for example, is also a partner of Bundesliga football club FK Austria Vienna – with a co-operation officially aimed at the team's youth sector. The so-called “Young Violets”, FK Austria Vienna's team in the second highest division of Austrian football, wear the Gazprom logo on their jerseys. The club receives a seven-figure sum for this. In the wake of the war in Ukraine, the Austrian club reacted by removing the Gazprom logo from its jerseys.

The economic and legal consequences of this war cannot yet be predicted. However, the dramatic events will certainly have legal implications for existing agreements, especially sponsorship and event contracts.

COVID-19 and Mandatory Vaccination

The COVID-19 pandemic has had a far-reaching impact on sports and presented a variety of challenges. In order to counteract the effects of

the pandemic, several regulations have been issued by the Austrian Minister of Health, which have contained special provisions for both amateur and professional sports. While professional sports competitions were permitted under certain conditions even in times of lockdown (for example, without any fans and spectators), general entry into sports facilities for the purpose of hobby sports (for example, in fitness centres) was, from time to time, prevented. This had a huge economic impact on the sports sector.

Furthermore, Austria passed a law making vaccinations against COVID-19 mandatory by February 2022, which will presumably play an important role from a labour law perspective. However, the vaccination obligation has been heavily criticised and has recently been suspended for a limited period of three months. At the end of this period, a new evaluation will be carried out in order to determine whether further suspension is necessary.

New Federal Anti-Doping Act 2021

The new Federal Anti-Doping Act 2021 (*Anti-Doping-Bundesgesetz 2021*, or ADBG 2021) entered into force on 1 January 2021 and implements the (new) World Anti-Doping Code 2021. In brief, the new law brings the following changes.

The ADBG 2021 sets out new provisions regarding the protection of whistle-blowers (Section 1 paragraph 2 No 11, ADBG 2021). Whistle-blowers are to be better protected against intimidation in the future.

The ADBG 2021 strengthens the protection of persons in particular need of protection

(*besonders schutzbedürftige Personen*) (Section 2 No 4, ADBG 2021). Such individuals will benefit from a lighter penalty regime for anti-doping violations.

Amateur athletes (*Freizeitsportlerin/Freizeitsportler*) are now explicitly defined (Section 2 No 14, ADBG 2021). Although amateur athletes are also subject to anti-doping violations, the law treats them less strictly. In the case of violations of the anti-doping regulations, a lesser penalty than for professional athletes can be applied and publication of the doping abuse can be waived.

Further provisions address sanctions for the use of abusive substances outside of a sports competition (Section 2 No 28, ADBG 2021). This is in response to concerns that the use of, for example, THC, cocaine, ecstasy, and heroin is more of a social problem than a sports problem. If the athlete can prove that the use of the substance with abuse potential took place outside of competition and was not related to athletic performance enhancement, the standard suspension is three months. A further reduction (up to one month) can be obtained if the athlete completes a rehabilitation programme.

With the ADBG 2021, the “International Standard for Education” comes into force and thus important measures are set in terms of doping prevention (Sections 3 and 24 paragraph 2 No 13, ADBG 2021).

The ADBG 2021 has established an athletes’ commission (Section 5 paragraph 2 No 5, ADGB 2021) in an effort to better involve active athletes in anti-doping work. Half of its members are women.

It is now possible to amicably settle disputes between the athlete and the authorities (Section 19, ADBG 2021).

Finally, the ADBG 2021 provides changes with regard to the inclusion of teams in the national testing pool (Section 9 paragraph 5, ADGB 2021) and the physician’s duty to provide information under certain circumstances, if the administration of drugs containing prohibited active substances or the use of prohibited methods is required (Section 27, ADGB 2021).

Review of the Legal Framework for Esports

Since the Austrian federal government emphasised – also in its coalition agreement (*Koalitionsvertrag*) – that esports has enormous social potential, a working group with representatives of the esports scene has been set up. Since this popular and modern form of sports competition raises many unanswered questions, it is the goal of the federal government to develop a legal framework for esports. It is also planned that esports will be recognised as a sport.

Digitalisation, Cryptocurrencies and Blockchain Technology

In Austria, sports clubs and athletes as well as companies active in the sports business have realised the enormous potential that digitalisation, cryptocurrencies and blockchain technologies have to further monetise fan engagement and attract sponsors in a new way.

Blockchain-based fan tokens, for example, can be used globally, regardless of currencies and country borders, and the technology offers transparency and traceability. Hence, Austrian football clubs in particular, such as SK Rapid Vienna, are currently thinking about the issuance of their players as NFTs to ensure that fans remain connected with the club.

In this context, the co-operation between the Austrian Football Bundesliga and the digital company Sorare is certainly worth mentioning. Together, they have presented the first NFT project in Austrian soccer: there are NFT trading

cards of each player in the Bundesliga. As in the real transfer market, users can buy players in the digital transfer market – here in the form of trading cards – and compete against each other in a fantasy football game.

The Austrian Football Association (*Österreichischer Fußballbund*, ÖFB) has also discovered NFTs for itself. Together with the Austrian startup “*AhoiKapptn!*”, the ÖFB is issuing NFTs with images of the players of the Austrian football national team. The NFTs, which can be purchased and traded using blockchain technology, offer the chance to win unique experiences and rewards such as “meet and greets”, signed match-worn jerseys or a training session with coaches.

Furthermore, Austrian sports clubs and organisations are also considering using blockchain technologies by implementing more secure and transparent ticket exchange markets.

Increased CSR Initiatives

Corporate social responsibility (CSR) is of growing importance in the Austrian corporate world. The discipline assumes that every company, including those involved in sports, should assume social responsibility.

Many sports clubs are doing this and a wide range of initiatives in this area are being launched, from sustainable turf without environmentally harmful plastic to extending the use of facilities to disabled people.

CSR also includes the fight for greater tolerance and against homophobia, racism and the like.

FIFA to Introduce New Loan Regulations

FIFA plans to introduce a new regulatory framework for football player loans. The new regulatory framework will include:

- the requirement of a written agreement defining the terms of the loan;
- a minimum loan duration, being the interval between two registration periods, and a maximum loan duration, being one year;
- a prohibition on sub-loaning a professional player who is already on loan to a third club; and
- a limitation on the number of loans per season between the same clubs and a limitation on a club’s total number of loans per season.

In particular, the limitation on the number of loans will have an impact on football clubs’ transfer business in Austria as elsewhere. Red Bull Salzburg, for example, would currently be affected by the reform.

Ongoing Discussions on the 50+1 Rule

The so-called 50+1 rule has been written into Austrian league statutes and requires that an Austrian Bundesliga football club must hold a majority of its own voting rights in order to compete in the Bundesliga (the first and second highest divisions of Austrian football), thus preventing takeovers by external investors, which are common practice in England and other parts of the world. It protects Austrian football clubs against cases where an investor with deep pockets buys a club, pumps in a lot of money and then withdraws it a short time later, leaving the club to drop down the leagues because they face economic crisis after the investor’s withdrawal.

This rule is, however, the subject of ongoing reform efforts in the Austrian Football Bundesliga, as the question of whether this regulation is compatible with antitrust law or EU law is subject to debate. For this reason, the Austrian Bundesliga is currently considering new concepts on how to regulate investments and on how to reshape the 50+1 rule.

SV Mattersburg: How a Banking Scandal Dragged a Bundesliga Football Club into Ruin

Following the Commerzialbank bankruptcy in the summer of 2020, SV Mattersburg slid into insolvency too. As a result, the football club returned its licence for participation in the Austrian Football Bundesliga. Despite the voluntary return of the licence, it must be mentioned that, due to the above-mentioned developments, SV Mattersburg would not have been able to continuously meet the criteria that a club must fulfil in order to receive a licence for the highest division in Austrian football. SV Mattersburg would therefore not have received a licence anyway.

As for the causes of SV Mattersburg's insolvency, it must be noted that the president of SV Mattersburg, Martin Pucher, was also the head of Commerzialbank Mattersburg. Thus, the club was absolutely financially dependent on the bank. Since the bank allegedly committed several financial crimes by falsifying balance sheets and issuing fictitious loans and subsequently had to file for bankruptcy, SV Mattersburg had almost no own funds left, which in turn led to the club's insolvency.

New FIFA Football Agent Regulations Expected to Enter into Force this Year

FIFA is currently discussing several proposals for a new legal framework governing agents' activity, which is expected to be approved in 2022. The changes include the establishment of an Agents Chamber to deal with specific disputes, the limiting of agents' licences to natural persons only, the payment of agent fees through a FIFA clearing house, the application of sanctions to clients who work with unlicensed agents and the creation of the Football Agent Working Group (to be composed of representatives of professional football stakeholders and agent organisations recognised by FIFA).

Changes at FIFA level will also have consequences for Austria. The changes will then have to be implemented in the Austrian Football Association's regulations on working with players' agents (*ÖFB-Reglement zur Arbeit mit Spielervermittlern*).

Austrian Football Association Plans Academy Reform

The Austrian Football Association (ÖFB) is currently evaluating its structure in the academy area together with experts from the Bundesliga, representatives of the regional associations and external experts. For example, the ÖFB is also working on a second-highest division in the youth leagues.

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1. REGULATORY

1.1 Anti-doping

An athlete using a prohibited substance would not constitute a criminal offence under PRC law but will only trigger administrative sanctions from the authorities in China. Additionally, Amendment XI to the Criminal Law of the People's Republic of China ("Criminal Law"), which was enacted in 2021, 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. What is more, 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 Prohibited Substance Catalogue, which is substantially similar to the WADA Prohibited Substance List, is jointly promulgated and renewed on a yearly basis by the General Administration of Sports of China (GASC), the Ministry of Commerce (MOFCOM), the National Health Commission of the People's Republic of China (NHC), the General Administration of Customs (GAC), and the National Medical Products Administration (NMPA).

The GASC promulgated the Administrative Measures on Anti-doping ("Anti-doping Measures") in July 2021, as an addition to the Regulations on Anti-doping promulgated by the State Council (last amended in 2014, "Anti-doping Regulations"). Under the authorisation of the Anti-doping Regulations and the Anti-doping Measures, the GASC promulgated numerous anti-doping rules, which were eventually unified and amended to formulate the Anti-doping Rules, last promulgated by the GASC in Decem-

ber 2020, which are consistent with the principles of the World Anti-Doping Code ("Code"), and cover doping violations, inspections, investigation, testing, waivers, hearings, penalties for athletes and entities, dispute resolution and other rules in connection with anti-doping.

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

The China Anti-Doping Agency (CADA), an internal organ of the GASC, is the national anti-doping organisation in China. Its main purposes are to participate in the formulation of anti-doping catalogues, organising and implementing doping inspections and testing, organising and implementing investigations and hearings on doping violations, and constructing and managing doping test labs. CADA promulgates an annual work report on anti-doping work and doping violations on its official [website](#). According to CADA's 2020 annual report, it prosecuted 31 doping violations in 2020.

1.2 Integrity

According to the Sports Law of the People's Republic of China ("Sports Law"), athletes, coaches, and referees are prohibited from fraud, match-fixing, and malpractice. According to the Administrative Measures for Sports Events ("Sports Events Measures"), match-fixing and gambling on sports events will constitute administrative violations or even criminal offences. Although there is not a specific crime of match-fixing, there are various applicable provisions in the Criminal Law against match-fixing, gambling on sports events, misconduct, bribery or fraud, such as anti-corruption, anti-bribery, and anti-gambling provisions. In 2021, the GASC, together with the Ministry of Public Safety (MPS) promulgated a circular related to

match-fixing and gambling, under which the GASC and MPS emphasised the importance of fighting against match-fixing and gambling on sports events. The GASC and MPS will enforce more serious sanctions against match-fixing and gambling on sports events, which may also constitute criminal offences if the offender is a public servant. For example, in 2012, a number of GASC officials in charge of football, along with a number of football referees, were sentenced to five to ten years of imprisonment for accepting bribes in order to fix the outcomes of football matches. More recently, in 2019, a Chinese snooker player was sanctioned with a life-time ban for match-fixing by the Chinese Billiards & Snooker Association.

1.3 Betting

Betting is prohibited under PRC laws regardless of whether it is related to sports or anything else. 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 the police, instead of sports governing bodies.

1.4 Disciplinary Proceedings

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

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

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

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

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

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

2. COMMERCIAL RIGHTS

2.1 Available Sports-Related Rights

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

Merchandising usually includes the sale of goods related to the name, marks, logos, images, and other intangible property of a club or an athlete. Usually, the club or the athlete will enter into an agreement with the manufacturer

or the retailer, where the club or the athlete will grant the manufacturer or the retailer a licence to design, produce, or sell products embodying the name, marks, logos, images or other intellectual property rights or intangible property rights. The agreement could be on a contingent basis; ie, the club or the athlete is entitled to a share of revenue gained by the manufacturer or the retailer. But as a more usual case, the manufacturer or the retailer will pay a non-refundable but recoupable advance plus a royalty to the club or the athlete.

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

2.2 Sponsorship

Sponsorship is one of the most important funding sources for sports events. Sponsors have great regard for the exposure opportunities provided by sports events. Generally, sponsors are classified into different categories with different rights, for example, sponsors to the league, the event, the clubs or the athletes. They promote their brand by a variety of means, for example, displaying their names, brands, or trade marks on billboards around the court, on the floor, or on athletes' jerseys, titling clubs, or displaying their commercials during halftime breaks or timeouts.

However, the Chinese Football Association (CFA) promulgated a rule in 2020 stating that the name of a football club in CFA Super League, Division A League, and Division B League shall not contain the name of sponsors starting from the 2021 season.

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

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

The key terms of a typical standard contract include:

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

2.3 Broadcasting

The broadcasters for sports events include cable TV and webcasters. Cable TV usually generates profit from broadcasting rights through advertising and webcasters. Since all China TV stations are state-owned entities, they do not

collect subscription fees directly from a public audience. The audience usually pays a very low rate for carriers to use their internet service and the cable TV service is usually bundled with that internet service. In this case, audiences do not usually pay separately for cable TV. Cable TV broadcasters in China exploit their broadcasting rights 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 sport market in China, sports right-holders usually do not have to put in much effort to attract broadcasters. Instead, broadcasters or licence resellers will pitch sports right-holders for exclusive broadcasting licences; and the price of such exclusive licences has increased sharply during recent years. For example, in 2015, China Sports Media paid CFA CNY8 billion for a five-year CFA Super League exclusive broadcasting licence, which was later raised to CNY11 billion for a ten-year exclusive broadcasting licence. By comparison, the five-year bundle for 2007 to 2012 only cost CNY50 million.

3. SPORTS EVENTS

3.1 Relationships

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

such as the right to exclusively organise sports events, intellectual property rights and the right to control the access to the venue.

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

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

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 issue sanctions to their members.

3.2 Liability

Under PRC law, the 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. In addition, according to the Sports Events Measures, the organisers of sports events shall be responsible for the safe operation of the sports events they organise. 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 (GO).

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 the aforementioned regulations, the CFA may suspend or deregister the club's membership. Under such circumstance, the club may not participate in any of the events organised by the CFA, which means all nationwide football games because, as stated in **3.1 Relationships**, all nationwide games for a certain sport can only be organised by the national association for such sport.

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

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

4.3 Funding of Sport

As mentioned in **2.2 Sponsorship**, sponsorship is the main funding stream for sports events. Government agencies will take the lead in organising sports events and provide some preferential policies, such as the specific lane for Olympic vehicles. Specific undertakers will be responsible for the operation, including attracting sponsorships, and co-ordination of the interests among stakeholders. 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

With the successful organisation of the Beijing 2022 Winter Olympics, private equity investment in the skating and skiing industry has become a great hit in China. The GASC promulgated a circular to encourage the development of towns with special characteristics, especially for outdoor skating and skiing. Wanda, a famous real estate investor in China, began the development of a "snow town" in north-east China.

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 those identical with the 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 the sports event itself is not copyrightable. The 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 holder provided that such use is for personal study, research, or appreciation.

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

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

Notable Sports Copyrights Cases

The phenomenal Sina.com v iFeng.com case and CCTC v Baofeng.com were both tried in the first-instance court, the court of appeals, and only concluded by retrial court 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 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.

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 series of high-tech devices are commonly used in sports events and daily training to collect the 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 circumstance.

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

5.6 Data Protection

The GDPR does not apply in China. Instead, China has its own set of data protection laws, which in part reflect the principles of the GDPR. For example, both the Personal Information Protection Law of the People's Republic of China ("PI Protection Law") and the Data Security Law of the People's Republic of China ("Data Security Law") were enacted in 2021. Under the PI Protection Law, personal information (PI) is "any kind of information related to an identified or identifiable natural person as electronically or otherwise recorded, excluding information that has been anonymised." There is also a category called "sensitive personal information", which includes biometric recognition, 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.

6. DISPUTE RESOLUTION

6.1 National Court System

The courts in China have limited jurisdiction over disputes related to sports. As stipulated in the Sports Law, "disputes arising from competitive

sports activities shall be mediated and arbitrated by sports arbitration institutions" and the establishment of such institutions shall be regulated by the central government separately. However, there is no arbitration institution established by the central government.

However, although there is no state-governed arbitration institution, sports associations usually have their own arbitration institutions. Most sports disputes will be submitted to the arbitration institution of the respective sports association (see **6.2 ADR, including Arbitration**). Notwithstanding the above, there are still some sports cases that are heard by national courts. For example, an employment dispute was heard by a trial court in Shanghai in 2020, ruling that the employment dispute was not within the jurisdiction of the CFA and that the club should reimburse the athlete for early termination of their contract. There was also another case heard by a trial court in Beijing in 2020 in which the court sent judicial suggestions to the CFA that it should remove the finality statement in its statutes.

6.2 ADR, including Arbitration

Associations usually have their own arbitration institution and all sports disputes under the jurisdiction of an association will be submitted to its arbitration institution. The statutes of the associations also usually declare their exclusive jurisdiction and finality over sports disputes. For example, the CFA Statutes require all members to submit sports disputes to the arbitration commission of the CFA and all awards made by it shall be final.

6.3 Challenging Sports Governing Bodies

The Sports Law empowers the sports governing bodies to enforce sanctions against their members. Also, the governing bodies usually declare their power to enforce sanctions against

their members and athletes. Typically, the sports governing bodies impose fines, point deduction, revocation of results, ban, revocation 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 only appeal within the association. For example, according to Practice Rules of the CFA Arbitration Commission, challenges to sanctions enforced by the disciplinary committee may be submitted to the CFA arbitration commission for arbitration.

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

7.3 Free Movement of Athletes

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

8. ESPORTS

8.1 Overview of Esports

Esports was first listed in the sports industry catalogue by the GASC in 2019 and later became a formal competition of the Asian Games 2022. The esports industry has been developing rapidly in recently years. According to market research, China's esports market reached CNY147.4 billion in 2020, increased by 29.8% compared with 2019. The total users were more than 500 million in 2020, increased by 5.5% compared with 2019. The total number or users may have been more than 525 million in 2022. According to another research entity, the market may increase to over CNY184.33 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 CNY0.91 billion. The total amount in 2020 was CNY2.3 billion and as of November 2021, the total amount was CNY2.3 billion.

A notable case is 52tt.com's obtaining a USD100 million investment from Matrix Partners China and Orchid Asia. With the increasing number of mobile games and users, and the development of professional clubs, both professional esports and non-professional esports are likely to develop rapidly in the future.

9. WOMEN'S SPORT

9.1 Overview of Women's Sport

Women's sports are developed as equal, if not superior, 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. Statistic indicate that from 2013 to 2020, the number of female athletes over National Grade 2 increased by 141,000, and 480 of them 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 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 AFC Women's Asian Cup last month. Alipay declared that they will pay the team CNY13 million in awards. Women's sports

attracts more and more attention from the public in China. For example, the viewership rate of the Women's Volleyball Nations League 2021 surmounted the figures for the European Cup and the World Cup 2022 qualifiers.

10. NON-FUNGIBLE TOKENS (NFTS)

10.1 Overview of NFTs

NFT is 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. On the one hand, the trading of virtual items is not a new concept in the Chinese market, far preceding the recent boom of the NFT technology. On the other hand, the Chinese government has taken a hard line against private cryptocurrencies. Since 2017, regulators have instituted an outright ban on cryptocurrency exchanges and ICOs in China, and also imposed severe restrictions on the use of cryptocurrencies and relevant trading services. The Interpretation of the Supreme People's Court of Several Issues on the Specific Application of Law in the Handling of Criminal Cases about Illegal Fund-Raising, which was amended in February 2022, further expressly provides that the "trade of virtual currency" as a means of illegal fund-raising may be considered a crime under PRC law. Therefore, NFT virtual collectibles that are offered and traded in a way similar to virtual currencies may also face similar risks.

11. REGIONAL ISSUES

11.1 Overview of Regional Issues

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

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 and intellectual property protection. The members of DaHui's sports practice have developed a repu-

tation as client-oriented, pre-eminent attorneys across the entire spectrum of sports matters. Whether assisting domestic PRC giants in their onshore ventures, or advocating on behalf of global companies in their inbound or outbound 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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Trends and Developments

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Rapid Growth in China's Sports Industry

In recent years, the strength of China's sports industry has grown significantly, the global allocation of sports resources has continued to improve, and the international influence of the sports industry has continued to increase. Statistics indicate that the total market size of China's sports industry has increased from CNY1.71 trillion as of the end of 2015 to CNY2.74 trillion as of the end of 2020, slightly falling from CNY2.95 trillion as of the end of 2019 due to the impact of COVID-19.

Statics indicate that as of the end of 2018, there were more than 4.6 million people working in China's sports industry. The number of legal entities in China's sports industry increased from just over 1,000 as of the end of 2015 to almost 3,000 as of the end of 2019. As of the end of 2020, there were 3.71 million sports venues in the country, with an area of 3.1 billion square meters. Such sports venues include those for basketball, football, volleyball and badminton.

Taking advantage of the Beijing Winter Olympic Games 2022, the winter sports industry has developed rapidly in China. Market research shows that as of October 2021, the number of people participating in winter sports nationwide was 346 million, and the participation rate for winter sports exceeded 24%. In the snow season 2020–21, the number of Chinese winter leisure tourists reached 230 million, the income of winter leisure tourism exceeded CNY390 billion, and the general market size of winter sports was CNY624.65 billion in 2021 and is expected to grow to CNY785.29 billion in 2022.

The sports-related consumer market is also expected to grow rapidly. In 2019, the per capita GDP of China exceeded USD10,000. The huge market demand generated by the nation's rising middle class has led to the growth of the sports industry in China. According to a new survey by Morgan Stanley, 35% of residents choose to play sports games in their leisure time. This is expected to translate into increased consumer demand for professional sports. With respect to the scope of consumption, presently, customers in China are becoming more accustomed to paying for experience-oriented consumption such as fitness centres and on-site game viewing, sports tourism and esports. As competition performances, sports media, winter sports, "smart" sports and other industries continue to mature, new formats and products such as "cloud" competitions, online fitness, smart sports tourism, and online sports training will have an important role in sports consumption.

COVID-19

The development of the Chinese sports market is not without challenges. COVID-19 must be one of the biggest challenges of all. In the past two years, the COVID-19 pandemic has seriously affected the sports industry. Many important sports events were cancelled, such as F1 China, and many games were played in foreign countries, such as the qualification games for the 2022 World Cup. After the suspension of most sports events, China's sports industry has gradually resumed "normal service" recently. The China Football Association (CFA) Super League, China Basketball Association (CBA) League, China Volleyball League and other sports events have returned to normal operation, except there are no spectators. But due to the

adverse impact caused by COVID-19, the value of those sports events decreased sharply, not only because of fewer matches in a season but also because sponsors and broadcasters lack cash. For example, the sponsorship fee of the CFA Super League was CNY618 million in 2019, but decreased to CNY300 million in 2020. In addition, in 2015, China Sports Media paid CFA CNY8 billion for a five-year CFA Super League exclusive broadcasting licence. But due to the COVID-19 pandemic and reduction in games, the contract was revised to CNY11 billion for a ten-year exclusive broadcasting licence. That said, with the successful closing of the 2022 Winter Olympics and the return of economic growth since 2021, it is expected that the sports market will also resume growth, with the potential to soar, in 2022.

Private investment in sports

Private equity investment in the winter sports industry is growing in China. In 2019, the State Council promulgated its Opinions on Promoting the Nationwide Fitness Programme and Sports Consumption to Boost High-Quality Development of the Sports Industry (the “Opinions”). Thereafter, the General Administration of Sports of China (GASC) promulgated the Sports Development Plan for the 14th Five-Year Plan in October 2021. Both of these aim to encourage the development of investments in the sports industry in China, including through state-owned investment funds and private capital, such as private equity investment funds, including establishing a number of private investment funds that specifically target the sports industry. It is expected that the total investment in the sports industry will soar, with the goal of making China’s sports market worth a total of CNY5 trillion by 2025.

Regulatory guidance and IP protection

In their determination to boost the market, the Chinese authorities have also expended great

legislative effort to provide systematic and regulatory guidance and protection to the market and its players. For example, the Administrative Measures for Sports Events was enacted in May 2020, outlining the competent organisers for different sports events, the rights and obligations of those organisers, and liability for violations. Most importantly, it liberalised the administrative procedures for international sports games held in China. Such games, except some special categories of sports, or world class games, now only need to gain approval from provincial level governments instead of from the GASC.

The market also sees strengthened protection for economic benefits deriving from the sports market. In 2020, the Beijing High Court heard two benchmark cases, the Sina.com v iFeng.com case and the CCTC v Baofeng.com case, both at retrial stage, to confirm that sports broadcasting rights are copyrightable and to scrutinise unauthorised use of images or video clips taken from live broadcasting of sports games.

In 2021, the amended Copyright Law of the People’s republic of China (“Copyright Law”) was enacted. The Copyright Law further clarifies that audio-visual works are not limited to motion pictures, episodes, documentaries, and animations, but sports broadcasting images may also be copyrightable. The Copyright Law also clarifies that webcasting is in the scope of broadcasting, and rebroadcasting and unauthorised webcasting also constitute infringement of broadcasting rights.

Anti-doping measures

As a member of the International Convention Against Doping in Sport and the World Anti-Doping Code, China has great regard for anti-doping efforts. The GASC promulgated the unified Anti-doping Rules at the end of 2020, and the Administrative Measures on Anti-doping (“Anti-doping Measures”) in July 2021, to set record-

high anti-doping efforts nationwide. In addition, Amendment XI to the Criminal Law of the People's Republic of China, enacted in 2021, for the first time expressly included doping-related crimes specifically in the sports domain. Now, a person commits a criminal offence when inducing, abetting, or deceiving an athlete to use prohibited substances during important domestic or international competitions.

Extant legal issues and regulatory challenges

However, there are also legal issues in the market that remain to be solved. For example, the current law does not clearly identify the legal relationships between professional athletes and sports clubs. While sports governing bodies such as the CFA tend to provide in their statutes that their own arbitration institutions have exclusive jurisdiction over disputes between professional athletes and sports clubs, such provisions are not without objections. In an employment dispute heard by a trial court in Shanghai in 2020, the court ruled that employment disputes are not within the jurisdiction of the CFA, and the club in question was ordered to reimburse the athlete for early termination of their contract. In another case heard by a trial court in Beijing in the same year, the court sent judicial suggestions to the CFA stating that it should remove from its statutes the statement regarding the finality of its arbitral awards. The court also challenged the authority of the arbitration institution of the CFA because, according to the current Sports Law, a sports arbitration institution shall be set up by the central government, not a sports association (notwithstanding the fact that the central government has not set up any sports arbitration institutions).

As a potential further advance in the sports legal landscape, a draft amendment to the Sports Law of the PRC ("Draft Sports Law") was released in October 2021. The Draft Sports Law outlines the causes of action that may be submitted for arbi-

tration to challenge a sanction of disqualification, cancellation of competition results or suspension of competition made by sports NGOs, athlete management units, and event organisers in accordance with doping management regulations. The Draft Sports Law also states that contractual disputes and other property rights disputes between citizens, legal persons and other organisations, or labour disputes between employers and employees do not fall under the jurisdiction of sports arbitration. The draft also sets the standard for qualified arbiters and the formation of the panel. In addition, the Draft Sports Law stipulates the process for application for cancellation of arbitral awards. If the Draft Sports Law is passed as it is currently written, the chronic disputes over jurisdiction in disputes between national courts and the arbitration institutions of sports-governing bodies, such as the CFA and CBA, can be expected to eventually be resolved, and the market is expected to operate more smoothly.

The potential impact of new technologies

The Chinese market has seen wide application of new technologies revamping the sports industry. For example, it is reported that AI technologies are being used to train Chinese athletes in several kinds of sports ranging from freestyle skiing aerials to Ping-Pong. Big data analytics is also widely used to profile the age groups, preferences, etc, of sports audiences and consumers. The application of new technologies also calls for new legislation; eg, for the protection of personal information and other sports-related data. In this regard, similar to the GDPR, in 2021, China enacted the Personal Information Protection Law of the People's Republic of China and the Data Security Law of the People's Republic of China, both of which will govern the protection of personal data.

NFT has also been a hot topic in the market recently. However, the Chinese market is cur-

rently cautious regarding the application of NFT technologies for sports collectibles. Not only is the technology itself a new concept that is yet to be proved in the Chinese market, but also the risks associated with NFT are significant. Cryptocurrency is subject to strict government scrutiny in China, and if a company offers NFT virtual collectibles that can be traded in a way similar to virtual currencies, it may be considered a criminal act of illegally raising funds in China.

Conclusion

As a quick summary, with the favourable government policies, rapid legislative developments and booming market, the sports law landscape in China, similar to that of other sectors in China, is expected to see vibrant, constant change, and market players are advised to consult with professional legal counsel when facing any legal challenges or uncertainties.

Contributed by: Cloud Li and Chris Beall, DaHui Lawyers

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

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

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1. REGULATORY

1.1 Anti-doping

Doping Sanctions

The use of doping products has not been criminally sanctioned since 1989. However, the detention of forbidden substances, without any duly justified medical reason, remains punishable by one year of imprisonment and a fine of EUR3,750 (Article L.232-25 to L.232-31, French Code of Sport).

On 25 September 2020, the French Council of State confirmed the sanction imposed by the French Anti-Doping Agency on an athlete who had been guilty of tempering with his girlfriend's anti-doping control, Clémence Calvin, by trying "to obstruct, mislead or engage in any fraudulent conduct to alter results or prevent normal procedures from occurring".

Doping Products and Methods

Pursuant to a decree of 28 December 2020, the 2021 list of prohibited substances and methods adopted by the World Anti-Doping Agency (WADA) following its annual review process has been implemented into French law (see L.232-9 French C. of Sport). The decree distinguishes the substances and methods that are prohibited at all times, in and out of competition, those that are prohibited in competition, and those that are prohibited for particular sports. The list is not limited, in order to keep up with the evolution of doping methods. It does not apply to athletes who have a therapeutic use exemption or a duly justified medical reason.

A substance or a method is included in the list when it meets at least two of the three following criteria:

- it has the potential to enhance or it actually enhances sport performance;

- it represents an actual or potential risk to the athlete's health; and
- it violates the spirit of sport.

French Anti-Doping Agency

This independent public authority created in 2006 is responsible for laying down and implementing anti-doping measures regarding athletes who participate in sports competitions., anti-doping controls, analysis of samples, issuance of therapeutic use exemptions, regulation of disciplinary proceedings, advice, and public health protection. Almost 8,000 urine and blood samples were carried out in 2019.

Harmonisation of Laws

French law is being progressively harmonised with the World Anti-Doping Code (see Laws of 5 April 2006, 3 July 2008, and 1 February 2012). In December 2020, the French Minister for Sport submitted a bill enabling the government to take "any measure necessary to ensure the compliance of French law with the World Anti-Doping Code's principles and reinforce the efficiency of the fight against doping".

Under the provisions of the World Anti-Doping Code (Articles 10.1 to 10.8) and of the French Code of Sport (Article L232-23), there are various kinds of sanction for doping violations, such as:

- invalidation (disqualification) of the results in the event during which a doping violation occurred;
- suspension (ineligibility) in case of presence, use, attempt to use, or possession of a prohibited substance or method; and
- invalidation (disqualification) of the results obtained in competitions subsequent to the sample collection or to the commission of an anti-doping rule violation.

In December 2019, Clémence Calvin was sanctioned with a four-year suspension by the French Anti-Doping Agency. Since October 2019, she has also been the subject of a judicial investigation by the public health division of the Marseille Public Prosecutor. An investigating judge has been appointed to investigate, in the context of “a judicial information against X”, the following offences: “acquisition, detention, transport, prescription, offer, and sale” of doping products, as well as “the offer and sale of substances classified as poisonous”.

1.2 Integrity Manipulation Sanction

In addition to the “traditional” criminal texts (corruption, forgery and use of forged documents etc), the Law of 1 February 2012 has enacted two offences of sport corruption (active and passive) in order to ensure the normal and fair conduct of competitions, which are punishable by five years of imprisonment and a fine of EUR500,000 (Article 445-1-1, French Criminal Code). This provision is currently the subject of a Preliminary Ruling on Constitutionality before the French Constitutional Council to check whether it infringes the principle of presumption of innocence.

Ethical Charter

The Law of 1 March 2017 has inserted into the French Code of Sport an obligation for the delegated federations to establish a charter of ethics and deontology in accordance with the principles laid down in the charter issued by the French National Olympic and Sports Committee (CNOSF). This charter is binding upon the licence holders.

For example, the Football Federation has set up a federal disciplinary committee which is competent to decide, in particular, upon incidents of indiscipline, facts relating to the security of an event or moral or ethical infringements.

1.3 Betting

In France, a general principle of the wrongfulness of organised gambling has long prevailed (Law of 21 May 1836). In response to the insistence of the European Commission, France has finally implemented a controlled liberalisation of its online gambling market (Law of 12 May 2010).

The French National Gambling Authority (NGA)

The NGA (formerly the Regulatory Authority for Online Games, or ARJEL) is an independent administrative authority that has been set up with the object, in particular, of issuing approvals to online betting operators, subject to compliance with binding specifications. The NGA decides which sports competitions may be subject to betting and the types of bets that are authorised. In August 2020, the President of the NGA had the opportunity to prohibit bets on a Europa League football match because of serious and consistent evidence of manipulation.

The NGA asks the organisers and operators to inform it without any delay of any anomaly related to the bets placed on one or more phases of a competition (amounts and distribution of bets, unusual or inexplicable changes in odds); a warning system has also been put in place.

Illegal Betting Sanction

Under French law, those involved in sports competitions (athletes, referees, agents, managers, etc) are prohibited from making sports forecasts (Article 131-16, French Criminal Code).

In 2015, the Civil Court and then the Court of Appeal of Montpellier found the Karabatic brothers (famous French handball players) guilty of fraud and condemned them to a two-month suspended prison sentence (final sentence).

Under French law, any online gaming operator is prohibited from having any direct or indirect

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control over an organiser of a sports event and vice versa.

1.4 Disciplinary Proceedings

Federal Regulations

Federations are competent to start disciplinary proceedings against their licence holders who have infringed the law. Pursuant to Article L.131-8 of the French Code of Sport, authorised federations must adopt a disciplinary regulation complying with a standard regulation available in appendix I-6 of that Code. As a result, the disciplinary body of first instance must give its ruling within a maximum period of three months from the start of the proceedings (ten weeks in doping cases), while the disciplinary body in an appeal must give its ruling within four months from the same date, in compliance with the principles of protection of the right to a defence and of an adversarial procedure. The decisions rendered must be reasoned, executed, and then duly notified to the party concerned.

Examples of the above procedure include the exclusion of Mr Aguilar from any official competition by the French Professional Football League following a third warning (decision of 20 January 2021) and the invalidation of the disciplinary sanctions imposed on the members of an association for non-compliance with the principles of impartiality and of public hearing, the president of the association being involved in the debates and in the vote while the persons being prosecuted were mainly accused of having incriminated him by letter (Pau Court of Appeal, 7 January 2021).

The Right to a Second Hearing in Disciplinary Matters

The sanctions pronounced by the disciplinary body at first instance can be appealed within 10–20 days from the date of notification. The appeal does not have any suspensory effect. When the appeal is lodged by the concerned

party only, the challenged sanction cannot be increased.

The decision taken by the disciplinary appeal body can be challenged before the court of the place of residence of the licence holder, which has jurisdiction only after the start of conciliation before the CNOSF (except in doping cases) (R.141-5, French C. of Sport).

2. COMMERCIAL RIGHTS

2.1 Available Sports-Related Rights Exclusive Right of the Organisers Regarding Their Sports Event

Article L.333-1 of the French Code of Sport provides that “Sports federations, as well as organisers of sports events, are the owners of the right to exploit the sports events or competitions they organise”. According to case law, this right covers all business related to the event, including the marketing of licensed products (merchandising).

Control over Tickets Resale

This exclusive right also covers ticketing and the sale of hospitality. It is frequently held that the resale of tickets on the secondary market, without the authorisation of the organiser of the sports event, infringes the rights of the organiser. Article 313-6-2 of the French Criminal Code provides for a fine of EUR15,000 for the sale, and the offer for sale, of “tickets to a sport, cultural or commercial event or to a live show, on a regular basis and without the authorisation of the producer of, the organiser of or the owner of the exploitation rights on this event or show”.

The purchasers of second-hand tickets may be held contractually liable for breach of the general terms and conditions of sale.

The sale and offer of hospitality are also a major issue for the organisers of sports competitions and for sports associations, so as to provide spectators with high value-added services. The provision of hospitality services is an important element of sponsorship contracts and is usually subject to extensive discussions between the parties during the negotiation of contracts.

The sale of derivative products reproducing the brand(s) of the sports association or of the organiser of the sports competition also represents a significant source of revenue. It should be noted that the merchandising activity is regularly assigned, in whole or in part, to third parties, such as equipment suppliers or companies specialised in the manufacture of sports equipment and clothing, through licence agreements.

2.2 Sponsorship

Enhancement of the Sponsor's Image

Sponsorship is one of the preferred sources of funding for sport in France (up to 50%). Sports events and competitions guarantee the sponsors unique audiences and media coverage which can encourage that audience to associate the sponsors' image with such events for advertising purposes. Sponsorship contracts, which are usually concluded for a fixed term, are largely left to contractual freedom and the provisions of ordinary law.

Counterparts

The sponsor is mainly required to pay the sponsored party, whether in kind or in cash. The sponsor then benefits from the right to use the distinctive signs of the sponsored party, in compliance with the contractual provisions (including the graphic charter set out in the licence agreement), some exposure in the stadium or in the sponsored party's institutional and/or commercial communications, hospitality and ticketing rights, etc.

For its part, the sponsored party has the obligation to display and promote the sponsor's name and brand in its communication. In many cases, the complex issue of conflicts between sponsors in relation to their respective areas of exclusivity needs to be resolved. The sponsored party may undertake to participate in some of the sponsor's public relations operations. In any case, it is essential that the sponsored party guarantees the sponsor against any negative publicity, under penalty of termination of the contract (eg, Tiger Woods).

Naming

Sponsorship can also take the form of the "naming" of sports equipment (eg, the Allianz Riviera in Nice or the Accor Arena in Paris) or of sports events (eg, Ligue 1 Uber Eats).

2.3 Broadcasting

Sale of Broadcasting Rights

Broadcasting rights, which are a necessary source of funding, include the broadcasting of competitions on television, either in full or in excerpts, live or deferred, but also the radio rights, broadcasting over the internet and via mobile phone, through video on demand (VOD), as well as on fixed media (including DVD). In order to optimise the valuing of its rights, the organiser – the holder of a property right on its sports event – proceeds to a sale by lot, to the highest bidder.

As an example, the French Football League identified seven lots for the 2020–24 period, of which the first two were the most sought after. Lot 1 consisted of one live match per matchday, broadcast on Sunday evening at 9pm, and one third-choice game as well as two pre and post-match programmes on Sunday evening. Lot 2 consisted of two live matches per matchday, broadcast on Friday at 9pm and on Saturday at 5pm, as well as one pre-match programme on Friday evening.

The sale of rights is usually done collectively and jointly by the federations or the national leagues, in the form of a transparent and non-discriminatory public tender, by lot, for not more than three or four years.

Toll-Services

In most cases, the purchaser is granted exclusive rights in a particular broadcasting mode, which enables it to make its investments more profitable, in accordance with the right to information. To this end, the acquired rights are widely advertised as a loss leader to promote its services more widely, particularly toll-services by subscription. In particular, the purchaser will have the opportunity to exploit the distinctive signs of the sports event, in compliance with the contractual provisions. It should be noted that the TV broadcasting of some events of major importance must be granted to a free-access TV channel (Article L.333-9, French Code of Sport).

3. SPORTS EVENTS

3.1 Relationships

Exclusive Property Right

France has chosen to grant protection to sports events taking place in France in the form of an exclusive property right (Law of July 13, 1992). This exclusive right enables the organisers to control the access to sports facilities, by entering into ticketing contracts with spectators, by subscription if necessary.

The Law of 10 May 2016 gives to the organisers the possibility to refuse or cancel the issuance of access tickets to people who did not comply with the provisions of the general terms and conditions of sale or with the internal regulations relating to the security of the events. Articles L.332-3 et seq of the French Code of Sport also sanction some forms of spectator behaviour.

Journalists' Access

Under the public's right to information, and subject to constraints directly related to the public and the athletes' safety as well as to the capacity of the venues, journalists, and staff of written or audio-visual information companies enjoy free access to the sports venues (Article L.333-6 French Code of Sport).

3.2 Liability

Liability(ies) of the Organiser

The organiser may be held civilly liable in cases of damage caused to participants or spectators, whether on a contractual grounds (breach of safety obligation or of information obligation) or on the ground of tortious liability under ordinary law (Article 1240, French Civil Code).

If necessary, the organiser may try to limit/exclude its liability by relying on a case of force majeure, the liability of a third party, or the fault of the victim. However, case law tends to reject clauses excluding or limiting the organisers' contractual liability in the event of a breach of safety obligation, such clauses being in addition presumed unfair with respect to consumers.

The organisation of a public sports event in an unauthorised venue is punishable by two years of imprisonment and a fine of EUR75,000 (Article L.312-14, French C. of Sport).

Criminal Liability of the Athlete

An athlete may be criminally liable for manslaughter (Article 221-6 French Criminal Code) in the case of the death of a spectator or, under Article 221-19 of the French Criminal Code, when a total incapacity for work for more than three months is caused by "clumsiness, recklessness, inattention, negligence or failure to comply with an obligation of prudence or safety imposed by law or regulation". The offence of endangering the life of others may also be considered (Article 223-1, French Criminal Code).

4. CORPORATE

4.1 Legal Sporting Structures

There are two types of sports bodies in France: sports associations and sports companies.

Sports Associations

Pursuant to Articles L.121-1 and L.131-2 of the French Code of Sport, sports associations and sports federations must be set up in the form of associations, in accordance with the provisions of the law of 1 July 1901 (except for sports associations having their headquarters in the departments of Haut-Rhin, Bas-Rhin and Moselle applying the Alsace-Moselle Civil Code).

The set-up of a sports association is subject to some provisions of the ordinary law (corporate purpose, managers, statutes, obligation of declaration to the prefecture in order to have legal personality, etc) and relies on two documents: the statutes and the internal regulations.

Some conditions of special law may also apply.

- For the purposes of approval, a federation must have adopted (i) statutes guaranteeing democratic functioning, (ii) a disciplinary regulation in accordance with the standard regulation provided for in the French Code of Sport, and (iii) a special disciplinary regulation relating to anti-doping.
- A federation may be “delegated” if it has been approved and created for the purpose of organising the practice of a single sport or of related disciplines; its internal regulation must, in particular, provide for the publication, before the start of a sports season, of an official calendar of the competitions that it organises or authorises.
- In the event of the creation of a professional league managing professional activities in the form of an association which is a “subsidiary” of the federation, Article R.132-1 of the

French Code of Sport provides for the conditions that must be met.

- In order to be approved and to benefit from state aid, a sports club set up in the form of an association must adopt statutes guaranteeing the democratic functioning of the association, the transparency of its management and equal access by women and men to its governing bodies, the rights of defence in disciplinary proceedings and the absence of any discrimination in the association’s organisation and activities.

The affiliation of the association to an approved sports federation constitutes an approval. Otherwise, the association cannot participate in sports competitions organised by the federation.

Sports Companies

In accordance with the provisions of Article L 122-1 of the French Code of Sport, any sports association affiliated with a sports federation, which usually participates in the organisation of paid sports events that provide revenues that exceed a threshold set by decree in Council of State or which employs athletes whose total remuneration amount exceeds a figure set by decree in Council of State, constitutes a commercial company governed by the French Commercial Code.

The amounts of the revenues, or of the remunerations, above which a sports association is required to create a commercial company are set respectively at EUR1.2 million and EUR800,000 (Article R.122-1 of the French Code of Sport).

The relationship between the sports association and the sports company is governed by an agreement that has obtained a prefectorial approval (Article R 122-8 of the French Code of Sport).

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Historically, sports companies were set up in one of the following forms, each of which having to adopt standard statutes: one-person sports limited liability company (EUSRL), sports-related public limited liability company (SAOS) or professional sports public limited liability company (SASP).

The SASP has for a long time been the sole corporate form that was of interest to private investors, as this structure allowed them to take full and complete control and be remunerated by profit sharing.

Since 2012, sports companies can also be set up in a “traditional” form of limited liability company (SARL), public limited liability company (SA) and simplified joint stock company (SAS).

It is important to note that, in accordance with Article L 122-7 of the French Code of Sport, the same private individual cannot, exclusively or jointly, control or exercise any determining influence on several sports companies whose corporate object relates to the same discipline.

4.2 Corporate Governance

Corporate Governance

The law of 1 July 1901 relating to associations does not impose any specific way of managing on those associations.

The statutes can therefore freely determine the organisation chart. In general, an association is composed of a general assembly (in charge of general policy) and a board (composed, for example, of a president, a secretary, and a treasurer) for the association’s daily management.

Sports federations have a certain degree of autonomy in the choice of their governing bodies (for example, choice of a board of directors and a president, or a supervisory board and a management board). Pursuant to appendix I-5 of

the French Code of Sport, however, the federation will have to set up a supervisory commission for electoral operations, a medical commission, and a commission of judges and referees.

Professional leagues must, for their part, be managed by at least one governing body, the composition of which is provided for in Article R.132-4 of the French Code of Sport.

Managers’ Personal Liability

This liability can be disciplinary, civil, and criminal.

Disciplinary liability arises from the affiliation of the sports association with the involved sports federation. In the case of a breach of the federal obligations, a prior conciliation before the French National Olympic and Sports Committee may be brought, before the federation uses its disciplinary power against the manager.

The manager can also be held civilly liable (either non-contractual liability in the case of a dispute with one or more members of the association, or contractual liability in the case of a breach of their obligations in acting as representative).

The manager can be held criminally liable only if their direct or indirect participation in the offences is established.

Control Bodies

In accordance with the terms of Article L 132-2 of the French Code of Sport, the federations, which have set up a professional league, create a body, with an independent discretionary power, authorised to refer matters to the competent disciplinary bodies and whose missions are:

- to ensure the administrative, legal, and financial control of sports associations and companies that are members of the federation or of the professional league, or that are

applying for membership in the federation or in the league;

- to ensure the financial control of sports agents' activity; and
- to ensure the control and the evaluation of projects for the purchase, assignment and change of shareholders of sports companies.

It should be noted that when a sports association or company is required to have its accounts certified by an auditor; it shall forward the auditor's report on its annual accounts to that body without delay.

Direction Nationale de Contrôle de Gestion

The most noteworthy example is that of the National Directorate of Management Control (*Direction Nationale de Contrôle de Gestion*, or DNCG), hosted by the French professional Football League and responsible for monitoring the accounts of professional football clubs in France.

After a review of the situation of these clubs, the DNCG may take sanctions regarding:

- a club's size (eg, partial or total ban on recruiting new players, controlled recruitment with limitation of the estimated budget or of the estimated payroll, etc); and
- a club's participation in competitions (downgrading it to a lower division, ban on accessing the higher division, or exclusion from competitions).

4.3 Funding of Sport

General Principles

Sport funding in France can be both public and private, with an important distinction between amateur sport (which depends heavily on public funding) and professional sport (which is mainly based on private investors).

Public Funding

Public funding of sport is mainly based on the collection of various taxes and levies, whether directly or indirectly, on sports events.

There are for example some levies related to sports betting (eg, levies on *Française des Jeux* or on online betting companies), or the contribution on the assignment of broadcasting rights for sports events to a television service (Article 302 bis ZE, French General Tax Code).

Public funding of amateur sport

Amateur sport is mainly based on public funding (ie, aid from the State and from local authorities), which is divided between, on the one hand, national agreements on objectives (concluded between approved associations and the Ministry of Sports) and, on the other hand, the actions of the National Agency for Sport (*Agence Nationale du Sport*).

Created in 2019, the purpose of the National Agency for Sport is "to define and achieve common objectives in terms of development of sports practice in France and of high level as well as of high performance, particularly in view of the Olympic and Paralympic Games in Paris in 2024".

The purpose of this Agency is thus to develop sports practices, by supporting projects aimed at developing access to sport for everyone throughout France and overseas, by stimulating new dynamics related to sport.

Public funding of professional sport

The legal regime for the funding of professional clubs is provided for in Articles L.113-1 to L.113-3, and L.122-11 of the French Code of Sport. These texts only apply to groups composed of a sports association and a sports company.

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In accordance with Article L.122-11 of the French Code of Sport, sports companies are excluded from the economic interventionism of local authorities.

However, sports companies may conclude, under some strictly defined conditions:

- grant allocation agreements, pursuant to Articles L.113-2 and R.113-1 of the French Code of Sport; and
- service agreements, pursuant to which local authorities may purchase advertising space and tickets.

Private Funding of Sports Associations

For amateur sport, funding is mainly based on members' subscriptions, on ticketing, as well as on one-off actions such as refreshment bars, lotteries and raffles (under conditions).

Private funding can also take the form of donations, gifts (only for associations declared to be of public utility), and patronage.

Professional clubs funding

There are various sources of funding, such as:

- marketing of intellectual property rights (eg, the valuation of brands and related rights);
- property rights to a sports event and related rights;
- sports betting; and
- sponsorship contracts under which benefits are granted to the sponsor in return for the payment of a specified amount of money (eg, advertising on the jersey, exposure in the stadium and communications, hospitality and tickets, etc).

In team sports, transfer agreements for professional athletes are also a source of revenue.

COVID-19

A decree of 23 August 2021 extended, for the period from 1 January to 29 June 2021, the state aid aimed at partially compensating for the economic impact, on the professional sports sector in France, of general measures taken by the administrative authorities, directly or indirectly prohibiting or limiting the reception of the public in order to deal with the COVID-19 epidemic.

In addition, the government reactivated the partial activity with no remaining costs for structures confronted with capacity limitations and the ban on the sale of drinks and food in establishments in sports venues receiving the public from December 2021 to January 2022. This measure was accompanied by “fixed costs” aid over the same period in the event of a loss of more than 50% of turnover, enabling businesses to benefit from resource compensation for 90% of their operating losses.

4.4 Recent Deals/Trends

In recent years, several professional football clubs have been acquired by foreign investors (eg, Olympique de Marseille, OGC Nice, Girondins de Bordeaux).

The recent takeover of the Ligue 2 club, Estac de Troyes, by the City Football Group (the Abu Dhabi-based owners of Manchester City), has highlighted one takeover trend, that of integrating French clubs into club consortia in order to derive financial and sporting benefits.

NewCity Capital, a private investment company that invested in multiple European football clubs (including the French club of AS Nancy Lorraine), is another example of this multi-club ownership model.

5. INTELLECTUAL PROPERTY, DATA AND DATA PROTECTION

5.1 Trade Marks

Protection through Registration

Filing must be made with a national (the National Institute of Industrial Property in France), regional (eg, European Union Intellectual Property Office) or international (World Intellectual Property Organization) office. The ten-year registration can be renewed indefinitely. The granted protection is limited to products and services identical or similar to those designated in the registration.

Distinctiveness

The criterion for protection by trade mark law is distinctiveness. The sign applied for must therefore neither be necessary, generic, or common to designate the goods or services concerned, nor be descriptive of the goods or services covered, nor consist of the shape of the product resulting from the nature or function of the product itself or giving its substantial value to the product.

Scope of Protection

The exclusive right conferred by registration is not absolute but is governed by the principle of speciality (the monopoly is limited to the products and services that are identical or similar to those referred to in the registration) and the principle of territoriality. With that proviso, the trade mark owner has a monopoly of exploitation on the sign and can therefore oppose any identical or similar use by a competitor if there is a likelihood of confusion. The more well-known a trade mark is, the broader its scope of protection.

For example, the newspaper that owns the “*Bal-lon d’Or*” trade mark opposed with success the registration of the “Golden Balls” trade mark. On 14 May 2019, the Paris Civil Court (*Tribunal de Grande Instance de Paris*) pronounced the inva-

lidity of a “Neymar” trade mark filed in fraud of the famous footballer’s rights.

Olympic Trade Marks

In accordance with the provisions of Article L.141-5 of the French Code of Sport, the French Olympic Committee is the owner of trade mark rights on the signs “*Jeux Olympiques*” (Olympic Games), *Olympiade* (Olympiad) and JO (OG), as well as on the expression “city + year” referring to the previous Olympic Games; the Olympic Committee has obtained, on numerous occasions, the condemnation by courts of companies that used these signs without authorisation.

The delegated sports federations, for their part, hold exclusive rights on the use of the expressions “*Fédération française de*”, “*Fédération nationale de*”, “*Equipe de France*” and “*Champion de France*” followed by the name of their sports disciplines (Article L.131-17, French C. of Sport).

For example, on 18 December 2020, the Paris Civil Court cancelled the “*Championnat de France VTTAE*” trade mark applied for by a sports federation that did not have any approval for that discipline.

5.2 Copyright/Database Rights

Original Work

The author of an intellectual work has, by the mere fact of its creation, an intangible property right that is exclusive and enforceable against all (Article L.111-1, French Intellectual Property Code). Unlike patents or trade marks, the acquisition of a monopoly on the work does not depend on any filing. However, it is up to the author to establish the existence of an original intellectual work (ie, bearing the imprint of their personality).

For example, it was judged that the World Cup trophy or a piece of choreography benefits from

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copyright protection; however, it is firmly judged that a sports event as such does not benefit from copyright protection.

Scope of Protection

Anyone who represents or reproduces, without authorisation, the main characteristics of an original work is guilty of infringement, unless one of the legal exceptions to copyright can be relied on (family circle, private copy, press review, short excerpts, parody, exhaustion of rights, etc). The prerogatives resulting from the author's moral rights (including the right to be named, the right of integrity of the work, and the right of disclosure) may also be infringed.

Databases

Databases can benefit from copyright protection, as long as the criterion of originality is met. Producers of databases also enjoy *sui generis* protection, as a reward for their investments (Article L.341-1, French Intellectual Property Code).

5.3 Image Rights and Other IP

Personality rights (rights relating to the image of a person) are not expressly protected by the law. However, referring to Article 9 of the French Civil Code and on the basis of Article 1240 of the same code, French case law has established the protection of the "right to one's image" as one of the components of "personality rights". "[E]very person has an exclusive right over his/her image, which is an integral part of his/her personality, and which allows him/her to oppose its reproduction".

The national collective agreement for sport clearly provides that athletes can freely assign their image rights. Athletes can also oppose any unauthorised commercial use of their image and bring legal action to stop such infringements and be compensated.

It is up to the athletes to inform their clubs of the various advertising actions they intend to carry out. The employer can also, in the employment agreement, prohibit their employee from concluding advertising contracts that compete with their partners.

It should be noted that the Law of 1 March 2017 has enshrined in the French Code of Sport the possibility for sports clubs to conclude a contract with the athletes they employ to use their associated individual images. The use of the collective associated images of athletes is, for its part, often governed by collective agreements.

5.4 Licensing

Licences

Sports actors frequently use their rights (brand/image) by concluding licences as part of partnerships that provide them with a significant source of revenue. These licences are left to contractual freedom. While, in principle, the existence of a written document is not required as a condition of validity, it may be necessary to make the contract enforceable against third parties, after publication in the relevant Industrial Property Registry.

Legislative Frameworks

Some areas are regulated. For example, communication for betting sites requires the insertion of a warning message; the Evin Law of 10 January 1991 prohibits propaganda or direct or indirect advertising in favour of tobacco and strictly regulates advertising in favour of alcohol. Furthermore, any sponsorship operation whose object or effect would be to propagandise or advertise in favour of tobacco/alcoholic beverages is prohibited.

Trade Mark Assignment by an Association

Assignment must be recorded in writing otherwise it will be considered null and void. The association may assign the distinctive signs it

owns to a sports company. A third party may also acquire these rights.

Any agreement pursuant to which a sports association or a sports company seeks to assign its name, its trade mark or any other distinctive sign, or seeks to grant a licence to use to another legal entity, governed by private law requires a prior filing with the prefecture (Article R.122-5, French C. of Sport).

5.5 Sports Data

Sports Data

Sports data is becoming increasingly important. From a purely sporting point of view, it allows the analysis of athletes' performances in competitions and the assessment of their development, and even the analysis of sequences of games in order to identify possible frauds. The live broadcasting of data and statistics also represents an added value for viewers in the broadcasting of sports events, particularly in football, rugby, tennis or cycling; hence, it can be an additional source of revenue. However, issues around the ownership of sports data are the subject of debate.

Personal Data

Article L.332-1 of the French Code of Sport authorises the automatic processing of personal data regarding persons that are banned from entering stadiums. The use of such data thus contributes to the security of the event.

5.6 Data Protection

In accordance with EU Regulation 2016/679 (the GDPR), the French regulation resulting from the Law of 20 June 2018 is based on several key elements, including the consent of the individual to the collection and processing of their data, the confidentiality and security of the data collected, and the right to erase personal data.

Athletes' and spectators' data is no exception, as their collection requires a positive act of authorisation. Besides, any further commercial use of the collected data must be expressly authorised at the time of collection.

The mission of the CNIL (National Commission on Information Technology and Liberties) is to verify compliance with French legislation in this area.

6. DISPUTE RESOLUTION

6.1 National Court System

The exhaustion of domestic remedies rule requires that the successive remedies provided for in federal regulations be applied for before bringing a case before the competent courts (Council of State, 13 June 1984). Failing that, the judicial remedy is held inadmissible.

A non-remedy clause prohibiting access to the courts would be null and void. Their jurisdiction cannot be ousted.

6.2 ADR, including Arbitration

Conciliation before the French National Olympic and Sports Committee (CNOSF)

Participants in disciplinary disputes (except for those having to do with doping offences) must have made recourse to conciliation before the CNOSF before being able to lodge a jurisdictional, judicial, or administrative appeal. This compulsory preliminary procedure, created by the Law of 13 July 1992, is codified in Articles L.141-1 et seq of the French Code of Sport.

The implementation of a preliminary conciliation procedure does not exempt potential litigants from exhausting all domestic remedies before lodging any judicial appeal.

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Arbitration

It is also possible to use arbitration (Article 1442 et seq., French Code of Civil Procedure), in particular before the CNOSF Sports Arbitration Chamber or before the Court of Arbitration for Sport in Lausanne.

6.3 Challenging Sports Governing Bodies

As a private entity holding a public service concession, a sports federation can enact its own rules. All licence holders agree to be subject to the sanctions set out by their federation in case of violation of federal rules.

The disciplinary commission is a body emanating from the federation whose mission is to pronounce these sanctions (warning, blame, fine, suspension, etc). Internal remedies must be provided for, according to the right to a second hearing in disciplinary matters.

7. EMPLOYMENT

7.1 Sports-Related Contracts of Employment

Employment Contracts

Payers' contracts are most often concluded with clubs; some federations, such as those overseeing football and rugby, also offer federal contracts.

In addition to the conclusion of the employment contract governing the traditional aspects of the contractual relationship, the club is required to conclude a transfer contract involving the purchase of the player's sports rights.

Remuneration

As part of the wage negotiation, the employing club must comply with the legal or conventional minimum as well as with the possible cap on the payroll that may be decided by the relevant

federation (Article L.131-16, French C. of Sport). Although the salary cap mechanism was validated by the Council of State in December 2019, only the National Rugby League currently uses it (which it has been doing since 2010).

It should be noted that in football, UEFA (the administrative body overseeing football in Europe) imposes the so-called financial fair play rule in order to prevent clubs from spending more than the revenues they generate. These provisions have a direct impact on professional clubs, particularly in the decision-making related to remuneration.

Self-Employed Status

When an athlete is not under any legal subordination in the exercise of their activity, they presumed to be free from any employment contract with the organiser (Article L.222-2-11, French C. of Sport). This is most often the case with an individual athlete who performs services on their own account and who bears all resulting gains and losses (tennis, athletics, etc).

7.2 Employer/Employee Rights

Specific Fixed-Term Contract

Given the particularities of their activities, the Law of 27 November 2015 created a fixed-term contract specific to salaried athletes and derogating from the ordinary law; this contractual form is not optional but imposed on athletes. In principle, these contracts cannot either be shorter than the duration of a sports season (12 months) or exceed five years. The provisions of the ordinary law from the French Labour Code remain applicable, except in case of derogations expressly provided for in the French Code of Sport.

Homologation

The regulation of the sports federations or, where appropriate, of the professional leagues may provide for the homologation of the fixed-term

employment contract of the professional athlete and of the coach (L.222-2-6, French C. of Sport).

Athletes' fixed-term contracts are also subject to a special regulation regarding their termination. For example, Article L.222-2-7 of the French Code of Sport provides that "the clauses for the pure and simple unilateral termination of the fixed-term employment contract of the professional salaried athlete and coach are null and void".

7.3 Free Movement of Athletes Bosman Ruling

The issue of international transfers changed radically in 1995 with the European Court of Justice's decision in the Bosman case. Based on the freedom of movement, this ruling put an end to the practice of quotas for foreign players (from EU member states) within the European Union. It is the same for athletes from countries with which the EU has concluded association agreements, as the Council of State reiterated in a decision of 30 December 2002.

The scope of the decision is limited to the EU; France is also bound by the Cotonou agreements, which allow the recruitment of African players without limitation in terms of number. Federations therefore retain the possibility of limiting the number of non-EU players in French clubs (Article 553 of the professional Football Charter). The quotas that then apply are frequently circumvented by using athletes with dual nationality.

Article L.131-16 of the French Code of Sport provides that federal regulations may contain provisions aimed at encouraging the local training of players, in particular by forcing clubs to train a part of their players, regardless of their nationality.

8. ESPORTS

8.1 Overview of Esports

The esports global market exceeded USD1 billion in 2020. France has been contributing for several years to the development of numerous esports disciplines and has the fourth highest number of professional players in the world (around 189). The audience in 2021 amounted to 9.4 million consumers and practitioners.

Entities are increasingly professionalised, as demonstrated by the economic development of structures such as Team Vitality, whose reputation is global.

The development of electronic sport is supported by public authorities. In October 2019, the Ministries of the Economy and of Sports jointly presented their 2020–25 National E-Sports Strategy, which aims at making France the European leader by 2025.

The esports market in France is growing steadily with a turnover of EUR50 million in 2019. Investments in the sector are increasing with EUR61 million euros invested between 2017 and 2019. This development is also reflected in the involvement of high-level professional athletes within these structures, such as Tony Parker and his partnership with LDLC to create, within the TP Adéquat Academy, a training course dedicated to esports.

In France, esports is also strongly supported and linked to the French streaming community, with notorious streamers and/or players who invest in professional structures on various games (eg, Corentin "Gotaga" Houssein founded Team Vitality with Fabien "Neo" Devide; Adrien "Zerator" Nougaret launched its Valorant team "Mandatory"; Kamel "Kameto" Kebir created with two partners (Zouhair "Kotei" and Amine "Prime" Mekri) the Karmine Corp, a League of Legends

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professional team which has one of the strongest fanbases in France).

Traditional professional sport clubs, such as Paris Saint-Germain, also have structures dedicated to esports and host several teams performing on different platforms.

In France, the France Esports Association was created to bring together esports players (players, creators-publishers, promoters) and offer them an efficient collaboration platform. However, to date, this association has not been recognised as a sports federation by the CNOSF.

Benefiting from its third place in the rank of European video game producers and a strong track record in the development of the practice of esports, France is strengthening the framework of professional practice and aims to position itself internationally.

Finally, COVID-19 has necessarily impacted the holding of physical competitions (LANs) all over the world, including in France, as well as, in general, the holding of training sessions during boot camps. For instance, the Trackmania Cup, held in AccorArena and originally scheduled in May 2021, has been postponed to 4 June 2022.

Streaming of online events grew steadily in 2021. On 27 January 2022, a peak audience of 221,000 people on Twitch was reached during the game between Solary and Karmin Corp on League of Legends.

9. WOMEN'S SPORT

9.1 Overview of Women's Sport

In France, sports practice, and particularly team sports, is gradually becoming more feminine, rising from just under 15% in 2000 to over 38% in 2020. This democratisation of collective sport

is accompanied by a growth in women's sports fans (12.3 million in 2021) and in the commercial revenues generated by it. In 2021, cumulative revenues from media rights, sponsorship, and sporting events reached EUR293 million (EUR286 million in 2016) and could jump by 89% to a projected EUR552.7 million in 2026. The organisation of global sporting events, increased sporting performance, and increased media coverage are key indicators of the strong development of women's sport.

The Organisation of World Sporting Events

The Women's Rugby World Cup in 2014, which saw the French team finish third in the tournament, gave rise to television audiences averaging 1.5 million viewers, with a peak of 2.1 million viewers. This trend was confirmed on 20 November 2021 with the women's rugby match between the French team and New Zealand (29-7) in front of 1.9 million viewers (19.8% audience share) with a peak of 2.5 million.

According to FIFA, the 2019 Women's World Cup, watched by 1.12 billion people worldwide, was a great success, particularly in France, with an average stadium attendance of 21,756 per match. In terms of national audiences, the French team's games attracted an average of 9.9 million viewers over five broadcasts; ie, 44.6% of audience share. Furthermore, the match between the French team and the USA (ie, the future winners), attracted 10.7 million viewers (50.7% audience share) and set a new audience record for women's sport. Encouraged by the enthusiasm generated, the French Football Federation has officially applied to host the UEFA European Women's Championship in 2025.

From 24 July to 31 July 2022, the first edition of the Tour de France for Women will be held, a cycling road race that will take place over eight stages and be labelled by the UCI World Tour for Women. Zwift, a global online fitness plat-

form, will be the presenting partner for the first four editions of the race, which will be called the “*Tour de France Femmes avec Zwift*”. Other partners committed to this race, notably LCL (yellow jersey) and the Leclerc group (polka dot jersey). In addition, France Télévisions will broadcast the competition.

Increased Sports Performance

World champions for the second time in 2017, European champions in 2018, gold medallists at the 2020 Summer Olympics, the French women’s handball team is one of the nation’s most successful sports teams. These performances helped to improve the national handball championship. Indeed, the first naming contract in women’s sport was concluded in 2019 for three seasons between the *Ligue Féminine de Handball* (LFH) and the Butagaz group concerning the women’s first division championship. Created in 2009, the LFH aims to develop and professionalise women’s handball and has increased spectators by more than 160% in ten years.

The Olympique Lyonnais (OL) women’s team developed in 2004 has been one of the main vectors for the growth and professionalisation of women’s football in France. French champions 14 years in a row from 2007 to 2020, the Lyon women have also won the European Champions League on seven occasions. The last final won by Lyon in 2020 against Wolfsburg was watched by 1.1 million viewers (4.9% audience share). These achievements are a great showcase for women’s football, which is the team sport with the most female members in France (200,000 in 2020). Since then, Paris Saint-Germain also invested in the development of a women’s top-tier team.

In 2019, the French group Arkéma acquired title sponsorship rights for the French Women’s Division 1 Championship for a sum of EUR3 million

over three years with the objective of developing and structuring women’s football.

10. NON-FUNGIBLE TOKENS (NFTS)

10.1 Overview of NFTs

Interest in NFTs continues to grow, but only 8% of French people know exactly what they are. Moreover, a disparity within the French population exists between the 18–35 age group, where 45% want to invest in NFTs, compared to only 15% of their elders. Legally, NFTs are considered digital assets according to Article L. 54-10-1 of the French Monetary and Financial Code. These cryptographic certificates for digital works have already turned the art market upside down and are now tackling the sports industry.

NFTs and the Sports Industry

Founded in 2018, French start-up Sorare offers a fantasy football game in which players buy, sell, trade, and manage a virtual team with player cards, digitally. Sorare directly negotiates agreements with clubs and federations to be able to exploit the image of the players under official licence. Sorare raised EUE598 million in September 2021 and is now valued at EUR4 billion. Several professional sportsmen have invested in the start-up, including André Schürrle, Gérard Piqué, Sergio Ramos, Antoine Griezmann and Eugénie Le Sommer. With more than 200,000 active users, sales of NFT Sorare cards have risen from EUR26,000 in December 2019 to more than EUR190 million for the year 2021. The company wants to expand into other sports and duplicate the same game principle. The founders estimate that the global market for NFT and fantasy sports could reach nearly EUR90 billion in the future.

Professional football clubs have also entered the NFT market, such as LOSC, which has put

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four rings on sale to commemorate the club's four championship titles and a virtual ticket. In addition, Uber Eats, naming partner of Ligue 1, launched a collection with Olympique de Marseille of unique digital artworks featuring five of the club's players combined with a pizza order. In association with a Parisian artist, PSG also unveiled its first NFTs in the form of virtual figurines in the club's colours, the "Lucky Buddy", a portion of the proceeds from the sale of which will go to support the PSG endowment fund.

Opportunities and Risks of NFTs

NFTs reach a young population whose main objective seems to be the expected future profits from speculation. To this end, there are many tutorials or guides to making lucrative investments in the Sorare game. Recently, the card featuring Borussia Dortmund's Norwegian striker Erling Haaland was bought for EUR609,000.

However, as more and more projects are created, there is a risk that the bubble will burst and most NFT projects will collapse.

11. REGIONAL ISSUES

11.1 Overview of Regional Issues

As the United Kingdom benefited from a transitional period during which the country remained subject to European Union regulations, Brexit has only been effective since 31 December 2020.

From now on, the country is no longer a member of the single market and British athletes are considered as non-EU recruits. Conversely, transfers of French athletes have been made more complicated by the requirement to obtain a points-based work permit (Governing Body Endorsement) and by the rule limiting to three the number of foreign players under 21 years old who can be recruited per transfer window and per club.

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NFALAW brings together a team of lawyers with a very high level of expertise in the fields of sports, intellectual property, competition, distribution and consumer, labour and corporate law from its base in Paris. More than 30 years of daily practice in civil, commercial, administrative and regulatory proceedings enables NFALAW to assist its clients in all aspects of their business, from operational risk analysis to resolving pre-litigation and litigation. NFALAW's re-

sourceful and collaborative team is made up of professionals who are not only specialists in the given area of law but who also understand their clients' businesses. They put this knowledge and understanding to work every day to advise, assist and defend their clients, who include professional football and basketball teams, professional sports leagues, and organisers of sports events, as well as the French National Olympic and Sport Committee.

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FRANCE LAW AND PRACTICE

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Trends and Developments

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Doping: Duration of Suspension Extended by the Administrative Judge

In France, the *Conseil d'Etat* (France's highest administrative court) has challenged the reduction of a sanction pronounced against a cyclist by the French Anti-Doping Agency (*Agence française de lutte contre le dopage*, or AFLD) and extended it.

During the 2018 Tour of Guiana, one of the participants had undergone a doping test. The analysis revealed the presence in the athlete's body of mephentermine and phentermine, prohibited substances classified as "non-specified".

In a decision dated 17 December 2018, the first instance anti-doping disciplinary body of the French Cycling Federation (FCF) had sanctioned the rider with a four-year ban from participating in the sports competitions it organises.

However, based on the provisions of Article L. 232-22 of the Code of Sport, the AFLD took up the case.

Thus, in a decision dated 7 October 2020, the AFLD Sanctions Committee reduced the duration of the cyclist's suspension to two years, extending its scope to competitions organised by all delegated or approved sports federations.

Under the terms of Article L. 232-23-3-10 of the French Code of Sport, the AFLD has the power, using a specially reasoned decision, to reduce the duration of the ban imposed, provided that the particular circumstances of the case justify it in the light of the principle of proportionality.

To characterise these special circumstances, the AFLD emphasised in this case the rider's ignorance of the doping nature of the substances in question, his young age, his lack of anti-doping education and the "strong influence" of his coach, who had recommended the use of the disputed medicine.

However, the President of the AFLD referred the matter to the High Administrative Court to obtain the annulment of the decision of the Agency's Sanctions Committee.

In a ruling handed down on 7 February 2022, the *Conseil d'Etat* upheld the claimant's arguments, extending the cyclist's suspension to four years.

The high administrative court considered that the Sanctions Committee had committed an error of assessment by basing its decision on these various elements to reduce the duration of the suspension while, at the same time, it extended its scope beyond the events covered by the FCF alone.

Stop for Sports Agents' Lawyers

The Paris Court of Appeal has just ruled in favour of sports agents in a decision dated 14 October 2021 in which the judges annulled Article P. 6.3.0.3 of the Internal Regulations of the Paris Bar Association, which allowed lawyers in the capacity of sports agents to put players and clubs in contact with each other.

Since the 1970s, the legal profession has continued to evolve and expand its field of activity. The activity of sports agents was authorised by the Law of 28 March 2011, which inserted an

Article 6 ter into the Law of 31 December 1971 authorising lawyers to carry out this function in competition with sports agents.

In addition, Decree No 2016-882 of 29 June 2016 opened up the possibility for lawyers to engage in ancillary commercial activities known as “derogatory activities”, by amending Article 111 of Decree No 91-1197 of 27 November 1991.

Deliberation of the Council of the Paris Bar Association of 2 June 2020 created a new Article in the Internal Rules of the Paris Bar under number P. 6.3.0.3, which provides that:

“The lawyer may, in the capacity of sports agent, carry out the activity of bringing together, for remuneration, the parties interested in the conclusion of a contract either relating to the paid exercise of a sporting or training activity, or which provides for the conclusion of a contract of employment having as its object the paid exercise of a sporting or training activity.”

Sports agents strongly challenged this provision, considering that lawyers could not carry out such an activity. Similarly, for the French Football Federation (FFF), the French Rugby Federation and the French National Olympic and Sports Committee, this provision clearly contradicted several provisions of the Law of 31 December 1971 on the profession of the lawyer and was also contrary to Article L. 222-7 of the French Code of Sport, which reserves the right to engage in the activity of a sports agent solely to holders of a licence issued by a delegated sports federation.

As a result, the FFF decided to refer the matter to the Public Prosecutor’s Office, which, on 10 July 2020, filed an action for annulment of the decision of the Paris Bar Council adopting Article P. 6.3.0.3.

In a judgment dated 14 October 2021, the Court of Appeal noted that the combination of the provisions of the law of 28 March 2011 and Article L. 227-7 of the French Code of Sport led to the conclusion that:

“Only the sports agent, who must obtain a professional licence to exercise the role of intermediary, has the power to bring together the parties interested in the conclusion of a contract relating to the remunerated exercise of a sporting or training activity, while the sports agent lawyer’s role is to represent, within the framework of a mandate, the interests of an athlete or a club in the conclusion of these contracts.”

On the other hand, the Court of Appeal recalls that putting people in touch with each other constitutes a brokerage activity, which is commercial; and any commercial activity carried out as a principal activity is prohibited for lawyers. A lawyer can only carry out such a commercial activity as an accessory to their main activity of advice, assistance, and representation.

Thus, the Court concluded that the lawyer, in their capacity as agent, cannot carry out the activity of putting players and clubs in touch with each other, which is a principally commercial activity, and therefore cannot intervene, in the phase of drawing up contracts, before the athletes and clubs have first been put in touch with each other by a sports agent.

This judgment will undoubtedly be subject to one or more appeals by bodies representing the interests of the legal profession.

Moreover, the objective of the Law of 28 March 2011 was to protect sportsmen and women through the ethics of the legal profession. One may therefore wonder whether this ruling does not go against the spirit of the law.

Professional Football League and TV Rights

On 19 January 2022, the Senate voted in favour of the bill on the modernisation of sport, which includes the possibility for the Professional Football League (PFL) to create a commercial company to market future TV rights. The law will have to go back to the Senate and on 24 February to the National Assembly.

Indeed, on 9 December 2020, the Ligue 1 and Ligue 2 football clubs voted at an extraordinary general meeting of the PFL to reform the statutes and, in particular, to allow the creation of a commercial subsidiary or to allow the clubs take stakes in a company in relation to this purpose.

Given the severe financial crisis experienced by the clubs owing to the COVID-19 pandemic and the non-payment by Mediapro of its TV rights instalments, the heads of the professional teams found themselves in a highly complex situation with losses of between EUR600 and 800 million.

As requested by the Ministry of Sport, the elected representatives amended the opening of the capital of the future commercial company of the PFL to a prospective investor to a maximum of 20%.

Furthermore, it is planned that all the PFL's commercial rights will be managed by the future subsidiary of the authority, except for sports betting, which the PFL would have liked to see included. Finally, the presence of the French Football Federation in the governing bodies of the future commercial company has been confirmed.

With the assistance of the advisory banks Lazard and Centerview, the PFL has shortlisted four investment funds from among the ten or so that had submitted an offer on 13 December 2021: Silver Lake, CVC, Oaktree and Hellman and Friedman.

The British company CVC has already reached an agreement with Spain's La Liga in return for 8.2% of the profits from match marketing over 50 years for EUR2 billion.

The PFL, which manages Europe's fifth-largest football league (Ligue 1), is hoping for EUR1.5 billion in exchange for 10% to 15% of the capital of its future commercial company. After Mediapro's failure and the acquisition of TV rights by Amazon, the PFL generates EUR800 million in revenue.

Therefore, this contribution is vital for French football, which is seriously weakened and has no short-term alternative for injecting money.

On the other hand, Canal+ will find out, on 31 March 2022, whether the courts will allow it to stop paying beIN Sports and broadcasting Ligue 1.

Indeed, the two broadcasters are in dispute before the Versailles Court of Appeal because Canal + believes it is entitled to terminate the sub-licensing contract between it and beIN Sports, the initial holder of Lot 3 comprising two matches per day of Ligue 1 until 2024 for EUR332 million per year.

This sub-licence agreement signed in 2020 implies that Canal+ is responsible for paying this sum and broadcasting the matches. BeIN Sports acts as an intermediary for the PFL.

This dispute arose when Mediapro abandoned the TV rights, and Amazon took over 80% of the rights for EUR250 million per season.

In this case, the Commercial Court of Nanterre ordered Canal+ to execute the sub-licence contract provisionally and, therefore, to pay and broadcast the matches.

If the Court of Appeal overturns the first instance order, beIN Sports would be required to broadcast the matches and bear the cost.

Other merits proceedings are underway, particularly against the PFL, to contest the value of Lot 3.

Implementing New Tools against Illegal Streaming of Sports Events

The fight against illegal streaming continues to intensify in France. A bill had been filed before the National Assembly on 5 December 2019, but its examination had to be suspended due to the health crisis. The Law of 25 October 2021 finally provides a mechanism to block platforms illegally retransmitting sports competitions (blocking orders) and a summary judgment mechanism for holders of broadcasting rights to sports events. A new regulator was created to implement these innovative tools: the *Autorité de régulation de la communication audiovisuelle et numérique* (ARCOM), born from the merger between the *Haute Autorité pour la Diffusion des Œuvres et la Protection des droits d'auteur sur Internet* (HADOPI) and the *Conseil supérieur de l'audiovisuel* (CSA).

In doing so, the French legislature struggled with a worrying endemic phenomenon. In the first four months of 2018, the number of pirate internet users who used live streaming services to watch sports programmes reached a record level of more than 11 million users; 17% of French internet users over the age of 15 years are said to consume sports competitions through illegal streaming. However, this illicit offer is cannibalising the legal offer: 45% of illegal live streaming sports content consumers said they had unsubscribed from a legal offer (HADOPI study, December 2020).

More generally, the fight against piracy has become a significant issue, even vital, for the entire audio-visual and film industry. Indeed, the illegal consumption of audio-visual content would generate a loss of revenue of nearly EURO1.2 billion and the loss of 2,650 jobs, to which must be added 408 million euros in lost tax revenue for the French state.

The Law of 25 October 2021, which came into force on 1 January 2022, has been rapidly implemented by the organisers of sports events and their beneficiaries, thereby demonstrating the need that the new tools made available to them have met.

On 20 and 28 January 2022, the President of the Paris Court of First Instance issued two summary orders prescribing prohibition measures to prevent and put an end to the infringement of the exclusive audio-visual broadcasting rights held respectively by BEIN SPORTS and CANAL + for the 2021–22 TOP 14 matches and the African Cup of Nations. These blocking orders will have to be implemented by the various telecommunication operators involved in the procedure within three days of the service of these decisions.

Given these initial judicial successes, there is no doubt that recourse to the provisions of the new Articles L.333-10 et seq of the French Code of Sport should rapidly become widespread, if not commonplace. In the long term, these measures will make it possible to (re)enhance the value of sports events in the best interests of the organisers and sport in general.

Contributed by: Fabienne Fajgenbaum, Thibault Lachacinski, Maxime Vigneron and Valentin Turpin, NFALAW

NFALAW brings together a team of lawyers with a very high level of expertise in the fields of sports, intellectual property, competition, distribution and consumer, labour and corporate law from its base in Paris. More than 30 years of daily practice in civil, commercial, administrative and regulatory proceedings, enables NFALAW to assist its clients in all aspects of their business, from operational risk analysis to resolving pre-litigation and litigation. NFALAW's

resourceful and collaborative team is made up of professionals who are not only specialists in the given area of law but who also understand their clients' businesses. They put this knowledge and understanding to work every day to advise, assist and defend their clients, who include professional football and basketball teams, professional sports leagues, organisers of sports events, as well as the French National Olympic and Sport Committee.

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FRANCE TRENDS AND DEVELOPMENTS

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The logo for NFALAW, featuring the lowercase letters 'nfalaw' in a bold, blue, sans-serif font.

Law and Practice

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1. REGULATORY

1.1 Anti-doping

Doping as a Criminal Offence

Until 2015, doping was only punishable under criminal law if illegal drugs were used. In this case, the unauthorised prescribing and/or trafficking of doping substances could be sanctioned. In 2015, the German anti-doping law came into effect. In addition to covering criminal liability and punishment for possessing, marketing, manufacturing, trading and prescribing doping substances, the law regulates the prohibition and punishment of the use of doping substances (“self-doping”) to obtain an advantage in an organised sport competition. The German anti-doping law covers only specific doping substances, which are listed in the annex to the law. The list includes well-known substances, such as anabolic steroids, growth hormones, and EPO. Several prohibited doping substances are narcotics. If particular narcotics are used for doping purpose, criminal liability under German narcotics law may also apply.

The National Anti Doping Agency

The National Anti Doping Agency (NADA) is the central authority for “clean” sports in Germany. The goal of NADA Germany is to ensure fairness and equal opportunities in sports. As a non-profit civil law foundation, NADA is an independent body. NADA is financed according to the stakeholder model by the German state, sports, and business.

NADA is the competence centre for anti-doping activities in Germany. NADA’s tasks include doping controls, prevention, medical and legal advice, and international co-operation. In this way, NADA makes a significant contribution to upholding values in sports.

Implementation of the World Anti-Doping Code

In 2003, Germany committed itself to national implementation of the World Anti-Doping Code (WADC) requirements, which have been successfully translated into the National Anti-Doping Code (NADC). Over the years, the anti-doping regulations have been revised several times. In January 2021, the current NADC 2021 came into effect.

Jan Ullrich Doping Scandal

One of the most famous doping cases in Germany involved German cyclist Jan Ullrich, the 1997 winner of the Tour de France. In 2006, it was alleged that Ullrich received and used doping substances from the Spanish sports doctor, Eufemiano Fuentes. In 2007, Ullrich retired, stating that he “never once cheated as a cyclist.” In 2012, the Court of Arbitration for Sport (CAS) found Jan Ullrich guilty of anti-doping rule violations and retroactively banned him with all results gained since 2005 wiped from his slate. In 2013, he finally admitted to using blood doping during his career.

The Ban of Claudia Pechstein

During the World Championships in Hamar, Norway in February 2009, the most successful German speedskater, Claudia Pechstein, was accused of blood doping based on an abnormal level of immature red blood cells. After an oral hearing, the ISU Disciplinary Commission (DC) found Pechstein guilty of an anti-doping rule violation (blood doping) and banned her for two years. She was the first athlete to receive a suspension based not on a positive drug test, but on irregularities in her blood profile. Pechstein denied that she had doped and appealed to the Court of Arbitration for Sport (CAS) in Lausanne, claiming that she has an inherited condition that explains the abnormal measurements. The court confirmed the ban in November 2009, finding no evidence for an inherited condition in the expert

testimony provided by Pechstein. Pechstein also unsuccessfully challenged this ban in front of German civil courts and the European Court of Human Rights (ECHR), claiming the arbitration process had been unfair.

1.2 Integrity

National Law to Ensure Integrity

In 2017, the offences of sports betting fraud and manipulation of professional sports competitions were introduced to prosecute cheating players, coaches, officials and referees. These laws complement the fraud paragraph in the Criminal Code and the offences of bribery and corruption, which only apply to specific cases.

Measures of the German Football Association to Ensure Integrity

The National German Football Association (DFB) monitors betting on matches and engages in match-fixing prevention activities. The DFB has worked together with international (FIFA, UEFA) and national (*Deutsche Fußball Liga*, or DFL) partners to set up several programmes to identify and prevent the manipulation of matches (eg, the “Together against Match-Fixing” project). In addition to comprehensive training and information programmes, the DFB and DFL have also appointed an ombudsman as an independent contact person for anyone who can provide information of actual and planned match-fixing. If players, coaches, referees, and officials have suspicions about match-fixing, they can seek advice from the ombudsman and help prevent manipulation, corruption, and fraud in German football. Moreover, the DFB has the authority to demand that betting providers hand over player data if analysis reveals suspicious betting transactions.

Match-Fixing Scandal in Tennis

In July 2020, several matches of a tennis tournament in Germany were suspected of having been manipulated. The systems of betting pro-

viders reported suspicious betting on individual games in certain sets and on the entire course of some matches. The Tennis Integrity Unit (TIU), which investigates and sanctions cases of betting manipulation in professional tennis, has not yet commented on the suspicious matches for “operational reasons.”

1.3 Betting

Gambling Regulations in Germany

While gambling law is primarily subject to regulation at the level of the 16 German federal states, the Interstate Treaty on Gambling (ITG) covers basic legal requirements for the organisation of all types of gambling across states. After years of legal uncertainty for sports betting operators, new gambling regulations, the ITG 2021, will come into force in July 2021. Despite opening the online sports betting market and largely legalising online sports betting, the ITG 2021 provides for very strict requirements for obtaining a licence to offer online sports betting (including security deposits, advertising regulations, and limitations on player accounts).

National Law on the Manipulation of Sports Competitions

According to the German Criminal Code, the manipulation of professional sports competitions constitutes a criminal offence, irrespective of whether betting was involved or not. Sports betting fraud or the manipulation of matches in professional sports competitions could lead to a fine or a term of imprisonment of up to three years, depending on the actual misconduct involved.

Prevention of Match-Fixing in German Football

According to the legal and procedural regulations of the DFB, players, managers, and officials of the clubs are prohibited from placing bets. This prohibition is also part of the standard employment contract for professional and con-

tract players provided by the DFB, meaning that misconduct may also affect the players' employment relationships. In addition, the regulations of the DFB prohibit match-fixing, which involves any actions of players, managers, officials, and referees to influence the course and/or the result of a football match. The prohibition of disclosure of inside information prevents players, coaches, club officials and referees from disclosing any sports betting-related information that is not accessible to the public. Breaches of these rules constitute unsportsmanlike conduct and will be sanctioned (eg, by sentencing suspensions and fines).

Since 2005, the DFL has co-operated with the Swiss company Sportradar AG to monitor all Bundesliga matches with regard to match-fixing.

Match-Fixing Scandal in 2005

In 2005, Robert Hoyzer, who at that time was referee in Bundesliga 2, admitted that he had fixed German Cup, second division and regional league matches in return for bribes from a Croatian betting mafia ring. Hoyzer was banned for life from any role in football and received a 29-month prison sentence.

1.4 Disciplinary Proceedings

Disciplinary Proceedings: The Example of Anti-doping Rule Violations

All German sports federations are committed to the prohibition of doping to protect players from damage to their health and preserve fairness in sports competitions. In close co-operation with NADA, anti-doping commissions carry out doping tests on a regular basis and perform tasks related to the observance and enforcement of the prohibition of doping and betting in sports. If an anti-doping rule violation cannot be excluded, the responsible anti-doping organisation may initiate disciplinary proceedings against the parties involved. The responsible disciplinary body for carrying out disciplinary proceedings is the body

specified in the arbitration agreement between the athlete and the federation (eg, the German Court of Arbitration for Sport). Consequences for those involved range from fines to suspension and may also include the issuance of provisional measures. The responsible organisation and/or NADA may order a player penalised for a doping offence to undergo further doping tests.

Player Punished for Betting on Bundesliga 2 Matches

In 2016, Ivica Olić, at that time a player for a Bundesliga 2 club, was involved in betting on several second division matches. He was sentenced to a two-match ban and a EUR20,000 fine by the DFB Sports Court. Furthermore, his club imposed an additional fine. The player admitted that he had given his credit card to friends, who bet on matches. The relatively small penalty was justified by the fact that there were no signs of match manipulation. The "Betradar", an early warning system against match manipulation, which was introduced after the Hoyzer scandal in 2005 (see **1.3 Betting**), reported no irregularities. In addition, the fact that the bets were not placed on the player's own club might have contributed to mitigating the accusations.

2. COMMERCIAL RIGHTS

2.1 Available Sports-Related Rights Commercial Rights

Especially (but not exclusively) for professional sports leagues and sports events which do not generate the majority of their revenue through broadcasting fees, alternative commercial rights are of mayor importance. Thus, the focus on ticketing, match hospitality and merchandising is still growing and is not only an important way to maintain a relationship with fans and supporters but also ensures important revenues for the clubs.

Various clubs and the DFL are incubators of tech start-ups in sports to promote technical development and generate additional sources of revenue.

Ticket Enforcement

Even though selling event tickets is not an offence under German criminal law, the secondary market for tickets raises different legal issues. Generally, reselling tickets breaches the ticket contract terms and conditions and, furthermore, can raise issues with regard to German competition law.

Merchandising

Clubs' merchandising has been significantly expanded and professionalised in the last decade. Merchandising does not only mean selling team shirts but exploiting the trade marks and the reputation of the clubs in the most lucrative way. The authors of this chapter provide legal advice and actions to prevent and prosecute the illegal use of trade marks by third parties without letting that enforcement (both in court and out of court) have a negative influence on the relevant club's reputation and public relations.

2.2 Sponsorship

Classic and Modern Types of Sponsorship

Sponsorships in sports are an attractive investment for companies to enhance and promote their brand and products. The recent developments from static brand placements to LED walls and virtual overlays give countless opportunities to create an attractive and catchy presentation of brands and products. In addition, social media (eg, Instagram, TikTok, Clubhouse) provide a fast-moving channel for emotional sponsorship integration with enormous potential reach.

Sponsorship Agreements

Sponsorship agreements are tailored for all different types of sponsorship deals (eg, main sponsorships, equipment supplier contracts,

league partnerships and athlete sponsorships). Besides the standard elements, sponsorship agreements provide a detailed description of the rights which the right-holder grants to the sponsor, such as trade mark usage, TV visibility, naming rights, partnership events, and social media appearance. Often, sponsorship deals are designed as barter deals, so that the sponsor's consideration is not provided in money but in goods or services.

2.3 Broadcasting

Broadcasting Rights

Broadcasting rights in Germany are sold through a public tendering. The big sports leagues in particular (eg, the Bundesliga) sell different kinds of packages that allow the buyers to exploit the product at certain times (eg, live or rebroadcast), through certain channels (eg, tv, radio, mobile) and in a certain forms (eg, a complete live match or short highlights). In this context, the right-holders always have to walk the thin line between maximum exploitation (through, for example, maximising the number of kick-off times) on the one hand and keeping the product attractive to fans and spectators on the other.

No-Single-Buyer Rule

After a decision of the German Federal Cartel Office in the middle of the last decade, it is no longer allowed, under German antitrust law, to assign the live broadcasting rights for all matches of a competition (eg, the Bundesliga) to only one single buyer. This rule is meant to avoid tv monopolies and to ensure product improvements that are beneficial to consumers.

3. SPORTS EVENTS

3.1 Relationships

Householders' Rights and Contractual Access Rights

There are no proprietary rights to a sports event under German law. However, organisers do have the householder's right, which is part of or derived from the ownership of the grounds and buildings of the sports venue where the event takes place. It gives the organiser the power to deny anyone access to the site or to expel anybody from it and is only restrained by access rights that any individual has obtained by contract. So, the respective contracts with spectators and the media, etc, specify in detail the terms and conditions for access to the site and also sanctions for non-compliance. As it is impossible for organisers to negotiate every single contract and it is therefore necessary to use standardised terms, the legislation on general terms and conditions applies.

In some cases (a prominent example is the DFL) the organisers produce the footage themselves and the media only receive the final TV signal, rather than access with their own cameras.

Organisation and Management

How sports events are organised and managed depends on the size, budget and reputation of the event. In amateur sports or local events, it is common for the organisation to be done entirely by volunteer members of the organising club. In semi-professional sports or regional events, the club board often hires external organisers from, for example, event agencies and supervises them to realise the event in the club's interest. In professional sports or at national or international level, the events are organised by sports governing bodies with special departments or their subsidiaries.

Participation

Participants can register for the event themselves following a call for entries by the organiser. The organiser then checks whether an entrant meets the requirements, if any are specified. Or, for some high-profile events, a personal invitation or nomination will be required. In most cases, the organiser will register the event with the relevant governing body and apply the official rules for sporting competition in the event and delegate the disciplinary process to the governing body. Participants agree to this by registering for the event or by explicit contract.

3.2 Liability

Liability of Sports Event Organisers

Sports events organisers do have to fulfil public safety obligations (*Verkehrssicherungspflichten*) on the grounds and in the buildings of the sporting location. This means, the organiser is obliged to minimise risks to, in particular, the physical integrity of participants and spectators. This includes but is not limited to protective measures against injuries caused by the sporting actions (eg, safety of tracks and fields for participants, or protective fences against the risk of balls or rackets flying into the public).

As the organiser will usually have contractual relations with anybody in the sports venue the liability will also result from those contractual obligations.

Liability Limitation

A limitation of liability is possible by contractual agreement between the organiser and their respective counterparty (participant, spectator, media, etc).

But liability for damage to life and limb, health and physical integrity cannot be excluded in general terms and conditions, and neither can liability for gross negligence or intent. Individual agreements could potentially cover these issues

but are regularly impossible for factual reasons. So, liability is only excluded for ordinary negligence and financial damages in most cases.

If the event is cancelled for any reason and the spectators have already paid the entry fees in advance, the organisers have to refund them whether they were responsible for the cancellation or not (as in the COVID-19 pandemic).

Liability of Athletes

As athletes and spectators do not have a contractual relationship, athletes can only be liable for tort. As tortious liability requires at least simple negligence, it must be considered that the athlete will regularly be allowed to rely on the organiser's public safety measures and does not really have to think about the safety of spectators. Liability between opposing athletes is excluded in dangerous sports (including contact sports such as football) if the damaging action was legal under the rules or only a simple breach of the rules.

Safety from Violence and Disorder

There is a borderline between inside and outside the sports venue regarding the safety from violence and disorder. Inside the stadium, venue, etc., the organiser is responsible for spectator safety and therefore engages security firms; outside it is a task of the state police. State police will only enter the sports venue if the situation is escalating or there is a high probability that it will. There is ongoing discussion as to whether organisers have to bear the costs of state police operations that are challenged by violent groups of spectators.

4. CORPORATE

4.1 Legal Sporting Structures

Origins in Amateur Sport

The original legal form of sports organisations is the registered association (*eingetragener Verein*, e.V.). This applies to professional and non-professional sports clubs as well as to sports governing bodies. The legal form of an association offers several advantages over partnerships or corporations:

- simple formation (no minimum share capital);
- no personal liability of members (but rather of the board);
- no accounting or publicity obligations; and
- possibly, tax advantages due to non-profit status.

Associations are basically democratically structured. There is no owner or shareholder, no distribution of profits to members (only remuneration to employees) and – usually – all members (for governing bodies: clubs; for clubs: natural persons) have the same rights.

These advantages lose their attractiveness the more professionally oriented the club or governing body is and the more it is dependent on developing extensive economic activities to maintain its high-level sporting performance.

Professional Sport

Therefore, in the professional area, subsidiary capital corporations of the clubs are often founded, which then take over the game operation and/or certain marketing activities. Legal forms can be the limited liability company (*Gesellschaft mit beschränkter Haftung*, GmbH), stock company (*Aktiengesellschaft*, AG) or limited partnership with shares (*Kommanditgesellschaft auf Aktien*, KGaA). This enables profit-oriented, professional corporate management and the integration of investors. The various types of capital corpora-

tions are then subject to the legal requirements that apply to the respective legal form in general and also outside of sports.

Football

The so-called 50+1 rule of the DFL states that there has to be a registered association (e.V.) that acts as the parent company and holds 50% plus one vote in the subsidiary capital corporation. It thereby limits the maximum share of investors to 50% minus one vote (GmbH, AG) or requires legal forms that exclude the investor from influencing the executive management (KGaA). Exemptions to this are granted only very rarely and are tied to high requirements.

4.2 Corporate Governance

National Law

National law does not provide a specific corporate governance code for sport. On the part of the state, the requirements resulting from the legal regulations for the respective corporate (legal) form apply. The obligations for the acting persons (representative bodies) also essentially result from the legal regulations applicable to the chosen legal form. So, there is no difference between sports clubs and non-sports corporations.

Sports Governing Bodies

However, corporate governance requirements do arise from the licensing procedure of the sport governing bodies and leagues. Clubs wishing to participate in a sports league must, in addition to their sporting qualifications, also prove their economic capabilities and, to this end, have their financial situation and planning as well as certain contractual relationships revealed and audited. This is to protect the conduct of match play throughout the season and the integrity of the competition.

Insolvency

Even if the sport governing bodies are actually primarily concerned with *avoiding* club insolvencies, they can provide in their regulations for the insolvency of a club to be penalised in a special way. In the top three football leagues, for example, a deduction of nine points is regularly imposed; in the leagues below, the insolvent club is automatically relegated to the next lowest division at the end of the season.

4.3 Funding of Sport

Professional v Amateur Sports

While the professional clubs in the popular sports are mainly financed by their own commercial activities, the less popular sports and amateur sports benefit from government or other public or private subsidies and members' fees.

The sources of income for professional sports clubs include, in particular, ticketing and hospitality, sponsorship, licensing, merchandising and media marketing. Fan bonds and investor participation offer further possibilities to generate the necessary funds in a crisis or before special investment measures.

Distribution of Money

There are several solidarity mechanisms put in place by the governing bodies to take some of the money from professional sports to fund amateur and semi-professional sports. This happens not only between the upper and lower leagues within the same sport, but also between different sports. For example, the German Football League Foundation also supports young athletes from other sports.

Government funds are either allocated directly by government agencies to sports organisations within their area of responsibility, or distributed to athletes and clubs within the governing body systems. Special sources of state revenue for sport promotion are state lotteries. Also worthy

of note are the opportunities for athletes to be accepted into sports support groups of the German Armed Forces and the police.

COVID-19

COVID-19 has had a harsh impact on the funding of both professional and amateur sport. Professional clubs lost their revenues from ticketing and hospitality, as well as some of their sponsorship revenues. It was vital for professional sports that scheduled events could take place even without spectators but be broadcast by the media. The amateur clubs who don't have media broadcasting revenues and must bear in addition a loss of members and membership fees are eligible for special COVID-19 government funds.

The Federal Ministry of the Interior and for Home Affairs has extended its assistance programme for professional sports organisations affected by COVID-19. The updated programme has been in force since 24 February 2022. The goal of the programme is to mitigate financial losses in ticket revenue and other losses associated with the COVID-19 outbreak. To this end, the maximum permissible subsidy limit for further subsidies was raised to EUR2.3 million, and a subsequent approval option for ticket revenue shortfalls was created.

4.4 Recent Deals/Trends

The so-called 50+1 rule (see **4.1 Legal Sporting Structures**), which limits the participation of investors in football clubs to minority shareholdings, is repeatedly the subject of discussion. Other than narrow exceptions, which are linked to particularly high requirements, all football clubs must be majority-controlled by one club.

At the international level, this restriction is partly seen by clubs as a competitive disadvantage compared to clubs from Spain, Italy, France, and England, which have more extensive possibilities for attract external investors.

On a national level, it is argued that taking on investors is the only way for smaller clubs to compensate for the additional income of the big clubs from participating in international competitions.

On a legal level, the discussion is mainly around whether the scheme is a restriction of competition in violation of antitrust law. So far, however, it has stood.

5. INTELLECTUAL PROPERTY, DATA AND DATA PROTECTION

5.1 Trade Marks

Especially in the emotional context of professional sports, trade marks represent values, tradition and identity and need to be protected. Market players need to register of all types of trade marks – such as word marks, picture marks and design patents – and enforce those trade mark rights, including through cease and desist letters, interim measures and proceedings at the German Patent and Trade Mark Office (DPMA).

The landmark case for trade mark protection in sports is Arsenal FC v Reed ruled by the European Court of Justice (ECJ, C-206/01 – Arsenal Football Club). The ECJ decided that printing the logo of a football club on shirts does create the impression that the shirt is offered by the club itself or at least by a contractual partner of the club and, therefore, constitutes a trade mark infringement.

5.2 Copyright/Database Rights

The German Copyright Act (*Urhebergesetz*) is the centrepiece of a reliable legal system for the protection of intellectual property.

The scope of protection of databases under the German Copyright Act depends on whether the

data base reaches a certain level of creativity (Paragraph 4 Section 2, Copyright Act) or merely constitutes a scientific database that contains plain, unadorned data (eg, in chronological or alphabetical order) (Paragraphs 87a et seq, Copyright Act).

5.3 Image Rights and Other IP

The image right and its exploitation derive from the fundamental right of informational self-determination. In principle, the use and/or display of another person's images require the consent of that person. However, the "German law regulating art and copyright questions" (*Kunsturhebergesetz*) allows exceptions if that person is significant for contemporary events, which usually applies to famous athletes. In the event of an infringement of an image right (or other IP) by a third party, the rights-holder has the usual claims for injunctive relief, information, and damages.

5.4 Licensing

Generally, professional players assign their IP and the general right of personality (including their image right) to the club in the context of their employment relationship in order to allow the club to use these rights for centralised marketing.

5.5 Sports Data

Data usage and the corresponding data protection requirements have become increasingly important in the 21st century. Using the available data about athletes for analysing and enhancing performance is crucial for modern, professional performance analysis. Furthermore, clubs and other organisers of big sports events aim to collect as much data as possible about their fans and visitors to ensure the perfect event experience and to monetise this data with commercial partners.

5.6 Data Protection

GDPR and BDSG

The General Data Protection Regulation (GDPR) and the German Federal Data Protection Act (BDSG) are the two relevant statutes guaranteeing lawful processing of data in Germany. Performance analysis, online appearances (including social media), fan communication and direct marketing are a few of the many examples that raise data protection issues.

Transparent Fans

Modern opportunities to collect and analyse a vast amount of data about fans and spectators of sports events make it possible for clubs and other event organisers to maximise profits (eg, by offering tailored products to customers or selling the data to commercial partners that use it for personalised advertising). This concept of the "transparent fan" underlines the tension between the maximum exploitation of the "new gold" and compliant behaviour under German and European data protections laws.

6. DISPUTE RESOLUTION

6.1 National Court System

General Jurisdiction of National Courts

In general, national courts have jurisdiction over all disputes, including sports disputes. However, civil procedure law requires courts to respect an arbitration agreement between the parties. National courts are precluded from hearing the matter if the arbitration agreement is valid.

Exhausting Internal Dispute Resolution Mechanisms

An obligation to exhaust governing bodies' internal dispute resolution mechanisms is not enshrined in national law but is commonly implemented by sports governing bodies in their respective statutes, and the regulations for disputes that arise from this internal legisla-

tion. In respect of the associations' constitutionally guaranteed autonomy, national courts will only accept a case after the internal pathway has been exhausted. The legitimating reason is that the claimant has accepted these statutes and regulations as binding either by contract or by membership. Nonetheless, national courts do consider themselves competent in cases of interim relief if exhausting the internal mechanism would take too much time for the claimant to be still able to obtain effective protection from the national courts afterwards.

6.2 ADR, including Arbitration Alternative Dispute Resolution

Contracting parties can agree on mediation or arbitration. Sports governing bodies regularly provide mediation bodies that can be called upon in cases such as employment disputes between the club and an athlete.

The German Institution for Arbitration (*Deutsche Institution für Schiedsgerichtsbarkeit*, DIS) has implemented the German Court of Arbitration for Sports (*Deutsches Sport Schiedsgericht*). However, like any other arbitration court, it is only competent for the case if the parties contractually agree so. The specialisation on sports results, inter alia, from the particular knowledge and experience of the arbitrators.

Arbitration

National courts are excluded from hearing cases if the arbitration agreement fulfils certain requirements, including the arbitrator or arbitration tribunal being an independent third party and not, for example, an internal dispute resolution chamber or mechanism within the sports governing body or being under the decisive influence of the latter. In this situation, the arbitral award is generally binding. It is challengeable before the national courts only if core principles of procedural rules have been seriously violated. This is what former Olympic ice skater Claudia

Pechstein had to experience in her dispute with the International Ice Skating Union before the Federal Civil Court when she tried to bring her claim before the national courts after having already lost her case before CAS.

6.3 Challenging Sports Governing Bodies

Enforcement Power

If a final sporting sanction imposed by a sports club or a governing body is not accepted by an athlete or a club, this usually constitutes a further breach of rules (at least of the rule that declares the sanctions to be binding), which is itself sanctioned with harsher measures. For example, in the case of non-acceptance of a player suspension, the use of the suspended player would thus be sanctioned with a financial penalty for the club. Unpaid financial sanctions could be enforced by deducting points from a club, or relegating or excluding it. As the latter means the reduction or withdrawal of rights and positions that have been, and can only be, granted by the governing body, these sanctions are in a way self-executive. However, it is of vital importance that such a sanction is clearly foreseen in the enforcing bodies' own statutes per se, and in relation to the specific type of infringement as well as proportionate to the concrete infringement in question.

Challenging Decisions

In order to challenge such decisions, it is mandatory that the internal dispute resolution pathway of the respective club or governing body be exhausted. Whether and how the final decision is challengeable itself depends on the situation. If there is an arbitration agreement, national courts are excluded from the matter. If national courts are competent, the scope of review of the decision depends on the status of the decision-making body. While decisions of club tribunals are subject to only limited revision by the courts with respect to their constitutionally guaranteed

autonomy, the decisions of governing bodies' tribunals are almost fully reviewed, which is legitimated by their monopolistic and thus powerful position in relation to the individual club or athlete.

7. EMPLOYMENT

7.1 Sports-Related Contracts of Employment

Employment Relationships in Professional Sports

In professional sports, players are generally considered employees to the extent that they are involved in the organisation of a club in the context of a team sport. The DFL provides a model contract that standardises the relationship between clubs and players. The model contract is intended to be a non-binding proposal that can be adapted to individual needs and must be legally reviewed. In addition to the obligation to refrain from match-fixing and sports betting, the player undertakes to exclusively wear the contractual products provided by the equipment supplier during their activity for the club and allows the club to exploit their personality rights.

Salary Caps

A salary cap for players does not (yet) exist in Germany. In the course of the COVID-19 pandemic, many have argued that the introduction of a salary cap is a necessary imposition. However, salary capping is proving to be problematic due to the prevailing freedom of competition and the free movement of employees in the European Union.

7.2 Employer/Employee Rights

Application of Labour Law to the Relationships between Athlete and Club

In general, German labour law applies to the relationship between athlete and club without any restrictions. However, the following exam-

ples show that the rules applicable to “regular” employment relationships under German labour law may not necessarily suit the characteristics of the employment relationships of professional athletes.

Fixed-Term Employment Contracts in German Professional Football

Because fixed-term contracts circumvent the protection against dismissal, the Part-Time Employment Act only permits fixed-term contracts without a material reason once up to a maximum of two years. Consecutive fixed-term contracts without objective justification are invalid. This regulation was invoked by former Bundesliga goalkeeper Heinz Müller, whose employment contract term, as standard practice in professional football, exceeded the two-year period. While the labour court did not see any objective justification for a fixed-term contract and upheld the goalkeeper's claim, the higher labour court overturned this ruling on appeal, basing its decision on the special features of employment relationships in professional football. An employment contract of indefinite term would increase uncertainty for a club regarding the time period over which a professional football player can successfully be employed (including injuries, changed playing systems and age structure, replacement by better players). While these are reasonable considerations, the court's decision would not stand up to judicial scrutiny outside professional football.

Working Hours of Underage Players

According to the German Youth Employment Protection Act, minors may only be employed until 8pm. If sports events take place after 8pm, underage players may not be part of the game. Despite the unambiguous wording, the trade supervisory authority in such cases applies the exemption regulation of the act, according to which minors are allowed to take part in musi-

cal performances and theatre performances until 11pm.

7.3 Free Movement of Athletes

Capping of Foreign Players

In Germany, the rules regarding the use of foreign players have been amended several times in the past. Since the Bosman ruling of the European Court of Justice (ECJ) in 1995, the use of players from EU countries and UEFA member states has been permitted in unlimited numbers in the German national football leagues due to the free movement of workers. However, professional football clubs are subject to the regulations of the DFL, which specify the minimum number of German-licensed players, players trained in Germany, and players trained at the club.

Requirements for Foreign Athletes

Athletes from third countries (non-EU/EEA) require a valid residence permit for entry and residence, which permits employment. The permit must be applied for in advance. The residence permit for the purpose of gainful employment is generally issued for a limited period and for a specific purpose in accordance with the German Residence Act and requires a concrete job offer and the approval of the Federal Employment Agency (BA). The approval requirement is only waived in the case of professional athletes in licensed (ie, professional) leagues.

As part of the approval procedure, the BA carries out a labour market check, which consists of a priority check and an examination of the employment conditions. The purpose of this check is to prevent adverse effects on the German labour market and distortions of competition caused by the employment of foreign workers. The examination of the conditions of employment covers essential working conditions applicable to an employment relationship (eg, pay and working hours).

8. ESPORTS

8.1 Overview of Esports

In recent years, esports have grown rapidly in popularity in Germany. While it is difficult to estimate the exact number of gamers, esports reaches around 3 million people all over Germany. The most played esports games in Germany are League of Legends, DOTA 2, Counter-Strike: Global Offensive, StarCraft II, and FIFA. A total of 40,000–150,000 esports players are loosely organised in teams, and 60 broader gaming associations exist. The German Esports Federation (ESBD) represents the interests of the organised gaming associations in Germany. Some of the leading esports organisations (eg, SK Gaming GmbH & Co. KG and G2 eSports) and ESL (one of the world's largest league/tournament organisers) are based in Germany. Legal issues that arise in relation to esports include those related to player employment contracts, transfers, sponsorship, and media rights.

In contrast to amateur players, professional players are part of sponsored teams and have extensive contractual obligations to their organisations. In recent years more and more renowned football, handball and basketball clubs have established their own esports teams. The number of professional esports players in Germany is now estimated to be over 1,000.

In January 2022, the German esports league and tournament organiser ESL was sold to Savvy Gaming Group (Saudi Arabia) for USD1.05 billion. ESL will merge with esports gaming platform FACEIT to become ESL FACEIT Group. Savvy Gaming Group plans to invest USD30 billion into ESL FACEIT Group in the next five years.

Despite its rapid growth in popularity in Germany, esports is still not recognised as an official “sport” according to German tax law and to the

German Olympic Committee (DOSB). Teams and clubs still therefore cannot benefit from certain tax advantages and funding, nor can esports become a member of the DOSB.

9. WOMEN'S SPORT

9.1 Overview of Women's Sport

General Development

Sports in Germany nowadays is an activity for everyone and has developed into a mass phenomenon. While 50 years ago, sport was dominated by young men, this has changed enormously over the past years. Sport is able to reach all members of society independent of their sex, age or origin. Women's sports has gained in acceptance and importance over recent years in Germany as it has done so globally. Many German women are extremely successful at international level.

However, there is still a long way to go to reach full gender equality in sport. In 2015, a total of 35.74% of the male and 22.19% of the female population were organised by the German Olympic Sports Confederation (DOSB) through membership in a sports club. Also, the vast majority of the coaches in professional sports are male. For example, only 8% of the coaches of the German team at the Summer Olympics 2021 in Tokyo were female.

Women in Leadership Positions

The share of women in leadership positions in organised sports amounts to one third. This corresponds to the share of women in leadership positions in German organisations generally. A gender quota has applied in all committees of the DOSB since the end of 2014, which states that both women and men must be represented in these bodies, to a level of at least 30% each.

To increase this number, the DOSB creates an annual "Equality Report" about the share of women, men, and persons of different genders in the various fields of action in sport to make grievances regarding the representation of women in leadership positions transparent and open to informed discussion. Another important instrument for better gender equality is the DOSB mentoring programme. This motivates and helps former female top athletes to take on leadership positions after their careers as professional athletes end.

In men's football one of the most important leadership positions was filled by a woman in 2022. For the first time a woman, Donata Hopfen, became Chairperson of the Management Board of the DFL (German Football League). The DFL is responsible for the operating business of the professional leagues of men's football in Germany.

Promotion of Women's Sports by the DOSB

The Department of Gender Equality is an independent department of the Diversity Department of the DOSB, which is part of the responsibility of the chairperson of the board of directors/head of sports development. The Department of Gender Equality deals with the promotion and equality of all genders in sports as well as the resulting fields of action. Their focus is to reduce sexual violence, the promotion of women as coaches/referees, women in leadership positions and gender-equitable media reporting. The Department of Gender Equality organises the annual Women's General Assembly of the DOSB, which is anchored in the DOSB Statutes and has the right to submit a motion to the General Assembly of the DOSB.

Gender Pay Gap in Sports

Just as in wider society, women earn less than men in professional sports. The gap in sport is even bigger. For most top female athletes, sport

is not their main source of income. Not even for the players of the Women's Bundesliga, whereas their male counterparts earn millions. The average player in the men's Bundesliga earns EUR1.4 million per year, whereas women in the women's Bundesliga only earn about EUR12,000. If the German women had become European champions in 2017, the German Football Association (DFB) would have paid a bonus of EUR37,500 per player. The men, on the other hand, would have collected EUR300,000 per player for winning the 2016 European Championship. The gender pay gap regarding bonuses in the football business therefore amounts to 87.5%. In comparison, the general wage gap between men and women in Germany is 21%.

Media Coverage of Women's Sports

The media report significantly less on women's sports than on men's sports. Only 10–15 % of the sports coverage is dedicated to women. Regarding women, sports coverage focusses mainly on individual sports or traditional "women's sports". The only exception is women's football. Other women's team sports are rarely subject to media coverage. The Vice-President and Commissioner for Women and Equality of the DOSB speak of a "Gender-Show-Gap" and emphasise that women receive less money via bonuses or sponsorships mainly because they are much less visible. This lack of visibility is also shown by the fact that 42% of boys aged six to 13 living in Germany could name sporting role models, but only 4% of girls could do so.

The Development of Women's Football and "Strategy 2027"

In 2003, victory in the Women's World Cup by the German national team was subject to huge media and public attention, significantly increasing the popularity of women's football in Germany. Nia Künzer won the Goal of the Year Award, which is awarded by the TV channel ARD each year, with her Golden Goal which had won the

tournament. She remains the only woman to ever win this award.

A big milestone on the way to gender equality in German football was Bibiana Steinhaus becoming, in 2007, the first female referee in Germany to officiate a match in men's football in the Second Bundesliga. She was one of 2,186 female football referees in Germany compared to 78,617 male football referees in Germany.

In December 2021, the DFB-Board adopted four main goals for its "Strategy 2027 – Women in football". These goals are:

- the national teams and clubs of the Women's Bundesliga winning international titles;
- the share of active female players, coaches and referees increasing by 25%;
- the media reach of women's football across all platforms doubling; and
- the share of women in committees and at full-time management levels of the DFB rising to at least 30%.

This strategy affects all areas of women's football from the amateurs up to the professional leagues and the national teams, including grassroots work, communication, marketing, coaching and talent promotion. Some specific measures have already been elaborated and executed.

Bid to host the 2027 FIFA Women's World Cup

Under the claim "Three Nations–One Goal!", the DFB is applying, together with the Belgian (RBFA) and Dutch Football Associations (KNVB), to host the 2027 FIFA Women's World Cup. The DFB would be hosting a Women's World Cup for the second time after the 2011 Women's World Cup. It has not yet been decided when a decision will be made on the venue for the tournament in 2027.

The three female football legends—Silvia Neid (Germany), Femke Maes (Belgium) and Sarina Wiegman (Netherlands) are the faces of the application.

The Women's DFB-Cup

From the 2022/23 season the Women's DFB-Cup ("DFB-Pokal Frauen") is to be marketed independently for the first time. The goal is to gain greater media attention and presence from the first rounds of the tournament up to the finale. For example, the DFB is working on a publicity-drawing concept to generate more attention for this competition.

Media rights strategy

The reallocation of the media rights regarding the Women's DFB-Cup 2022/23, the women's national team and the FLYERALARM Women's Bundesliga 2023/24 is supposed to play a big role in gaining more visibility for women's football. The DFB was already able to increase its reach within the framework of the currently existing contracts. In the 2021/22 and 2022/23 seasons, MagentaSport will broadcast all league matches live. In addition to the broadcast of all FLYERALARM Women's Bundesliga matches on the MagentaSport platform, one match per match day will be presented on free-to-air TV on Eurosport, as in the past. Furthermore, ARD has the right to one additional live match per match day and highlights coverage. In addition, the broadcaster will report regularly and in detail on the Saturday match in the Sportschau and thus integrate the FLYERALARM Women's Bundesliga into its general football coverage in the long term.

10. NON-FUNGIBLE TOKENS (NFTS)

10.1 Overview of NFTs

Overview

NFT market in Germany

The NFT market mainly consists of the trading of NFT tokens, which refer to visual content. Trading takes place via market platforms in cryptocurrencies such as Ether. Other areas of application for NFTs have not been widespread so far and are more likely to be found in niche areas.

Sports organisations and sponsors/brands

NFT's are used by sports clubs and sponsors in various ways. The Bundesliga, for example, has signed a co-operation agreement with Sorare, which runs an NFT-based fantasy league. Brands like Adidas have also started to become active in the NFT market. Adidas has created a redemption mechanism through which buyers can spend their NFTs in exchange for physical products.

Opportunities and Risks

While the profits to be made on the NFT market are currently rising to enormous heights, the market has so far been largely unregulated. Many legal questions and problems are so far only part of a scientific debate. It therefore remains to be seen how the courts will rule on the concerns associated with NFT trading. Discussions about regulation by the legislature have accompanied the market for a long time. While there are considerable potential profits for the companies involved, there are also much greater uncertainties and risks in the NFT market than in established markets.

11. REGIONAL ISSUES

11.1 Overview of Regional Issues

Although many stakeholders feared a serious impact from Brexit for the sports industry, this has not, from the authors' perspective, materialised. Of course, hurdles are higher for foreign football players to, for example, move to the UK, but rules are still manageable. Experience shows that Brexit will not prevent foreign players being transferred to a Premier League club.

In addition, in terms of other sports and wider business, the impact of Brexit has to date not been significant. Maybe this will change in the wake of recovery from COVID-19, once the number of public sporting events increases.

BluePort Legal is a boutique law firm specialising in the areas of sports, media and entertainment with four founding partners and five associates based in Hamburg, Germany. The firm's market-leading sports team has decades of experience in the sector and has been involved in many national and international high-profile matters. BluePort offers legal services to all national and international stakeholders in the world of sports and esports, from clubs, federations, athletes, intermediaries, broadcasters, media agencies and start-ups to venture capital

investors. It advises clients on player transfers, marketing deals, media rights and other commercial transactions as well as in litigation and arbitration matters. The firm's strength is a long-standing market expertise and an in-depth understanding of the industry from a commercial and legal perspective. In the field of media and press relations, BluePort represents athletes, celebrities, agencies and other commercial enterprises comprehensively in litigation and other legal matters against unauthorised media coverage.

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SPORTS
MEDIA
ENTERTAINMENT

Law and Practice

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ALMT Legal see p.136



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1. REGULATORY

1.1 Anti-doping

Doping-related regulations in India are predominantly governed and controlled by National Anti-Doping Agency (NADA). The Anti-Doping Bill, 2018 mandates imprisonment for up to four years and/or fines of up to INR1 million on any sportsperson involved in doping. This particular clause has now been removed after it faced serious objection from the World Anti-Doping Agency (WADA). NADA made certain amendments to the Anti-Doping Bill and tabled it before the ministry and the Indian Olympic Association (IOA) for clearance. The reason for the amendment is that there are certain substances which may be prohibited for consumption by an athlete which may be legally purchased. The criminality extent of the offence will be invoked only in extreme and exceptional circumstances wherein the intent and the motive are proven beyond doubt.

Prohibited Substances

NADA follows the same list provided by WADA with respect to prohibited substances. This is divided into substances:

- prohibited at all times;
- prohibited in-competitions; and
- prohibited in particular sports.

The Role of NADA

NADA was formed on 24 November 2005 under the provisions of the Societies Registration Act, 1860. The prime motive of the Agency is to ensure a sporting nation free from the clutches of doping. Its primary objective is to ensure that it:

- lays down and puts in place anti-doping rules as per the WADA Code and regulations;
- regulates doping-control programmes in various sports across the country at various levels;

- promotes research to create nation-wide awareness about doping and its ill effects;
- runs drug testing programmes at various levels; and
- ensures that all sporting organisations comply with the anti-doping code.

Its headquarters are located in Delhi, India.

NADA works and functions in accordance with the Code and regulations of the WADA. India is a signatory to the Copenhagen Declaration on Anti-Doping and the UNESCO International Convention against Doping.

In the recent past, many sportsperson – in the fields of bodybuilding, weightlifting, wrestling, athletics and even cricket – have been alleged to be involved in consuming banned substances for performance enhancement.

1.2 Integrity

Match-Fixing

Match-fixing has haunted the global sports industry for years and is one of the most pressing issues and concerns in the world of sport. Incidents of match-fixing gives rise to mistrust in the mind of audiences and hence the loss of interest and the viewership of the sport. It also creates a massive negative impact. The Indian cricket world was rocked by a wave of match-fixing allegations in the years 1999–2000. It was one of the most disgraceful periods in Indian sporting history. Cricket is the most-loved sport in India and cricketers are worshipped. The news of match-fixing in cricket matches left a black mark in the hearts and mind of millions of sports lovers across India (and the world).

In 2013, the Indian government presented a draft bill for the prevention of sporting fraud; however, this bill never become a statute. The draft bill did cover the definition of sporting fraud, the accused, and the punishment involved for such

offences. The punishment as prescribed in the draft bill can extend to five years of imprisonment, a fine of INR1 million or five times the benefit derived from the sporting fraud.

In 2016, the RM Lodha Committee told the Supreme Court of India that the Law Commission of India (LCI) should look sternly into criminalising match-fixing in sport. The LCI later agreed and concurred that match-fixing of any kind in sport should be a criminal offence carrying stringent punishment. India is yet to implement a stringent sports law regime for illegal and unregulated betting and match-fixing. In most cases, such situations are dealt with under certain sections of the Indian Penal Code relating to cheating, fraud and criminal breach of trust. The need to have a regulated sports law dealing with all these aspects is an immediate requirement.

Betting

In India, the legal status of betting is not yet dealt with by the judicial courts. To legalise it, the competent courts must first determine the requirement of whether betting is a game of skill or a game of chance. There are many judgments from various courts across India laying down the principle regarding what may amount to a game of skill and what may amount to game of chance and, accordingly, what may fall under which ambit. The Public Gambling Act, 1867, which is the current prevailing specific statute pertaining to gambling and betting, does not specifically provide for regulation relating to online betting. Each state in India has its own specific rules pertaining to betting. A specific statute to cover online betting is also the need of the hour in India.

A cohesive statute for sports law regulation is very important to curb the unregulated betting sector and prevent match-fixing. Several attempts have been made in the past to find a way to tackle these burning issues. The most

prominent of these occurred in 2013, when the draft Prevention of Sporting Fraud Bill was introduced into the Parliament with an intention to curb match-fixing, fraud, cheating and other illegal activities around the sporting world. It proposed stringent punishment and fines for such activities.

1.3 Betting

Betting or gambling is illegal in most of India. But there is no law that makes online betting an illegal activity. It is also difficult to catch internet gambling offenders if the websites are hosted by servers located in countries where betting is legal. See **1.2 Integrity** (Betting) for further details.

Fantasy Sports

The most regulated form of betting India is that of fantasy sports, which are determined to be a game of skill. The court has directed all online fantasy sports platforms must ensure that they provide all the correct disclaimers and acknowledgements to all participants as the same may have huge financial implications for each participant.

The information available on such fantasy sports platforms are mainly individual player statistics and are the ones commonly available in public forums. Certain competent courts of India have passed judgment detailing what amounts to game of skill and what is a game of chance. Accordingly, they have allowed fantasy sports operating as games of skill to continue, subject to certain terms and considerations.

1.4 Disciplinary Proceedings **Doping**

NADA in India has an Anti-Doping Disciplinary Panel and also an Anti-Doping Appeal Panel.

Typically, the process works as follows.

- “A” samples are collected from each player and sent to the lab.
- If the samples test positive for a banned substance, the name of the athlete is decoded as per the adverse analytical finding of their “A” sample.
- NADA will commence its internal review on whether the substance used is banned, what sort of substance was consumed and under what circumstances.
- If the review concludes that there is no positive finding of consumption of a banned substance, the athlete and all other respective bodies and organisations shall be duly informed.
- If the review reveals the consumption of the banned substance, the athlete shall be provisionally suspended by NADA pending the hearing panel.
- An athlete has the right to request the analysis of their “B” sample within seven working days of receiving the notice concerning the adverse analytical finding.
- If the athlete requests “B” sample analysis, NADA contacts the laboratory to schedule a time and date and notifies the athlete of this.
- If there is no request by the athlete to witness their “B” Sample, NADA informs the laboratory to conduct the analysis in the presence of an independent observer.
- If the “B” sample analysis by the laboratory proves negative, the entire test will be considered negative and the athlete and all other respective bodies and organisations shall be duly informed.
- If the “B” sample Analysis confirms the “A” sample adverse analytical finding, a second notice will be served by NADA to the athlete along with a copy to all other respective bodies and organisations asserting the anti-doping rule violation; the Anti-Doping Disciplinary Panel will be also notified along with all documents relevant to the assertion, for disciplinary proceedings to be conducted in

the positive case as per the WADA-compliant anti-doping rules of NADA.

- The athlete will be advised to present their case before the Anti-Doping Disciplinary Panel on the date and time fixed by the panel for hearing.
- During the hearing process, the athlete is given an opportunity to be represented by counsel and interpreter (at their own expense) to establish a basis for eliminating or reducing the sanctions.
- The athlete will have the right to appeal against the decision of the Anti-Doping Disciplinary Panel by lodging a notice of appeal with the Anti-Doping Appeal Panel within 14 days of the decision of the Anti-Doping Disciplinary Panel.

Betting

India has yet to implement a stringent sports law regime for illegal and unregulated betting and match-fixing. See **1.2 Integrity** (Betting) and **1.3 Betting** for further detail.

2. COMMERCIAL RIGHTS

2.1 Available Sports-Related Rights

Sports-related rights in India are mainly restricted to sponsorship rights, broadcasting rights, image rights, merchandising rights, copyrights, trade mark rights, design rights, publicity rights, ticketing rights, hospitality rights, travel rights and data/content rights.

Secondary Ticket Sales

Secondary sale of tickets in India is mainly governed through the official ticketing website for a particular sporting event, though, people do tend to offer and purchase tickets through many secondary websites, when the official ticket domain is sold out. In India, there is no legal restriction against reselling match tickets. There

is a restriction on the transfer of certain types of tickets but not all of them are non-transferable

There have been instances of arrests made by police, notably during the 2011 Cricket World Cup in India, wherein, there were many instances of people selling tickets on various platforms for huge sums. The same was construed by the police to be an offence of black marketing, cheating, misrepresentation and fraud.

However, there have been cases where the police have alleged that reselling of a ticket through an online platform amounts to cheating and fraud and the courts have considered otherwise. This is because the person dealing in the ticket clearly informed the buyer which ticket was being sold and the buyer was aware of the actual price of the ticket and that the seller was selling it for a higher price. The same will not amount to cheating, misrepresentation and fraud.

In India, there are certain states who have taken the steps of implementing state-wide statutes regarding the reselling of tickets through unauthorised platforms.

2.2 Sponsorship

Sponsorship and marketing of brands through sporting events and sporting teams is very prominent in India. The common practice is to be either a sole sponsor or be collectively involved in an event as a joint sponsor, event sponsor, title sponsor, hospitality partner, travel partner, etc.

In most cases, the sponsor for a sporting event will have to approach the respective sporting body governing the sport and/or the event to get access to the sponsorship rights for any event, in the manner applicable.

The key terms will be as follows:

- duration;
- details of the event;
- extension of the sponsorship;
- commercials;
- role and responsibilities;
- scope of services;
- restrictions;
- representations and warranties;
- type of sponsorship;
- territory;
- indemnity;
- limitation of liability;
- jurisdiction and governing laws; and
- other standard boiler plate clauses.

2.3 Broadcasting

Broadcasting rights are awarded to a particular direct-to-home (DTH) channel service provider or to an over-the-top (OTT) platform by the respective sporting body, governing the sport and/or the event. The exploitation of a broadcasting right to derive profits is mainly through advertisements of brands, using the respective time slot and space and also through viewership and subscription models.

Mostly, the sports rights-holder enters into a fixed-term contract (eg, for three, five or seven years/seasons) with the broadcasters on an exclusive basis for a fixed amount, depending on the discussion and negotiations. In India there are currently just two to three big broadcasting houses for sports and most of the broadcasting rights relating to sport revolve around them.

Typically, the accessibility of venues for the purpose of broadcasting is covered under the agreement entered into between the sporting body and the broadcaster. As a part of the fixed exclusive broadcasting arrangement, accessibility to venues is compulsory.

The intellectual property rights over the content/event in the broadcast lie mainly with the sporting bodies in most cases, with a licence given to the broadcaster to telecast the same. This is the typical arrangement; however, the same may differ from sport to sport.

3. SPORTS EVENTS

3.1 Relationships

There are proprietary rights attached to any sporting event and the same is owned by the association or the sporting body organising/conducting the event. The broadcasting rights are granted to a broadcaster through a specific exclusive agreement for a certain period; however, the rights attached to the footage and the telecast are mostly with the organiser of the event. The footage is mainly obtained from the broadcaster and archived with the sporting body for future licensing and exploitation.

Sporting events in India are typically organised in a very systematised manner.

- Fix the dates as per the available schedules.
- Decide the format and the fixtures.
- Call for various sponsorships and partner arrangements.
- Block (book) the venues and infrastructure requirements.
- Schedule the travel plans.
- Enter into the broadcasting arrangement.
- Arrange for all regulatory and local requisite permissions.
- Ensure adequate security arrangements.
- Schedule the ticketing arrangements.
- Appoint event managers, if required.
- Arrange for press releases and announcements.
- Conduct the event.

Participation in a sporting event is mainly governed by the eligibility criteria, rankings, schedule, conflicts in participation, and adhering to the applicable rules and regulations of the event.

3.2 Liability

Any sports organiser hosting and organising an event owes a duty of care towards the sportspersons and their audience. This duty of care may be with respect to security, health hazards, violence, racism, catastrophes, stampedes, vandalism, terrorist attacks and anything that can be dangerous to the sportsperson and/or their audience.

There have been instances in the past wherein cricket matches have been called off as the pitch was considered to be dangerous, match was called off as there was a suspected terrorist attack because the bus of the visiting team was attacked, audiences involved in drunk, abusive and racist behaviour have been fined and removed from the ground in many instances, audiences have started a riotous behaviour and obstructing the game. One classic example is 1996 Cricket ODI World Cup semi-final between India and Sri Lanka at Eden Gardens, Kolkata, wherein the match was called off due to the behaviour of the crowd.

Liability of the Organiser towards Sportspersons

Generally, under the law of torts, to extend liability to the organiser in the event of an injury to a sportsperson the latter would have to prove the following:

- the sporting organisation owed a duty of care towards the participant;
- the organisation breached that reasonable duty of care; and
- the injury sustained by the participant was a result of that breach of duty.

The competent court may hold the organiser liable if it fails to observe the duty of care it owes towards the players with this being the direct cause of the injury sustained by such player.

Liability of the Organiser towards the Audience

The duty of venue owners to provide a safe environment to spectators/viewers was laid down by the High Court of Delhi in *Association of Victims of Uphaar Tragedy v Union of India* (2003 ACJ 1631), wherein the negligence of the venue owners of a cinema hall resulted in a stampede which caused 69 fatalities. It was held that the venue owners were duty bound, in the interest of society, to provide a safe environment to spectators or viewers. Spectators/viewers who survived the tragedy mentioned that it could have been avoided by the owner of the venue by taking certain necessary precautions.

Duties of the BCCI

The Supreme Court of India in one of its judgments observed that the Board of Control of Cricket in India (BCCI) is responsible for mitigating injuries to players and promoting and ensuring the safety of the sport. “The Board which represents a nation with or without a statutory flavour has duties to perform towards the players, coaches, umpires, administrators and other team officials. They have a duty to create safe rules for the sport, if by reason thereof a physical injury to the player is to be avoided and to keep safety aspect under ongoing review.”

The judgment has opened up the requirement of liability being attached to the organisers of sporting events in the case of an injury to a player or a spectator in such events, especially if that injury is attributable to negligence or omission in rule making or organising by the organiser. Generally, the duty of keeping a sporting event free from violence and disorder is on the organiser. The

organiser needs to ensure a thorough check and have security in place to curb such incidents.

4. CORPORATE

4.1 Legal Sporting Structures

Sporting bodies in India mostly take the form of a federation or an association formed as a trust or a society under the applicable Indian Trust Act, 1882 or the Societies Registration Act, 1860.

4.2 Corporate Governance

In the year 2017, the government of India formed an expert panel to draft the National Code for Good Governance in Sports 2017 (NCGGS 2017). The Code is yet to come into force as there are disagreements among many members regarding it.

In recent years, there have been many instances where national sports governing bodies were derecognised for not complying with the requirements and the rules laid down by the National Sports Development Code of India, 2011 (NSDC).

The NSDC was notified by the Ministry of Youth Affairs and Sports, Government of India in 2011.

The NSDC largely governs the functioning of national-level sports governing bodies, officially termed National Sports Federations (NSF). NSFs under the NSDC are fully accountable for the management, direction, promotion, and sponsorship of their federation at all points. Any entity that seeks to attain recognition as an NSF in the future also needs to abide by the rules and regulations laid down by the NSDC. The NSDC also regulates the functioning of the Sports Authority of India (SAI). The NSDC lays down various regulations and eligibility conditions for the recognition of NSFs, and detailed process regarding the same.

An application has to be made to the Department of Youth Affairs and Sports in the form prescribed by the NSDC for recognition detailing all the requirements. Renewal of recognition for NSFs is automatic on a yearly basis provided all necessary documents and compliance is in place as prescribed. Also, it is imperative for a federation pertaining to a new sport to be in existence for three years and show credibility and popularity to attain recognition from the Ministry of Youth Affairs and Sports.

The conduct of NSF officers is codified under the rules and policies of the NSDC and also of the relevant NSFs and each member need to adhere and abide by these.

4.3 Funding of Sport

Sports in India is funded through a variety of means. Charity, donations, trusts, sponsorships, grants and so on and so forth.

The National Sports Development Fund (NSDF) was established in 1998 under the Charitable Endowments Act, 1890. It was duly notified by the government of India in November 1998. The NSDF helps sportspersons excel by providing them with platforms, funding and proper opportunities to train under coaches of international repute so that they can prepare themselves with the right techniques and knowledge for international competitions and gain proper exposure. The NSDF also provides financial assistance for the development of infrastructure, sporting facilities, academies and activities for the promotion of sports.

The money is distributed in accordance with the level of the sport in question, its popularity, the expense that has to be incurred, the requirement of promotion, the relevant geographical area, the existing infrastructure and (obviously) the requirement for facilities.

COVID-19 had a global impact on all businesses and sports is no exception. Promotion has taken a backseat during the peak of lockdown; however, with sports coming back slowly but surely, better times are hoped for and confidently anticipated.

Economic support for businesses affected by COVID-19 may not be available to many sectors of the Indian economy as business is returning to normal. India has now administered almost 1.75 billion vaccines and the numbers of new daily COVID-19 cases has been reduced immensely.

4.4 Recent Deals/Trends

Generally, we see a lot of investment and acquiring of stakes in teams of a particular sporting league, sponsorship deals for a particular sporting events or broadcasting rights deals for particular sporting events. Most of the teams in India's sporting leagues are either owned by one big conglomerate or are jointly owned by a few groups.

One noteworthy sporting deal in the recent past was the sponsorship deal for the Indian cricket team for a period of three years for a considerable amount awarded to by BYJU's, the Bengaluru-based educational technology and online tutorial firm.

5. INTELLECTUAL PROPERTY, DATA AND DATA PROTECTION

5.1 Trade Marks

Registration of a trade mark in India is governed under the provisions of the Trade Marks Act, 1999. Typically, a trade mark is registered by filing a form for the trade mark for registration purposes along with all the required documents before the Trade Marks Registry. The product/services that the trade mark may be associated

with are typically classified in accordance with the classes provided for under the Trade Marks Act, 1999. The process starts with a prior search of similar trade marks in the particular class and an application for a registration of the trade mark based on the search report, along with the filing of all required documents.

Once applied for, the authority will take its time to advertise it in the journal, seek objections, raise objections, require the filing of various documents, conduct a hearing and issue the registration certificate. The validity of the registration is for a period ten years from the date of the application. Once registered, the applicant can use ® on the right-hand upper corner of the trade mark.

Limitations on Trade Mark Registration

Marks that cannot be registered include:

- anything that is not distinctive and is generic in nature;
- anything that is descriptive in nature;
- anything used on a customary basis;
- names of places and towns;
- already registered or pending registered trade marks;
- anything that is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950;
- anything that is offensive to any religion, caste or creed;
- anything that may be considered as obscene or immoral;
- anything that is deceptively similar to another mark; and
- anything that denotes a shape, colour, quantity.

The main advantage of registration of a trade mark is that you get statutory protection for the trade mark in case of any infringement or passing off by any other party.

5.2 Copyright/Database Rights

The copyright provisions are covered under the Copyrights Act, 1957. Registration of a copyright in India is governed under the Copyrights Act, 1957.

Typically, a copyright for any work or content is registered by filing a form for the copyright for registration purposes along with all the required documents before the Copyrights Office. The process starts with a prior search of registered copyrights available in the database.

Once applied, the authority will take its time to scrutinise the application, advertise it in the journal, seek objections, raise objections, require the filing of various documents, conduct hearings and issue the registration certificate. Once the application is filed, the department will advertise the title of the copyright with the name of the author and the genre of the right attached to the work and shall seek objections within a time frame of one month from any third party.

The validity of the registration of a copyright is for a period of 60 years from the date of the death of the author. Once the registration is granted, the author can use © on the right-hand upper corner.

The common defence available is to sue any party for the infringement of a copyright.

5.3 Image Rights and Other IP Image Rights

The constituents of celebrity/image rights are still a matter of confusion in the absence of any statutory definition. The laws in India pertaining to image rights are nebulous and not recognised as distinct legal rights. However, various judicial precedents in India have recognised the following traits as personality rights which may be exploited: individuals personality, name of an individual (including official name, stage name or

nickname), signature, voice, photograph, physical appearance/likeness of the celebrity, title of the celebrity in a particular role, a specific character portrayed by the celebrity, a performance (including dancing or acting), style of dialogue delivery by the celebrity, merchandising rights, and gestures and mannerisms. In short, from an economic point of view, anything that can be related to a celebrity and used for commercial purpose can be considered as their right, which should be given protection under law.

Trade Marks

However, individuals may apply for protection under the Trade Mark Act for their name, likeness and nicknames, among other things, with the Indian Trade Marks Registry in order to obtain statutory protection against misuse. This is of strategic importance to celebrities who intend to use their image and likeness to identify their own or an authorised line of merchandise.

Passing Off

The action of passing off is relevant in cases where a person's name, likeness or performance characteristics are misused. An action in passing off may lie for any unauthorised exploitation of a celebrity's "goodwill" or "fame" by falsely indicating endorsement of products by the athlete. Similarly, the "wrongful appropriation of personality" could amount to passing off as the athlete could be said to have a proprietary right in the exclusive marketing for gain in their personality.

In the case of *ICC Development (International) Ltd. v Arvee Enterprises*, wherein the Delhi High Court observed that "the right of publicity has evolved from the right of privacy and can inhere only in an individual or in any indicia of an individual's personality like his name, personality trait, signature, voice, etc. An individual may acquire the right of publicity by virtue of his association with an event, sport, movie, etc. However, that right does not inhere in the event

in question, that made the individual famous, nor in the corporation that has brought about the organisation of the event. Any effort to take away the right of publicity from the individuals, to the organiser {non-human entity} of the event would be violative of Articles 19 and 21 of the Constitution of India. No persona can be monopolised. The right of Publicity vests in an individual and the alone is entitled to profit from it".

5.4 Licensing

Various sports bodies and athletes can exploit the IP rights owned by them by virtue of a licensing agreement, whether in an exclusive or a non-exclusive manner with any third party. IP rights, if owned by a party, may not be restricted from being assigned or licensed to any other party, unless that licensing is specifically prohibited or barred by a competent court of law or any regulatory authority, or is of such nature that the same is not licensable or assignable.

5.5 Sports Data

Sports related data or statistics are mainly published by sporting publications, websites and news-transmitting mediums. They may not be at all times and in all cases IP-protected information, as the same will be commonly available across various forums. Considering that the same is a freely accessible data, the same can be used by stakeholders and sporting bodies.

However, if a statistic is a protected one or data is specifically published and carried out by a particular forum or a publication based on an algorithm or a formula or some research analysis and studies, the same may require specific permission for the purpose of usage.

Commercial opportunities originating in sports data can be used in many ways. Sports data is central to certain sports business. Broadcasters use player performance data and statistics for attractive packaging of their content and

to attract more viewers and consumers. Data related to sportspersons is duly used by fantasy sports to attract consumers, either from information that is readily available or through agreements with leagues and event organisers.

5.6 Data Protection

The Personal Data Protection Bill, 2019 (PDPB) creates a legal structure to protect the personal data of individuals; however, the same is still being discussed. Over the past decade, athletes, teams and other sports entities have become increasingly reliant on their personal data.

One of the main reasons to preserve and archive the data pertaining to any sportsperson is to ensure that performance can be enhanced by analysing that data. Personal data is also required for the purpose of registration for any event. Data relating to health, timing, exercise regime, workout schedule and fitness tests is important for the development of the sportsperson in every sphere.

6. DISPUTE RESOLUTION

6.1 National Court System

National courts play an important role in resolving and settling disputes relating to sports. Historically the courts have been involved in matters pertaining to match fixing, cheating, fraud, misrepresentation, consumer disputes, infringement of intellectual property rights, breach of contract and so on and so forth.

The hierarchy regarding the dispute resolution mechanism is mainly governed under contractual arrangements or the rules and regulations framed by the relevant sporting body and may differ from one to another.

6.2 ADR, including Arbitration

Arbitration in sports is a very common and sought-after approach in India. Mediation is also another form of alternate dispute resolution mechanism available in the field of sports.

Most contractual arrangements in the recent past have provided, in detailed mediation and arbitration clauses, for these to be the primary mediums to settle disputes between parties, failing which, they may be referred to a competent court of jurisdiction.

6.3 Challenging Sports Governing Bodies

Sports governing bodies are typically an entity in the form of a society or a trust. The sanctions that they provide are mostly within their ambit, power and rules framed accordingly.

Considering that sanctions are mainly an internal procedure of any sporting body, the remedies available to any party will be before a competent civil or criminal court if they can prove fraud, misuse of funds, bribery or a scam relating to such sanctions.

7. EMPLOYMENT

7.1 Sports-Related Contracts of Employment

A sportsperson generally has a yearly or a fixed-term contract with the relevant sporting body, which lays down the terms and conditions, along with the remuneration for the year.

The remuneration is revised on a periodic basis and often the sportspersons are graded as per their seniority and deliverables.

One issue that regularly arises is the conflict of interest around dual employment or contracts of endorsement with other brands/companies. This

is something that needs serious attention and to be handled in a professional manner with proper guidelines being implemented for the same.

7.2 Employer/Employee Rights

Though, the concept of dual employment may not prevail for many sportspersons, there are sporting bodies who urge players not to be involved with private or public sector companies as employees to avoid any possible conflict that may arise.

7.3 Free Movement of Athletes

Structures and restrictions relating to foreign players are mainly governed by the rules and regulations of the leagues in which they play. For example, as per the current rule, the IPL allows a maximum of four foreign players in the playing eleven. In the Pro Kabaddi league, the rule is that a minimum of one foreign player shall be a part of the match day playing squad.

India as a jurisdiction is a very travel-friendly and visa-friendly country. The following are all eligible for visas.

- Foreign nationals are eligible for employment visas if they are coming to India to take up employment as coaches of national/state-level teams or reputed sports clubs.
- Foreign sportspersons who are given a contract for a specified period by Indian clubs/organisations (this will not include foreign nationals who are engaged in commercial sports events in India on contract (including coaches), for whom the appropriate visa would be B-Sports visa).
- Foreign nationals who are engaged in commercial sports events in India on contract (including coaches) such as the Indian Premier League or the Indian Soccer League, with remuneration; they may be granted “B-Sports” visas with multiple entry facility for the appropriate period (such a foreign nation-

al shall comply with all the statutory obligations including payment of taxes).

- Participants in international sports events and the officials (including coaches) of the sports teams (other than those who are engaged in commercial sports events in India), who may be granted ‘X-SP’ (Entry Sports) visas of appropriate duration.
- Members of the delegations of foreign countries attending meetings of sports bodies such as the International Olympic Association, who will be granted “Conference Visas” of the appropriate sub-category.

The aforesaid grant of visa is subject to fulfilment of all the necessary requirements, documents, procedure and information.

8. ESPORTS

8.1 Overview of Esports

Esports has gained in popularity in recent years due to the popularity of multiplayer online games like PUBG. The market is constantly evolving, and with many big brands ready to enter, the audience base and the revenue are projected to grow strongly. It is becoming a very lucrative opportunity for big brands to reach out to audiences.

Given that audiences spend more time on esports and are more highly engaged in the action, brands believe that they have the opportunity to achieve more value out of their association or sponsorship.

Most of the revenue generated in esports is from sponsorship, which is why it is significant that big brands are ready to invest more in esports. India is now paving the way for more esports events and opening its gate to bigger and wider esports tournaments.

Unlike many other sports, Esports is not seasonal and the business around it is open for the entire year. Many companies and platform are ensuring the sustainability and promotion of esports in India. One of the most important factors for the growth of the esports business in India is connectivity and the telecoms service providers play a huge role in that. The government's initiative of a digital India will also have a huge impact on the growth of the industry.

It is important that esports are given the status of a sport and not just entertainment and it is imperative that the same be officially recognised as a sport.

9. WOMEN'S SPORT

9.1 Overview of Women's Sport

Women's sport is growing fast and rapidly increasing in popularity in India. Viewership and followers are rising daily. Many individual sports feature world-class women athletes, and team games such as cricket boast huge fan followings. The Indian women's cricket team have been top of the world rankings and have been competing with the best at the global level and also hold various world records such as the highest number of runs and most wickets. There is already a discussion regarding a women's cricket league, operating in a similar manner to the IPL, in India.

Women's Sporting Success

PV Sindhu is the first Indian singles badminton player to have won an Olympic Silver and Bronze and is undoubtedly one of India's most successful athletes of all time. In 2012, Mary Kom became the first Indian female boxer to win an Olympic medal when she won a bronze. Aditi Ashok finished fourth in the golf competition at the Tokyo Olympics. The women's hockey team narrowly missed out on a bronze medal.

This is all in addition to the many great female sporting individuals who have featured in the field of badminton, wrestling, boxing, tennis, weightlifting, cricket, hockey and track and field over the years.

At the 2020 Tokyo Olympics, India won medals in wrestling, hockey, track and field, badminton, boxing and weightlifting. Women bagged three medals. This success was possible due, in addition to the athletes' hard work, to the funding, infrastructure, training, sponsorship, data analytics and technology and support in various forms provided for women's sport in India. A considerable percentage of the participants for India in the 2020 Tokyo Olympics were women.

Support for Women's Sport

Corporates, sports organisations and federations have all contributed to the infrastructure, technology, funding, programmes, training, grants, promotion, and identification and nurturing of young talent.

Many sporting associations and federations in India are promoting and nurturing women in various sports. The Sports Authority of India is actively involved in many such programmes.

The Operations Division of the Sports Authority of India deals with implementation of different sports promotional schemes designed to uncover and develop talented sportspersons in various age groups. These schemes are being implemented by the Sports Authority of India through its Regional Centres located at Bengaluru, Kolkata, Gandhinagar, Kandiveli (Mumbai), Bhopal, Sonapat, Lucknow, Chandigarh, Guwahati and Imphal, along with Academic Wings located at NS NIS, Patiala and the LNCPE, Thiruvananthapuram. The sports science set-up is well developed at Patiala, Bengaluru and Kolkata and these facilities are also being upgraded in other centres.

The Khelo India programme has been introduced to revive the sports culture in India at grass-roots level by building a strong framework for all sports played in the country and establishing India as a great sporting nation.

10. NON-FUNGIBLE TOKENS (NFTS)

10.1 Overview of NFTs

There is a lot of discussion and interest regarding non-fungible tokens (NFTs) in India. It is a major point of interest and discussion, and sports and entertainment are a hot bed of NFT development, expected to give a huge boost to the NFT market in India. Many sporting celebrities are already showing interest in the NFT sector and a few have already opened their own NFT platform.

NFTs are still a new and upcoming technology and there may be rules and regulations that may need to be framed in the future around their use. The COVID-19 pandemic led to mobility restrictions, social distancing and more working from home, which in turn forced many art connoisseurs to find new way to express their enthusiasm. The advent and introduction of NFTs provided such people with the opportunity to express their passion.

An NFT is a digital asset that represents real-world objects like art, music, in-game items and videos. They are bought and sold online, frequently with cryptocurrency, and they are generally encoded with the same underlying software as many cryptocurrencies.

This financial year (2021), many Indians saw their favourite celebrities launch their own digital collections and were keen to invest in them. This was prompted by the promising nature of NFTs in the market, as well as the urge of fans and

passionate followers to be the owner of exclusive items related to some of the greatest personalities or celebrities in the country, and the related bragging rights.

Many sports personalities are now taking the plunge into the NFT world to connect more with their fans and achieve a wider reach, as well as to gain a monetary benefit in the form of a business venture. This platform is allowing sports personalities and various sporting bodies to give unique access to fans, through certain specific digital memorabilia and through ownership over the same based on a unique token. The novelty factor around this platform also drives curiosity.

There is a chance that the sports ministry may consider issuing NFTs celebrating famous achievements of Indian athletes or sports stars in events such as the Olympics or the Asian Games, or of historic sporting moments, such as Cricket World Cup wins.

Potential Upcoming Regulation

Even as NFTs are creating a lot of attention and curiosity, the uncertainties around the yet-to-be released Cryptocurrency Bill have become an area of concern. Nonetheless, companies are trying to find different ways to boost purchases. The government of India proposed the inclusion virtual digital assets for taxation, or a “crypto-tax”, in the Budget 2022–23 as the Finance Bill 2022 was cleared by the *Lok Sabha*. The Finance Bill, as currently proposed, would impose a tax rate of 30% on cryptocurrency gains. This may have significant repercussions for small-time investors or players in this sector. The new tax provisions are set to come into effect from 1 April 2022.

11. REGIONAL ISSUES

11.1 Overview of Regional Issues

There are no relevant issues in Indian sports law not already covered in this chapter.

Contributed by: Souvik Paul Mazumdar, ALMT Legal

ALMT Legal is a dynamic and progressive full-service Indian law firm that provides high-quality Indian expertise with an international capability. With approximately 90 lawyers and 21 partners across offices in strategic commercial centres such as Mumbai and Bengaluru, ALMT has an

established reputation as one of India's leading firms. Its practice areas encompass all aspects of Indian law, ranging from corporate and commercial to tax, employment, dispute resolution, shipping, aviation and even immigration law.

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ADVOCATES AND SOLICITORS

Trends and Developments

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The Unstoppable Rise of Sports in India

Sport is one of the biggest and fastest growing industries in India. The advent of various new leagues and the increase in viewership of direct-to-home television, digital platforms as well as of over-the-top media services has ensured rapid growth. India's recent performance in the Tokyo 2020 Olympics has given a further boost to the sports industry and increased in followers.

Sport is one of the world's leading generators of employment and revenue, it is a multibillion-dollar global industry which caters to a humongous demand across the world. The development of sporting excellence and wider national development go hand in hand. Given the growth of the sports business in India, it is imperative that it be regulated in a proper manner.

The sports predominantly followed in India are cricket, football, tennis, badminton, wrestling and *kabbaddi*, although a variety of other indoor sports are popular. The viewership and following of cricket in India is, however, incomparable to any other sport. With the advent of the Indian Premier League (IPL) in India, the sporting structure in India completely changed and new business opportunities for various sports have arisen. Today in India, there are leagues for football, *kabbaddi*, badminton, volleyball and wrestling, among others.

The last few years have witnessed intense involvement in sports promotion from school-level sports all the way to Olympic-standard competition by the Indian government, in consonance with many sporting bodies. Opportunities abound and the budding sportsperson has the platform to showcase their skills and be noticed,

along with decent financial assistance. Leagues and teams offer great investment and marketing opportunities for leading brands and conglomerates. The government is putting time, effort and money into infrastructure, talent spotting and nurturing, training academies, grass-roots development, technology and coaching facilities. This initiative to promote sport at various level is widely acknowledged and is commendable. Various educational institutions have come forward, taken a specific interest in sports and have created complete sports-based schooling models and training institutes.

A recent trend that can be seen in the world of sports is the use of artificial intelligence (AI) and algorithms to enhance performances, understand weaknesses, compile statistics and to ensure better decision-making. The rise of the sports scientist, a professional who specifically deals with the scientific study of sport and sportspersons to provide them with advice pertaining to performance enhancement, is a good example of the increasingly data-led approach being taken. Various teams invest in having such experts as a part of their core staff to ensure that the performance level of each sportsperson is at the optimum level.

The Requirement for Proper Law and Regulation of the Sports Industry: The Need of the Hour

With the recent changes in the field of sports discussed above, it is imperative that the business of sports is properly regulated and streamlined. It is vital to bring in specific legislation to "regularise" the business of sports. The sports industry is massive in India and with so many leagues in place and opportunities created for the bud-

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ding sportsperson, it is necessary to ensure that a proper law covering this area is codified separately and so as not to leave participants in the sector relying on existing legislation.

With regular cases of doping and the involvement of teams and players in betting and match-fixing scandals, the need for specific, codified legislation is increasingly imperative.

Doping

Doping-related regulations in India are predominantly governed and controlled by National Anti-Doping Agency (NADA). India had previously relied on the Anti-Doping Bill, 2018 for enforcement activity in this area and had mandated imprisonment of up to four years and/or a fine of up to INR1 million on any sportsperson involved in doping. This particular clause has now been removed after it faced serious objection from the World Anti-Doping Agency (WADA). NADA made certain amendments to the Anti-Doping Bill and tabled it before the ministry and the Indian Olympic Association (IOA) for clearance. The reason for the amendment is that there are certain substances which may be prohibited for consumption for an athlete and which may be legally purchased. The criminality of the offence will be invoked only in extreme and exceptional circumstances, wherein the intent and the motive are proven beyond doubt.

NADA follows the same list provided by WADA with respect to prohibited substances. This is divided into those substances that are:

- prohibited at all times;
- prohibited in competition; and
- prohibited in particular sports.

The prime motive of NADA is:

- to ensure a sporting nation free from the clutches of doping by putting in place anti-

doping rules as per the WADA code and regulations;

- to regulate doping-control programmes to control the involvement of doping in sports across the country at various levels;
- to promote research and paperwork to create nation-wide awareness about doping and its ill effects;
- to run testing programmes at various levels; and
- to ensure that all sporting organisations comply with the anti-doping code.

NADA in India has an Anti-Doping Disciplinary Panel and also an Anti-Doping Appeal Panel and it follows a set process for handling any matter related to doping. It includes collection of samples, testing and internal review of the status of the substance. Based on the review, the accused will either be acquitted or provisionally suspended, following which suspension all relevant bodies will be duly informed and the due process of hearing the matter and appeal will be followed. During the hearing process, the athlete is given an opportunity to be represented by counsel and an interpreter (at their own expense) to establish a basis for elimination or reduction of the sanctions. The athlete will have the right to appeal against the decision of the Anti-Doping Disciplinary Panel by lodging a notice of appeal with the Anti-Doping Appeal Panel within 14 days of the decision of the Anti-Doping Disciplinary Panel.

In the recent past many sportspersons in the fields of bodybuilding, weightlifting, wrestling, athletics and even cricket have been accused of consuming banned substances for performance enhancement.

Match fixing

Match fixing has haunted the global sports industry for years and is one of the burning issues and deepest concerns in the sports world.

Incidents of match fixing gives rise to mistrust in the minds of spectators about the legitimacy of competition and hence a loss of interest and viewers for the affected sport. The Indian sporting industry was rocked by a wave of match fixing in cricket in 1999 and 2000. It was one of the most disgraceful periods in Indian sporting history. Cricket is the most watched and loved sport in India and cricketers are worshipped. The news of match fixing in cricket matches left a black mark in the hearts and mind of millions of sports lovers across India and the world.

In 2013, the Indian government presented a draft bill for the prevention of sporting fraud; however, the same never saw the light of the day to become a statute. The draft bill covered the definition of sporting fraud, the accused, and the punishment involved for such offences. The punishment as prescribed in the draft bill extends to five years of imprisonment, a fine of INR1 million or five times the benefit derived from the sporting fraud. In 2016, the RM Lodha Committee, told the Supreme Court of India that the Law Commission of India (LCI) should look seriously into criminalising match fixing in sport. The LCI later on agreed that match fixing of any kind in sport should be a criminal offence carrying a stringent punishment. Nevertheless, India is yet to implement a sports law regime covering illegal and unregulated betting and match fixing. In most cases, such situations are dealt with under parts of the Indian Penal Code relating to cheating, fraud and criminal breach of trust. A separate cohesive statute for sports law is a key step in curbing match-fixing. Several attempts have been made in the past to find a way to tackle these burning issues; one of the most prominent of which was made in 2013. In 2013, the draft Prevention of Sporting Fraud Bill was introduced in Parliament with an intention to curb match fixing, fraud, cheating and other illegal activities around the sporting world. It pro-

posed stringent punishment and fines for such activities. It remains, however, merely a draft bill.

Betting

Betting or gambling is illegal in most of India but there is no law that makes online betting an illegal activity. India is yet to implement a stringent sports law regime for illegal and unregulated betting. In most cases, such situations are dealt with under certain Sections of the Indian Penal Code, 1860 relating to cheating, fraud and criminal breach of trust. In India, the legal status of betting is not yet dealt with by the judicial courts. To legalise it, the competent courts must first determine whether the game in question is one of skill or chance. There are many judgments from various courts across India laying down the principle regarding what may amount to a game of skill and what may amount to game of chance and, accordingly, which games may fall under which ambit. The Public Gambling Act, 1867 which is the current prevailing specific statute pertaining to gambling and betting does not specifically provide for regulation relating to online betting. Each state in India has its own specific rules pertaining to betting. A specific statute to cover online betting is also the need of the hour in India. It is also difficult to catch internet gambling offenders if the websites are hosted by servers located in countries where betting is legal.

A big gambling market in India is that of fantasy sports, which is regarded as a game of skill. The court has directed all the online fantasy sports platforms to ensure that they provide all the correct disclaimers and acknowledgement to all participants, as the same may have huge financial implications for each participant. The information available for such fantasy sport platforms is mainly related to individual player statistics and these are commonly available on public forums. Certain competent courts of India have passed judgments detailing what amounts

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to game of skill and what to a game of chance; accordingly, they have allowed fantasy sports operating as games of skill to exist, subject to certain terms and considerations.

Recently, several states have banned fantasy game apps stating that these are games of chance and may amount to gambling. However, the matters were subsequently heard by the competent court of law and, based on the arguments presented, the apps have now been allowed to operate in most of these states.

Sponsorship

Sponsorship and marketing of a brand through a sporting event or sporting teams is very common in India and is one of the most easy and lucrative way to advertise due to the reach and viewership of sports. The common practice is to be either a sole sponsor or be collectively involved in an event as joint sponsor, event sponsor, title sponsor, hospitality partner, travel partner, etc.

Noteworthy sporting deals in the recent past include the sponsorship deal for the Indian cricket team for a period of three years for a considerable amount awarded to by BYJU's, the Bengaluru-based educational technology and online tutorial firm; VIVO and DLF being a part of the IPL; OPPO and SAHARA being a part of the Indian cricket team; VIVO being, again, a part of the Pro Kabaddi league; and TATA being a part of the IPL.

Big brands ensure that they are associated with teams and sporting events for a larger audience, and sponsorship ensures the financial assistance necessary for any sporting even to be run efficiently. Cricket, being the most followed sport in India, attracts larger sponsorship deals. With each day the sporting industry is reaching greater heights and the value of sponsorship attachments are increasing steadily. Sponsors

ensure that they get prominent footage in every manner possible.

Sponsorship of and advertisement during a sporting event, or associated with any sportsperson, is vulnerable to ambush marketing by other competing brands. There are many past instances where competing brands have used this method to steal attention away from legitimate sponsors.

It follows from the above that it is prudent to ensure a proper legal framework to regulate doping, betting, match fixing, ambush marketing, and sports-related arbitration, disputes and mediation. A cohesive and specific sports law is urgently needed.

Non-fungible Tokens (NFTs)

There is a lot of discussion and interest regarding non-fungible tokens (NFTs) in India. They are a major point of interest and discussion, and sports and entertainment are a hot bed of NFT development, expected to give a huge boost to the NFT market in India. Many sporting celebrities are already showing interest in the NFT sector and a few have already opened their own NFT platform.

NFTs are still a new and upcoming technology and there may be rules and regulations that need to be framed in the future around their use. The COVID-19 pandemic led to mobility restrictions, social distancing and more working from home, which in turn forced many art connoisseurs to find new way to express their enthusiasm. The advent and introduction of NFTs provided such people with the opportunity to express their passion.

An NFT is a digital asset that represents real-world objects such as art, music, in-game items and videos. They are bought and sold online, frequently with cryptocurrency, and they are gener-

ally encoded with the same underlying software as many cryptocurrencies.

This financial year (2021), many Indians saw their favourite celebrities launch their own digital collections and were keen to invest in them. This was prompted by the promising nature of the NFT marketplace, as well as the desire of fans and passionate followers to be the owner of exclusive items related to some of the greatest personalities or celebrities in the country, and the related bragging rights.

Many sports personalities are now taking the plunge into the NFT world to connect more with their fans and achieve a wider reach, as well as to gain a monetary benefit in the form of a business venture. This platform allows sports personalities and various sporting bodies to give unique access to fans, through certain specific digital memorabilia and through ownership over the same based on a unique token. The novelty factor around this platform also drives curiosity.

There is a chance that the sports ministry may consider issuing NFTs celebrating famous achievements of Indian athletes or sports stars in events such as the Olympics or the Asian Games, or of historic sporting moments, such as Cricket World Cup wins.

Potential upcoming regulation

Even as NFTs are creating a lot of attention and curiosity, the uncertainties around the yet-to-be released Cryptocurrency Bill have become an area of concern. Nonetheless, companies are trying to find different ways to boost purchases. The government of India proposed the inclusion of the taxation of virtual digital assets or a “crypto tax” in Budget 2022–23 as the Finance Bill 2022 was cleared by the *Lok Sabha*. The Finance Bill as currently proposed proposes to impose a tax rate of 30% on cryptocurrency gains. This may have significant repercussion and implication and may affect many small-time investors or players in this area. The new tax provisions are set to come into effect from 01 April 2022.

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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 "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 from 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 wrestler 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.

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 racing, 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 will be subject to such 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 on them.

Disciplinary procedures for other acts that violate the principle 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 ongoing COVID-19 pandemic, the Tokyo 2020 Games were held without spectators and all tickets were refunded. More details of this are given in **11. Regional Issues**. 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. 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

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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 for a further two years in 2020. In this agreement, it was agreed that the copyrights in and to the footage of the matches belong to the J.League.

As 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, will be 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.

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 and terms and conditions of participation with athletes and coaches participating in the sporting events, (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 which 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. A national federation which 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

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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 comprise about 25% 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.

The Japanese government, local authorities and the Japan Sports Agency are still providing various forms of financial support to sports associations and individuals as COVID-19 countermeasures and/or new initiatives for the post-coronavirus era through the use of digital technology.

4.4 Recent Deals/Trends

In Japan, the Rugby World Cup 2019 was held in 2019 and the Tokyo 2020 Games are due to be 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 is forecast to be JPY634.3 billion.

In sponsorship contracts for large international sporting events and other events, the sponsor is often granted exclusivity for 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

has been adopted whereby multiple companies coexist 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 reached an Olympic-record of JPY350 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 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, sports equipment (class 28), advertising (class 35), and 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

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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 description contained in such information). 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 utilised 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 completely within an organisation, cannot be settled in court. Domestic sports-related arbitration and mediation are prepared by the Japan Sports Arbitration Agency (JSAA), detailed in **6.2 ADR, including Arbitration**, and by the sports organisations that have their own mechanisms of 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 goal of sport arbitration conducted in the JSAA is to come to “a decision made by a sports organisation or its organs in relation to a sport 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.

6.3 Challenging Sports Governing Bodies

Sports governing bodies may dismiss or suspend persons, reduce subsidies or impose sanctions 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 others 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 “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”. However, 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,

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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 statuses of residence provided in the Immigration Control and Refugee Recognition Act. In general, the activities of a professional athlete would fall under the status of residence 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 status of residence of “Designated Activities”.

Certain leagues have established for themselves foreigners’ quotas, including the leagues for baseball, football, basketball and sumo. 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 Overview of Esports

In Japan, esports have been attracting increasing attention in recent years. Many large companies have entered the market, which was esti-

ated to be worth approximately JPY6.7 billion in 2020, compared to approximately JPY6.1 billion in 2019. It is expected to grow to approximately JPY12.8 billion in 2022 and over JPY15 billion in 2023.

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 have filed a lawsuit alleging violations of human rights under the Constitution of Japan.

9. WOMEN’S SPORT

9.1 Overview of Women’s Sport

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 percentage of female officers and counsel within each sports organisation is steadily increasing.

Finally, it should be noted that female athletes have shown very successful results in the recent Olympic games. In particular, female athletes won a total of 30 medals at the Tokyo 2020 Games, which exceeded the 25 medals won by male athletes.

10. NON-FUNGIBLE TOKENS (NFTS)

10.1 Overview of NFTs

With the emergence and development of NFT markets around the world in 2021 and beyond, various industries in Japan have commenced NFT businesses since the spring of 2021. Several NFT markets have been established in Japan, and the number of NFT issuances, in particular, those related to art, games, and celebrities, has been rapidly increasing. In the field of sports:

- the J.League announced plans for officially licensed games using NFTs in August 2021;
- in September 2021, the Seibu Lions professional baseball team began selling NFT content; and
- in December 2021, the Pacific League, one of Japan’s professional baseball leagues, also announced plans to release NFT footage.

In February 2022, the Kawasaki Brave Thunders, a professional basketball team, launched its official version of “PICKFIVE,” an online card game using NFTs, which had been in trial operation for some time beforehand. In April 2022, NFT content for the J.League is scheduled to be released. In addition, an increasing number of sports teams are issuing Fan Tokens using blockchain technology as a source of new funds. In this way, NFTs have shown the potential to become a new source of revenue for teams and leagues. However, since NFTs are traded in the market without a fixed term, it is necessary to appropriately clear the rights to images and team uniforms when issuing NFTs, and to reach an agreement among players, teams, issuers, purchasers and relevant parties on how to distribute returns from primary and secondary distributors and on how purchasers may use NFTs.

11. REGIONAL ISSUES

11.1 Overview of Regional Issues

The Tokyo 2020 Games, which had been postponed due to the COVID-19 pandemic, were eventually held in the summer of 2021. It was hoped that the Games would be held in their full form, but the continuance of the global outbreak of COVID-19 resulted in the decision being taken in March 2021 to abandon the acceptance of overseas spectators. Subsequently, in July, it was decided that there would be no spectators. Various COVID-19 measures were taken in order to protect athletes and related personnel

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entering Japan from overseas and residents of Japan from COVID-19 infection, and to ensure the safe execution of the Tokyo 2020 Games. These measures included the adoption of a so-called “bubble system.” For example, the following rules were established and disseminated:

- PCR testing before and after entry into Japan;
- daily PCR testing during participants’ time in Japan;
- a general prohibition on going outside the athletes’ village, hotels and competition venues;
- segregation of flow lines between Olympic and Paralympic officials and Japanese residents in hotels;
- health monitoring using apps;
- a prohibition on the use of public transportation;
- strict procedures for participation in competitions and practice by athletes who had tested positive or come into close contact with an infected person;
- procedures for leaving Japan after the Games.

These rules were published in the form of a “Playbook”, which was defined by the IOC, the IPC and TOCOG for each of the various categories of athletes, the media, the Olympic family and other stakeholders. The Playbook served as a model for the conduct of large-scale sporting events under the COVID-19 pandemic and was subsequently followed in the Beijing Winter Olympic and Paralympic Games held in February 2022.

In addition, as there were no spectators, all tickets were refunded.

TOCOG has had no major legal disputes or disruptions and is currently preparing for dissolution. The experience of the Tokyo 2020 Games will be highly useful for future sporting events in Japan and around the world.

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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, both numerically and geographically, while maintaining its progressive culture. Based in Tokyo, TMI now has 488 lawyers and 84 patent/trade mark attorneys among a total of 1,084 personnel as of 1 February 2021, 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 and London. TMI's sports and entertainment law practice constitutes a major practice of the firm, with TMI representing sports organising committees, sports federations, professional leagues, teams and athletes.

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1. REGULATORY

1.1 Anti-doping

Sports doping is not a criminal offence in New Zealand, although certain actions in relation to controlled or illegal drugs, which may be used in sport, can be a criminal offence under the Misuse of Drugs Act 1975.

The Sports Anti-Doping Act 2006 gives effect to the World Anti-Doping Code in New Zealand. Under this Act, Drug Free Sport NZ, which is an independent Crown entity, is responsible for implementation of the WADA Code. Drug Free Sport has promulgated the Sports Anti-Doping Rules, which mirror the WADA Code. Most national sporting organisations have adopted the Sports Anti-Doping Rules as their anti-doping policy.

Drug Free Sport NZ undertakes testing and investigations, with any anti-doping cases being referred to the Sports Tribunal of NZ or, in the case of rugby union, to the New Zealand Rugby Judicial Committee. In this respect, Drug Free Sport NZ is essentially the prosecutor.

1.2 Integrity

Match-fixing in sport is recognised as a form of deception, under Section 240A of the Crimes Act 1961. If found guilty, a person is liable to imprisonment for up to three years. Deception in this context includes any act to influence the betting outcome of a sporting event.

Sport NZ has established a New Zealand Policy on Sports Match-Fixing and Related Corruption to highlight the issue and provide guidelines.

1.3 Betting

Betting, or gambling, is illegal in New Zealand unless it is authorised by or under the Gambling Act 2003.

TAB New Zealand was established under the Racing Industry Act 2020. Under this Act, the TAB is authorised to conduct sports betting and may only conduct sports betting on a sporting event if they have entered into a written agreement with the appropriate New Zealand national sporting organisation. These agreements include payments to the sporting organisation of a share of revenue derived from sports betting. If there is no national sporting organisation that administers a sport, then the TAB must enter into an agreement with Sport NZ.

Under the Racing Industry Act, there is also a framework under which offshore betting operators must pay charges in respect of their betting operations involving New Zealand. Under this framework, offshore betting operators require permission from the relevant New Zealand national sporting organisation, or Sport NZ, before they use sporting information for taking bets on sporting events taking place in New Zealand. The offshore betting operator must enter into an agreement with the relevant organisation, which includes the payment of these betting information use charges.

These charges are to recognise the financial returns that offshore betting operators enjoy from bets that they take on sporting events held in New Zealand and from bets that they take from New Zealand residents.

1.4 Disciplinary Proceedings

The Sports Tribunal of NZ hears disciplinary proceedings concerning athletes. This includes in relation to anti-doping violations, but also appeals against decisions of national sporting organisations or the NZ Olympic Committee, where the rules of those organisations specifically allow for such an appeal. Examples are appeals against disciplinary decisions and appeals by an athlete against not being selected for a New Zealand team or squad, in each case

where the rules of the national sporting organisation allow for this right of appeal. The Sports Tribunal may also hear other sports-related disputes referred by agreement of all the parties.

2. COMMERCIAL RIGHTS

2.1 Available Sports-Related Rights

The Major Events Management Act 2007 protects the rights of event organisers and sponsors, including sporting events, primarily by preventing businesses that are not sponsors from claiming an association with the event concerned (so-called “ambush marketing”). Sporting events that have been subject to this Act include the Rugby World Cup 2011, the Cricket World Cup 2015 and the Lions Tour 2017.

This Act includes provision for “clean zones” around major event venues, where only authorised marketing activities can take place, and protection of words and emblems that could denote a connection with a major event, whether or not they are eligible for trade mark registration in New Zealand or are actually registered.

In terms of secondary or illegal ticket sales, there is no law that prevents event tickets being resold for a higher price than the original sale price of the ticket. The exception is where the event is covered by the Major Events Management Act. Tickets for an event covered by this Act cannot be sold for more than the original sale price (including charges such as booking fee and delivery fee).

2.2 Sponsorship

Rugby union has attracted the most substantial sponsorship arrangements among New Zealand’s major sporting codes, with Adidas and American International Group (AIG) having entered into multi-year arrangements over the years, reportedly for a value of USD10 million-

plus per annum. NZ Rugby bundles sponsorship with multiple New Zealand national rugby union teams (the All Blacks, the Black Ferns, the Māori All Blacks, men’s and women’s Sevens teams and the Under-20 men’s team). Recently, the arrangements with AIG came to an end, with French company Altrad becoming a “front of jersey” sponsor to the All Blacks and Black Ferns and Ineos becoming the “performance partner”. Prior to this announcement, NZ Rugby had reportedly been in negotiations with Amazon to replace AIG as main sponsor.

2.3 Broadcasting

Most major international and domestic sports of interest in New Zealand are shown live on subscription services through either Sky Sports (via satellite or online) or Spark Sports (online). These often include advertising. Sky TV is a listed pay TV broadcaster and Spark is a listed telecommunications operator. Radio broadcasting of major sporting events is also available on Sports Entertainment Network NZ.

Sports broadcasting rights are generally sold on an exclusive basis under long-term commercial arrangements. For example, Sky Sports recently won the sales process for the English Premier League broadcasting rights for six years starting with the new 2022–23 season. These rights had previously been held by Spark Sports.

In 2019, Sky Sports acquired a five-year broadcasting rights deal from NZ Rugby, which included New Zealand’s international rugby union test matches, tours of visiting Northern Hemisphere teams and Super Rugby. The exclusive rights include satellite, online and free-to-air. An interesting aspect of this deal is that NZ Rugby was issued a 5% shareholding interest in Sky.

Sky has also been active in the rugby union space globally, acquiring international rugby union streaming business RugbyPass.

New Zealand Rugby League announced in 2021 that it had entered into an arrangement with Sky Sports to broadcast New Zealand Warriors matches in the NRL, as well as all other NRL matches, the Kiwis and Kiwi Ferns, State of Origin, the NSW and QLD Cups and the National Premiership men's and women's, until the end of 2027.

3. SPORTS EVENTS

3.1 Relationships

There are no proprietary rights in a sporting event, but there are proprietary rights in the broadcasts of those events. This means that sports event organisers protect the value of their broadcast rights through exclusive arrangements with venue owners. This includes the exclusive right to film and record the event at that venue; the broadcaster may also control the advertising and branding used at the venue.

3.2 Liability

Sports event organisers owe a duty of care to persons involved in sporting events, under the common law. This includes taking reasonable steps to avoid injury or danger to participants, officials and spectators.

However, there is a no-fault accident compensation scheme in New Zealand under the Accident Compensation Act 2001, which prevents persons from suing for personal injury caused by accident and prohibits recovery of compensatory damages for personal injury.

Where an athlete is employed (as an employee or contractor or even a volunteer) by a sporting organisation, then the Health and Safety at Work Act 2015 will apply to their workplace, and the sporting organisation is required under that Act to take all practical steps to ensure worker safety.

4. CORPORATE

4.1 Legal Sporting Structures

Sports organisations in New Zealand are generally formed as either an incorporated society under the Incorporated Societies Act 1908 or as a charitable trust under the Charitable Trusts Act 1957. Whether an organisation is an incorporated society or a charitable trust, it can also apply to be registered as a charity if it has charitable purposes as defined under the Charities Act 2005. The Charities Act recognises that the promotion of amateur sport may be a charitable purpose if it meets one of the tests of charitable purpose under the Act. However, high performance or elite sport is not regarded as "charitable".

National sporting organisations are often structured as a federation of regional or code-based organisations. Those national sporting organisations, such as New Zealand Rugby and New Zealand Cricket, are themselves often formed as incorporated societies.

In rugby union, NZ Rugby has ownership of New Zealand Super Rugby teams, but issues licences to separate entities to operate each club. For example, in respect of the Hurricanes Super Rugby team, an entity which is a joint venture between the provincial rugby union and private investors has the operating licence to run the rugby club. Other operating licensees have different combinations of ownership structures, including provincial unions, NZ Rugby and private investors. Recently, NZ Rugby has introduced "permanent" franchise licences.

4.2 Corporate Governance

A national sporting organisation will have rules, usually a constitution, which deals with governance matters relating to the sporting code. Non-compliance can result in penalties and sanctions under these rules. Directors (board members)

owe duties in accordance with the rules of the organisation and also under general rules dealing with the particular legal structure they adopt (such as incorporated societies).

Sport NZ has produced a detailed governance guide for sporting organisations in New Zealand.

4.3 Funding of Sport

Most of the government funding for sporting organisations and athletes comes from Sport NZ (for grassroots sport and sporting participation generally) and High Performance Sport NZ (for elite athletes). Both of these organisations are Crown agencies.

Professional team sports receive broadcasting, sponsorship, merchandising and membership revenue.

4.4 Recent Deals/Trends

The most noteworthy recent deal (February 2022) involves the US private equity firm, Silver Lake, acquiring an interest in a new commercial entity to be established by NZ Rugby which will include all the revenue-generating assets of NZ Rugby. The investment by Silver Lake will be for NZD200 million, with a value of NZD3.5 billion for the commercial entity. Other local institutional investors will have an opportunity to invest in this entity in due course. The overall deal includes the establishment of “global rugby opportunities”, which will enable Silver Lake, NZ Rugby and the New Zealand Rugby Players Association to invest in rugby union-related businesses outside of New Zealand.

5. INTELLECTUAL PROPERTY, DATA AND DATA PROTECTION

5.1 Trade Marks

Trade marks can be registered under the Trade Marks Act 2002. Trade mark registration provides the exclusive right to use the trade mark throughout New Zealand to promote the goods or services that it covers and legal protection to deter others from trying to imitate the protected brand.

To be registrable, a trade mark must be distinctive. This means that a mark that says, for example, “football match” would not be distinctive as it simply describes the goods or services that are being offered and does not distinguish one sporting event from another. Commonly used phrases may not be distinctive.

5.2 Copyright/Database Rights

Copyright is covered by the Copyright Act 1994. Copyright comes into effect automatically when an original work of a specific type is created, published or performed. In New Zealand, there is no copyright register or application process to be granted protection.

Examples of defences include incidental copying and fair dealing for the purposes of criticism, news reporting, etc.

In New Zealand, there is no sui generis database right, as there is in the European Union. However, certain databases and datasets can, in principle, qualify as literary works which are protected under the Copyright Act.

5.3 Image Rights and Other IP

There is no specific legal protection for personal images under New Zealand law. There is protection against misleading conduct in trade under the Fair Trading Act 1986. The common

law tort of passing off may also apply in relation to athlete image rights, where the athlete has goodwill and reputation in relation to their image (particularly where it has been commercialised), although this has not yet been established in cases. It is generally more difficult to establish a claim of passing off, as compared to misleading conduct in trade under the Fair Trading Act.

5.4 Licensing

Copyright can subsist in photographs, films and broadcasts; a sporting body or athlete, if they create these works, will have copyright in them. This is likely to be the main form of protected intellectual property for sporting bodies or athletes which may be licensed to third parties. There are no restrictions on assigning IP rights to third parties.

5.5 Sports Data

Most significant national sporting organisations collect sports data for improving the performance of their sport and maximising its commercial potential. Where sports data is to be used for sports betting by TAB New Zealand (the only authorised agency for these purposes), it is normally subject to an agreement between the organisation and TAB.

Broader commercialisation of sports data is not common in New Zealand.

5.6 Data Protection

The Privacy Act 2020 provides the rules in New Zealand for protecting personal information. Personal information is “information about an identifiable individual”. Therefore, information about an athlete may be personal information, but team results may not be (unless they reveal individual team members). Practically, that means that if an organisation (such as a national sporting organisation, a tournament/event or a broadcaster) collects and uses personal information about an athlete, the athlete needs to

be informed and the organisation must properly manage the data and any disclosures.

While New Zealand’s privacy law is similar to the EU’s GDPR, it is different in a number of material respects. The GDPR does not apply inside New Zealand.

6. DISPUTE RESOLUTION

6.1 National Court System

In practice, the national courts have very little role in dealing with sports disputes. National sporting organisations may have their own tribunals for dealing with disputes within the code, with the Sports Tribunal of NZ being established as the appellate decision-making tribunal dealing with most sports disputes. As mentioned above, the Sports Tribunal also has a role in anti-doping proceedings.

If the Sports Tribunal does not have jurisdiction for a particular dispute, an athlete may seek to bring proceedings through the national courts, although that is rare.

6.2 ADR, including Arbitration

The Sports Tribunal will hear appeals from athletes against decisions of national sporting organisations, where the rules of the organisation provide for it. This includes appeals against decisions not nominating or selecting athletes for a New Zealand team or squad, as well as appeals against disciplinary decisions.

Most national sporting organisations provide in their rules for this right of appeal. All internal appeal rights and procedures within the national sporting organisation must have been completed first, before referring the dispute to the Sports Tribunal.

The Sports Tribunal can also hear other “sports-related” disputes, but only with the agreement of the parties.

The Sports Anti-Doping Act 2006 sets out the sorts of disputes the Sports Tribunal can hear.

6.3 Challenging Sports Governing Bodies

National sporting organisation rules will usually include penalties, including fines (which may be fairly nominal), banning and suspensions, removing competition points and reprimands. The organisation may have their own tribunal to impose such penalties. Where athletes are employed by national sporting organisations, enforcement matters are likely to be subject to their individual employment contracts.

As previously noted, the Sports Tribunal can hear and decide appeals against decisions made by a national sporting organisation or the New Zealand Olympic Committee (NZOC), if the rules of the organisation or NZOC allow for an appeal to the Tribunal. Most appeals to the Sports Tribunal are either resolved or withdrawn prior to hearing.

7. EMPLOYMENT

7.1 Sports-Related Contracts of Employment

High-level athletes may be employees or contractors of sports organisations. An athlete may be regarded as an employee under New Zealand law, even if they are described as a contractor. The Employment Relations Act 2000 applies to employees, including employees of sporting organisations. It provides procedures for dealing with employment relationship issues and also promotes collective bargaining.

Collective bargaining is used for professional athletes in New Zealand in certain sports, including

rugby union, cricket and netball. These arrangements are normally renegotiated periodically and include athlete payments and other benefits.

Salary caps do apply – for example, for NZ franchise clubs participating in Super Rugby, where players are employed by NZ Rugby. Third-party funding may be available for franchise clubs, for signing marquee players, which must be disclosed to NZ Rugby.

At the same time as the Silver Lake deal was announced (see above), NZ Rugby and the New Zealand Rugby Players Association agreed a new collective agreement, which includes revenue sharing with the players and also includes the relationship with the new commercial entity that will be established as part of the Silver Lake deal.

7.2 Employer/Employee Rights

Where an athlete (or a match official) is employed by a national sporting organisation (such as with rugby union), employment rights are dealt with in accordance with the employment contract and general employment law in New Zealand.

7.3 Free Movement of Athletes

Overseas athletes that wish to participate in a specific sporting event in New Zealand would normally apply for a Specific Purpose Work Visa from Immigration New Zealand.

8. ESPORTS

8.1 Overview of Esports

Esports have grown rapidly in New Zealand, as in most other countries. The NZ Esports Federation has been established as a national sporting organisation for esports in 2020.

9. WOMEN'S SPORT

9.1 Overview of Women's Sport

Women's sport at the elite level is continuing to develop in New Zealand. Across a range of individual sports, there are a significant number of elite women athletes at world-class level. In team sports, there are now professional and semi-professional teams in several major sports, including rugby union, football (soccer), rugby league, cricket and netball.

For example, in 2022, New Zealand Rugby launched Super Rugby Aupiki, which is a semi-professional league comprising four New Zealand teams playing over a four-week programme. Teams will have 28 contracted players. The national women's teams are the Black Ferns and Black Ferns Sevens.

In other sporting codes, the Wellington Phoenix women's professional football (soccer) team was established and has joined the W-League for the 2021–22 season. The W-League is run by the Australian Professional Leagues. The Warriors women's rugby league team is part of the women's NRL competition run out of Australia, although they did not participate in the last season due to COVID-19 restrictions.

Over the next few years, there are several major international women's sporting tournaments hosted or co-hosted in New Zealand. The ICC Women's Cricket World Cup is taking place in 2022, the Rugby World Cup 2021 for women also in 2022 and the FIFA Women's World Cup (co-hosted with Australia) in 2023.

The profile of women's sports is improving. Sport New Zealand has reported that women's sport (individual and team) accounts for 15% of media coverage in New Zealand, from around 10% several years ago.

In terms of broadcast rights and sponsorships, national sporting organisations will often include women's and men's teams and games as part of a single rights and sponsorship package.

10. NON-FUNGIBLE TOKENS (NFTS)

10.1 Overview of NFTs

NFTs are at an early stage in New Zealand, and have not been used extensively in the sports domain. Generally, NFTs or crypto assets are not directly regulated in New Zealand.

11. REGIONAL ISSUES

11.1 Overview of Regional Issues

Not applicable in this jurisdiction.

M Webb Ltd is a New Zealand law firm, based in Auckland. As a part of its practice, the firm advises clients in New Zealand and in Asia on

sports broadcasting rights and transactions and sports sponsorship arrangements.

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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 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 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 for 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 that 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, are seen 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 sponsor(s) and sport rights-holder(s) 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 is 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 March 22, 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 sports at the latest.

3. SPORTS EVENTS

3.1 Relationships

Sporting venues are, as a rule, the property of the entity who operates them. For example, a football club's stadium is, as a rule, owned by that club. But in several cases the stadium belongs to the state or for the municipality.

In the statutes and regulations of the sports federations and of 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 keep 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 deemed to be high risk, which take place

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other than at the enclosed sports location of the sports event promoter.

It is possible for sports organisations to have other revenues streams such as sponsors and patronage but in limited terms.

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 applicable 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 a 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.

There are COVID-19 general law support provisions which are still available and also the *Fundo de Apoio para a Recuperação da Atividade Física e Desportiva*, which support sports organisations and clubs facing problems related to COVID-19.

4.4 Recent Deals/Trends

There have been no particularly significant recent deals or trends in the corporate sports space in Portugal.

5. INTELLECTUAL PROPERTY, DATA AND DATA PROTECTION

5.1 Trade Marks

Defining a Trade Mark

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.

The Industrial Property Code also defines collective marks that, in some cases, may be applicable in the field of sports.

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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 which fall within the scope of these two definitions should be registered to be protected and to allow for exclusive commercial exploitation by the respective holders.

Registering a Trade Mark

Any trade mark related to the 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 which 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 species, 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 the 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 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* (“Portugal the National

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Football Federation”) and the most recent one the *Federação Portuguesa de Lohan Tao Kempo* (“Portuguese Federation Lohan Tao Kempo”).

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 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 as 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 July 4. 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.

Please note that 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, one’s image right is 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: 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 July 14, 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 to 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 as such 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

Licence Agreements for the Use of the Club's Trade Mark for Specific Products

Trade marks may be subject to a 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

One of the main sources of income for sports clubs, especially soccer 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 1st and 2nd Football league soccer championships. It was determined that (i) television and multimedia broadcasting rights for the seasons following the 2027–28 season will be the object of centralised marketing; and (ii) the entering into of 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 soccer 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.

On the other hand, spectator data is commonly used for statistical and security purposes, sending communications and even the provision of 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, and 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, to be 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 the 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.

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In order to have this card, a supporter would be required to fill out information containing personal data such as their name and age.

However, and 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 an identification document with a photo 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 gender can be influential in the decisions by brands to advertise a certain good or service 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, or for the purposes

of medicine and evaluation of the 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 associated 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.

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 for instead.

Indeed, the Portuguese Court of Arbitration for Sports (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 arbitration (ie, disputes arising out of acts and omissions of sports federations, professional leagues and/or other sport 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 the 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 the 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**, the Portuguese Arbitration Court for Sport (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.

The 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 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 the 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 that have signed employment contracts must comply with the minimum amounts stipulated in the Col-

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lective 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 in the Ministry's Employment and Labour Bulletins.

Also, in Portugal all employees are guaranteed a minimum monthly wage, which amount shall be yearly established by special legislation. As of 1 January 2022, the minimum monthly wage for the continental part of Portugal is EUR705.

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 one sporting season, as minimum, and five sporting seasons as maximum.

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 by expiry, agreement between the parties, dismissal with cause on 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, 12 February, subsequently amended), is subsidiary applicable to sports employment contracts.

Disputes regarding the discussion of the existence of just cause for a 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 decision of the 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 contracted alleging the existence of just cause following an attack of the fans of Sporting Clube Portugal SAD on its training academy. The Portuguese Court of Arbitration for Sports 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 League.

However, Portuguese professional football clubs are subject to the regulations of the Portuguese Football Federation that stipulate that the same 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 applicant resides and must be approved prior to the applicant's entrance into Portugal.

8. ESPORTS

8.1 Overview of Esports

It is early days for esports in Portugal. Whilst the industry is growing slowly and there are two projects for new esports federations in Portugal, there are not many organised competitions yet, nor official, national competitions.

The government and sports bodies are studying the matter, but Portugal has not yet recognised esports as a sport as there are still some resistances.

Since esports is 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 the same interpreted towards the specifics of esports.

9. WOMEN'S SPORT

9.1 Overview of Women's Sport

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 recently created *Observatório de Futebol de Portugal* of the Portuguese Football Federation, women's football is growing strongly with an increase of 181% of federated players in the last ten seasons (season 2010–11 had 3,437 women football players; 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 which 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 Overview of NFTs

The year 2021 was marked by the appearance in Portugal of some pioneer 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 worth mentioning the partnership between the start-up Realfevr, the Portuguese Football Federation and the Portuguese League, allowing football fans to buy,

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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 NFTs 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. But 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 Overview of Regional Issues

The impact of Brexit has not been felt much. Neither in terms of mutual recognition of diplomas or in the limitation of the number of foreign athletes (non-EU citizens) in teams, nor 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.

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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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1. REGULATORY

1.1 Anti-doping

Doping is a criminal offence under the Swedish Doping Act. However, the Act only criminalises certain specific doping substances such as anabolic steroids, testosterone and growth hormones. Those substances may not be imported, transferred, manufactured, offered for sale, etc. Anyone wilfully breaking the Act may be sentenced to a maximum of six years' imprisonment.

Sweden adopted the World Anti-Doping Agency (WADA) Code in 2004. The Swedish national governing bodies (NGB) regulatory framework (based on the WADA Code) generally apply to all athletes who engage in competitive sports in Sweden.

Doping within sports has previously been monitored within the Swedish Sports Confederation's internal organisation (the Doping Commission). A separate National Anti-Doping Agency (NADO) has been established as per 1 January 2021. This new entity (Anti-Doping Sweden) has taken over all the responsibilities previously handled by the Doping Commission.

Anti-Doping Sweden will investigate all positive doping results and decide whether the matter should be reported for disciplinary action to the Doping Panel (the first instance penal body for cases involving anti-doping rule violations within sports). The Doping Panel's decision may be appealed to the Supreme Sports Tribunal by the convicted person or by Anti-Doping Sweden. The Supreme Sports Tribunal is normally the last instance. Also, depending on the circumstances of the case, it may sometimes be appealed to the Court of Arbitration for Sport (CAS). However, CAS may dismiss the case.

1.2 Integrity

Sweden adopted a new Gambling Act in 2019, introducing specific criminal provisions related to match-fixing. Match-fixing and other manipulation of sports activities had previously no specific and separate penal provision in the Criminal Code. Under the new provisions of the Gambling Act, anyone who takes inappropriate actions to manipulate the outcome of a game that is subject to licence requirements under the Act may be imprisoned for a maximum of six years for cheating (ie, gambling fraud).

The Gambling Act is supervised by the Swedish Gambling Authority. The authority has created a special council concerning match-fixing and may halt and/or prohibit specific types of betting.

Match-fixing is a major concern in Sweden (as internationally) and may in the long run damage the credibility of the sports movement and cause losses to other stakeholders, such as the gambling industry. Efforts to prevent match-fixing are complicated when operations are run in different countries.

In 2015, the Swedish Sports Confederation adopted a general code to fight the manipulation of sporting competitions, covering all sports in Sweden. The code applies to all members of the federation (ie, the special NGBs for each sport, clubs and individual athletes who participate in sport activities for a club). Under the code, sanctions may be imposed on individuals (temporary ban for up to ten years), fines for NGBs and clubs as well as cancellation of results achieved in competitions, etc.

1.3 Betting

The new Gambling Act has created better opportunities for foreign operators to receive a gambling licence in Sweden. The Act applies to gambling of money, which is allowed in Swe-

den. The Swedish Gambling Authority has overall responsibility for licensing and supervision of the Act. Any gambling directed at the Swedish market without a licence from the authority is prohibited.

1.4 Disciplinary Proceedings

A regulatory or disciplinary offence by an athlete (doping matters included) will normally be determined by the relevant NGB's internal rules (by a disciplinary committee or similar body).

2. COMMERCIAL RIGHTS

2.1 Available Sports-Related Rights

The main source of revenues for the event organiser, besides sponsorship (see **2.2 Sponsorship**) and broadcasting rights (see **2.3 Broadcasting**), derives from merchandising, catering, hospitality and ticketing rights at the event.

Swedish law does not require that any mandatory statutory provisions must be incorporated into commercial agreements regarding sport-related rights, or apply under such contracts. Neither does Swedish law generally impose any restrictions on ticket resale, even if it has been much debated. Ticket resale by “scalpers” above face value is still legal, regardless of limitations imposed by the event organiser. Official ticket sellers have tried to prevent grey marketing by including a prohibition against reselling the tickets in its sale agreements or on the tickets themselves, thereby making reselling the ticket a contractual breach. Also, ticket quotas per customer and designating tickets for specified customers who can identify themselves have been used to prevent grey market sales.

2.2 Sponsorship

Sport in Sweden has a long tradition as an independent voluntary movement (generally known as the Scandinavian or, more broadly, the Nordic

model) and has always been a popular platform for sponsorship from various business actors. The business community sees an obvious marketing advantage in being able to associate itself with well-known sports events, NGBs, leagues, local clubs or individual athletes.

The commercialisation of the sports sector has been massive and fast-growing during recent decades. The sports rights-holders (such as NGBs, leagues, event organisers, clubs, individual athletes) have become significantly more professional and business-oriented and sponsorship is usually at the core of revenues.

The key deal terms of a standard contract between sponsors and sport rights-holders are usually the duration of the contract, the territory in which the sponsor can use the sponsorship rights, the nature and scope of the sponsor's rights (exclusive or non-exclusive rights to naming and title rights, advertising rights and official supplier rights, etc), the use of the parties' respective intellectual property rights, the financial arrangements, warranties from the parties (for instance, that the sport rights-holder owns and control all rights related to the sports event) and relevant termination rights.

In individual sponsorship agreements, sponsors tend to protect themselves against serious sporting offences on the part of an athlete, such as doping and match-fixing. Sometimes the sponsors go further and require the use of a morality clause, which may give the sponsor additional protection against other moral issues on the part of an athlete (such as drug abuse, gambling and other behaviour that does not reflect the sponsor's brand values). In some cases, the morality clause can be reversed, enabling the athlete to terminate the agreement if the sponsor or the brand suffers reputational damage.

2.3 Broadcasting

Broadcasting agreements are the most valuable source of revenue for the sport right-holders. Streaming services on the internet and other new media significantly increases these revenues. The broadcaster usually has the exclusive powers to license public screenings of a sport event. Swedish law does not recognise independent proprietary rights to an event per se (see **3.1 Relationships**). However, event organisers will be able to restrict illegal broadcasting through control of access to the event and the terms of entry. The Swedish Copyright Act provides that radio or TV broadcasts may not be transmitted to the public without the consent of the broadcaster.

Broadcasting rights in most high-profile sports are sold collectively by the governing bodies or the league, such as the Swedish Hockey League, on behalf of its member clubs. In 2020, UEFA announced the results from its bidding process for the UEFA Champions League and UEFA Europa League in the years 2021–24, where the Swedish company Telia bought the broadcasting rights to the Champions League in Sweden for SEK3 billion. From 2021, the UEFA Champions League is broadcasted on one of TV4 Group's channels (owned by Telia).

3. SPORTS EVENTS

3.1 Relationships

As mentioned in **2.3 Broadcasting**, Swedish law does not recognise independent proprietary rights in a sports event per se. The idea or concept for a sport event is not protectable under Swedish intellectual property laws. However, the sport event organiser generally protects the event and the commercial rights related to the event through a combination of real property law, contractual provisions, intellectual property law and tort law.

Generally, the event organiser holds control of access to the venue of the event. This means that the event organiser may restrict third-party access and ensure, through various agreements, that entrants are not entitled to benefit commercially from their attendance.

The event organiser may also protect the various commercial rights in the event through agreements related to the entry to the event (ticketing), sponsorship, broadcasting, merchandising, catering, hospitality, etc.

Entry to the event is based on the ticketing agreement between the organiser and the spectator (governed by the Contracts Act and the general principles of contract law). The ticket terms and conditions must be brought to the attention of the spectator at the time of purchase of the ticket. Access to the event may be granted on specific terms, usually described on the ticket itself, or by notices placed at the venue. If the ticket is purchased on the internet, the specific ticket conditions shall be listed on the seller's website. The event organiser may impose specific terms for entry, such as refusing access to the event for security reasons, restrictions on resale of the ticket and recording footage of the event, restricting access to the event to certain specified areas of the venue and specifying the ticket-holder is over a certain age.

3.2 Liability

An event organiser's (non-contractual) civil liability is partly governed by the Swedish Tort Liability Act and partly on Swedish case law. Event organisers have a pronounced duty of care for the spectators' and the athletes' safety. Non-contractual liability normally covers personal injury and loss of or damage to property. Compensation for pure financial loss is excluded, except in the case of criminal behaviour.

Liability requires an event organiser's negligence and must be evaluated in each specific case by reviewing whether the organiser has fulfilled its obligations deriving from applicable legislation and the safety instructions of the sport governing bodies. Damages may be reduced if the plaintiff has contributed, by fault or negligence, to the injury sustained. Damages are awarded only for injury sustained. Swedish law does not recognise the use of punitive or exemplary damages.

An athlete's civil liability (non-contractual liability) is governed by the same sources of law as the organisers' non-contractual liability. Athletes may be held liable for damage or injury caused to other athletes, officials or spectators when the athlete acts intentionally or negligently. The liability is evaluated on a case-by-case basis in the light of the athlete's obligations resulting from legislation and the governing body's sport-specific rules.

The athletes' criminal liability is based on the concept of non-acceptable risk-taking. Athletes have normally accepted the risks inherent in the specific sport. However, violence between athletes may constitute a criminal offence, even in sports involving more aggressive physical contact (such as boxing or ice hockey). However, if the athlete adheres to the relevant sporting rules, their actions will most likely not incur any civil or criminal liability. Sports-related violence is subject to public prosecution. Authorities will generally have to investigate criminal matters *ex officio*.

A spectator's civil liability (non-contractual) is governed by the same sources of law as the organisers and athletes' non-contractual liability. A spectator may be held liable in respect of damage to property or personal injury caused to the event organiser, other spectators or athletes. Liability for damages arises only when the spec-

tator acts intentionally or negligently. Spectators may also incur criminal liability for offences under the Criminal Code.

Specific legislation relating to the access to sports events was introduced in 2015 following some tragic incidents at Swedish football grounds (such as the death of a football fan after pre-match violence in 2014). An individual may be prohibited from entering a venue where a sport event is going to be held. The public prosecutor may issue a banning order against, for instance, a violent supporter, for up to three years. Anyone breaking the banning order will be sentenced to a fine or maximum of two years' imprisonment. In 2017, new anti-hooligan legislation was introduced for a ban against covering one's face at sporting events. A spectator at the arena who intentionally covers their face in a way that prevents identification may be sentenced to a fine or a maximum of six months' imprisonment.

4. CORPORATE

4.1 Legal Sporting Structures

The Swedish Sports Confederation is the unifying organisation of the sports movement in Sweden and has the task of supporting, representing, develop and leading the movement, both nationally and internationally.

The Sports Confederation consists of 72 special sports federations and 21 district sports federations, which organises more than 250 different sports and almost 20,000 local sports clubs. Almost a third of Sweden's inhabitants are members of a sports club (as athletes, officials, coaches or supporters).

Sport in Sweden is historically organised as an independent voluntary movement (known as the Scandinavian or Nordic model). A long experi-

ence of collaboration with central government and local authorities has led to the sports movement being entrusted with the task of organising sport in Sweden on its own, but with the help of financial support from the state and local authorities. For historical reasons, all sports are organised through voluntary non-profit associations. The right to participate in clubs and societies is guaranteed by the Swedish Constitution.

Membership in the Sports Confederation is only admitted to non-profit associations. All local sport clubs are organised as non-profit associations with the purpose of organising sports activities, having both professional teams and sport-for-all within the same organisation.

The Sports Confederation supports its members and represents the entire sports movement in contacts with the government, such as during the COVID-19 pandemic, where it has negotiated several financial compensation packages to its members due to the losses suffered by the pandemic.

The clubs are organised according to two principles: one geographical and one linked to the specific sport. The geographical organisation takes the form of district sports federations while particular sports are organised in special sports district federations and special sports federations.

The Sports Confederation has its own judicial system, with the Supreme Sports Tribunal as its highest instance. The tribunal deals with appeals against legal decisions handed down by the sports federations.

A sport club must hold a specific participating (sporting) licence with its special sport federation. However, the clubs may transfer its rights under the licence to a limited liability company, under the conditions that the club is the majority

owner of the shares/voting rights in the limited liability company. The limited liability company is prohibited from transferring the sporting rights to a third party. Many sports clubs with professional teams – for instance, within football and ice hockey – have used this opportunity to attract financial investors from private business. So far, only one of these limited liability companies (AIK Fotboll) has listed its shares on the public market.

All matters related to the Olympics are handled by the Swedish Olympic Committee. The committee consists of 41 member federations, the national sports federations for the Olympic sports and 15 recognised federations (ie, recognised by the International Olympic Committee, but not currently on the Olympic programme).

4.2 Corporate Governance

Swedish law does not provide for specific corporate governance codes within sports. However, sport governance is a growing concern among stakeholders, not least due to the significant commercialisation of sports during recent decades.

Professional teams organised within a limited liability company need to comply with the provisions of the Swedish Companies Act. Listed limited liability companies are subject to specific rules regarding corporate governance, such as the Swedish Corporate Governance Code; the Code may also be applied voluntarily by non-listed companies.

However, most clubs are organised as non-profit associations. Under Swedish law, the board is responsible for the organisation and management of the organisation's business. The board has the overall responsibility to assess the financial situation of the organisation and ensure that the accounting, management of assets and the financial situation of the organisation are moni-

tored in a safe manner. The board represents the organisation officially and has the power to sign on behalf of the organisation.

A board member (or an officer) of a non-profit association or a limited liability company may be held responsible for damages caused to the organisation (or its members or shareholders) in the performance of their duties.

Board members are primarily responsible for any acts and omissions within the scope of the board's area of responsibility. However, board members may also be liable for acts taken by an officer of the organisation within the day-to-day management, if the board has neglected its duty to supervise. Board members are required to keep themselves updated regarding the organisation's current financial situation and make decisions based upon sufficient information. A board member (or an officer) may also be liable for damage that they intentionally or negligently cause a third party by violating the statutes of the association or the provisions in the Companies Act. Further, a board member may be subject to a wide range of further provisions in specific legislation – for instance, related to book-keeping, annual accounts, tax payments or environmental matters.

Board members and officers of an organisation may also incur criminal liability under certain provisions of the Companies Act and other offences under the Swedish Criminal Code, such as credit fraud, breach of trust and bribery. Insurance policies against liability exposure for board members and officers may be obtained and are quite common.

4.3 Funding of Sport

The Swedish sports movement is generally funded by central government resources, support from the municipal communities and revenues from sponsorship agreements. Other

revenue streams derive from the transfer of players (mainly for the elite clubs), arenas (such as ticketing, hospitality and merchandising), online sales and lotteries.

The COVID-19 pandemic has caused great difficulties for the sports movement and the government has provided sport with several crisis packages, which were distributed to its stakeholders by the Swedish Sport Confederation. To mitigate the effects of restrictions that were enforced, the government recently proposed additional funds of SEK300 million to be allocated to culture and sport. The Swedish Parliament previously adopted a SEK940 million stimulatory package for culture in the budget for 2022. In 2020, the cultural sector received various crisis support packages, totalling more than SEK2.5 billion. In 2021, SEK3.9 billion in crisis support was distributed. So far, no elite club has been involved in any insolvency proceeding or gone bankrupt due to the pandemic, but the financial situation is still critical for the entire sport sector.

The phasing out of measures in response to COVID-19 began on 9 February 2022. As of that date, measures such as the participant limit for public gatherings and events and the possibility to demand vaccination certificates upon entry to Sweden was removed.

4.4 Recent Deals/Trends

The investor interest in the Swedish sports sector is mainly focused on individual top athletes. Investments from private equity firms, venture capital funds and other investment institutions in professional elite teams are still rare, due to the restricted control of the club by its members.

5. INTELLECTUAL PROPERTY, DATA AND DATA PROTECTION

5.1 Trade Marks

Many stakeholders within the Swedish sport sector (including individual top athletes) seeks trade mark protection. Sweden has domestic protection through the Trademarks Act and has also implemented the EU Trademark Directives and adopted the Madrid Protocol. EU trade marks are recognised in Sweden, as well as international trade mark registrations administered by the World Intellectual Property Organization (WIPO), designating Sweden.

Trade marks are registered by the Swedish Patent and Registration Office and the protection applies for ten years. Renewal can be made for an unlimited number of consecutive ten-year periods. The owner of the mark can bring an action against anyone making unauthorised use of the mark.

Trade marks may consist of words, signatures, symbols, patterns, etc, provided that the signs are distinctive.

A trade mark may be assigned or licensed.

5.2 Copyright/Database Rights

No particular form of copyright covers sports events specifically and an athlete's performance during the event would not be protectable in itself, but the provisions of the Copyright Act may anyway be applied. Any recording (sound, visual and audio-visual recordings), broadcast and footage of the performance may be protectable under the Copyright Act. The Copyright Act protects the expression of an original work (for example, broadcasts and sound recordings) for a period of 50 to 70 years. The protection will arise automatically on the expression of the work.

The Copyright Act also provides protection to the compilation and use of sports databases for commercial reasons. To receive protection, certain conditions must be fulfilled (such as a substantial investment in the obtaining, verifying or presentation of the contents of the database).

5.3 Image Rights and Other IP

Image rights are protected under Swedish law under the Act (1978:800) on Names and Images in Advertising (the Names Act).

According to the Names Act, an individual's name or picture cannot be used in marketing purposes without the explicit permission of the individual. Violations of the Names Act may lead to fines. The person whose image rights has been exploited is entitled to a reasonable compensation for the infringement. The infringer shall also pay compensation for other damages suffered by the individual.

The public prosecutor may also initiate a criminal action for violation of the Act if the injured party has submitted a complaint over the infringement or if a prosecution is necessary in the public interest.

As mentioned in **5.1 Trade Marks**, many Swedish professional athletes choose to protect their names as trade marks in accordance with the Trade Marks Act. The Names Act may be applied on most types of trade mark uses as well – ie, both acts may be applicable in infringement cases.

5.4 Licensing

NGBs, clubs and athletes may exploit their intellectual property rights through license agreements. Swedish law does not contain any provisions restricting the assignment of IP rights to third parties.

5.5 Sports Data

The use of data in sport is fast-growing, both in order to improve the athletes' performance and for commercial reasons – for instance, to engage with local supporters and consumers. Clubs may also use mobile app data and machine learning to personalise marketing campaigns and analyse game data. The use of new technology can engage new fans and drive revenue from ticket sales and sponsorships.

5.6 Data Protection

The General Data Protection Regulation (GDPR) came into effect in 2018 and applies to all Swedish NGBs and clubs that monitor their athletes. The Swedish Authority for Privacy Protection (IMY) is the supervising authority. So far, NGBs and other sport stakeholders have generally been compliant with the regulations and no hefty sanctions have been imposed.

6. DISPUTE RESOLUTION

6.1 National Court System

Public courts are normally not involved or likely to intervene in sports disputes. A regulatory or disciplinary offence by a participant will normally be solved within the respective NGB's internal dispute resolution mechanisms (disciplinary committee or arbitration). The individual athlete must abide contractually to the rules of their club, the relevant NGB, the Sport Confederation and the rules from international governing bodies. Most NGBs have their own disciplinary committee or arbitration board. Under certain circumstances, the Supreme Sports Tribunal deals with appeals against sport-related decisions and disciplinary sanctions handed down by the relevant NGB.

Public courts have jurisdiction over all disputes outside the sport governing bodies' internal dis-

pute resolution systems (such as civil and criminal liability cases).

6.2 ADR, including Arbitration

As mentioned in **6.1 National Court System**, a regulatory or disciplinary offence by an athlete or other similar sports disputes (such as breach of contract claims) will usually be determined by a disciplinary committee or arbitral panel pursuant to the relevant NGB's rules.

6.3 Challenging Sports Governing Bodies

An arbitration award from a NGB is enforceable as a court judgment (the Enforcement Code). The award must be in writing and signed by the majority of the arbitrators.

There are no established principles in Sweden regarding when the public courts can examine and decide on lawsuits in relation to decisions of NGBs – for example, decisions on membership issues or disciplinary sanctions. Generally, the public courts are very restrictive when it comes to challenging decisions from NGBs and there are very few court cases on this issue. However, a public court may set aside a decision from a NGB if the decision is based on obvious unreasonable circumstances, such as discrimination because of gender, race or religion.

7. EMPLOYMENT

7.1 Sports-Related Contracts of Employment

The relationship between clubs and professional athletes is governed by Swedish employment law. Professional athletes in commercialised team sports (eg, football and ice hockey) are regarded as employees. In most cases, standard form employment contracts set out by the relevant NGB is used. In many cases, these standard employment contracts form an integral part

of the collective bargaining agreement in place for the specific sport.

Temporary (fixed-term) employments are generally allowed, up to a maximum of two years. Longer fixed-term employments have been agreed in some collective bargaining agreements (such as within football).

The individuals and clubs must adhere to the transfer restrictions set out by the governing bodies and the corresponding rules from international governing bodies, such as FIFA's Regulations on the Status and Transfer of Players and FIFA's Transfer Matching System.

7.2 Employer/Employee Rights

All Swedish employers must take reasonable care of their employees' health and safety. The employers are also required by law to protect their employees from abuse, discrimination, sexual harassment, etc. The Swedish Sports Confederation is working proactively with its members to implement several regulations, guidelines and education related to, for example, doping, sports integrity, diversity, sexual harassment and violence in the workplace.

7.3 Free Movement of Athletes

Sweden is subject to the EU rules regarding the free movement of labour, cross-border competition and discrimination. Following the Bosman case of 1995, the NGBs and the clubs adjusted their internal regulations to comply with EU law. It is prohibited to restrict the number of foreign athletes from EU member states, but the number of non-EU athletes may be limited to some extent. The Swedish Football Association has adopted rules where at least half of the players noted in the club's player list must be "home-grown players" – ie, they have been registered for a Swedish football club for at least three years from the ages of 12 to 21 years.

Athletes who are EU citizens have the right to live and work in Sweden without a residence permit or a work permit. Athletes who are non-EU nationals need to apply for a work permit to compete for a Swedish club. Foreign athletes can temporarily compete in Sweden for a maximum of 90 days without obtaining a work permit. Non-EU citizens from certain countries (such as Russia, Afghanistan, Iraq, Egypt, Indonesia and most African countries) may need a visa to travel to Sweden.

8. ESPORTS

8.1 Overview of Esports

Despite its comparatively small population, Sweden is one of the world's leading countries within esports, and esports continue to grow rapidly. Some of the world's best-selling games are produced in the Nordic countries and the Nordic region is a huge gaming community. Sweden has approximately 435 professional esports players and is among the highest-earning countries in the world in terms of esports prize-winnings. The country develops some of the globe's top esports talent and has a leading esports programme, ensuring that junior players get a level of support that is on par with that of the professionals, including education, youth camps, training sessions, a strict code of conduct for players, parents, and organisers which holds those involved to the highest of standards.

A study conducted in 2018 found that Sweden is the second biggest market in Europe for esports consumption, based on merchandise purchases and brand interactions reported by sponsors. Sweden is also home to Dreamhack's esports tournaments, the biggest esports events in the world. The Swedish eSports Association is the umbrella organisation for Swedish competitive electronic gaming.

It is an ongoing debate whether esports should be recognised as an official sport in Sweden. The Sports Confederation has not yet accepted the eSports Association as a member, but this may change in 2022.

9. WOMEN'S SPORT

9.1 Overview of Women's Sport

Women's sports are well established in Sweden in most disciplines. Indeed, in some sports – such as alpine skiing and biathlon – the Swedish women have, due to their greater international success, received far more media attention than the men.

The government is investing in sport and expects the sports movement, at all levels, to redouble its efforts to achieve gender equality in sports, and to give all those with an active interest the same opportunities to participate, regardless of their gender. The largest women's sports in Sweden are still athletics, football and gymnastics, but other sports (such as ice hockey, basketball and handball) continue to develop.

There has been a sharp increase in audience figures during women's sports events in recent years and events from women's top sports leagues are regularly broadcast on TV and other mainstream media, which obviously attracts new sponsors, etc. In 2021, the Swedish Football Association introduced equal compensation for the national teams.

10. NON-FUNGIBLE TOKENS (NFTS)

10.1 Overview of NFTs

NFTs (non-fungible tokens) are digital assets that may lead to new revenue streams for Swedish

leagues, event organisers, clubs and individual top athletes, etc. NFTs, like cryptocurrencies, are technologies that at the time of writing remain in the grey area in terms of legal recognition in Sweden. NFTs have received huge interest globally, but the industry itself is in a very early stage, and the legal recognition of NFT transactions is still untested in Sweden. Nevertheless, NFTs may have great potential to offer new sources of revenue for the sports industry as they offer new types of engagement with the fans. Potential risks with NFTs are mainly copyright infringements and violation of GDPR/data protection regulations.

11. REGIONAL ISSUES

11.1 Overview of Regional Issues

So far, Brexit has not had any significant impact on sport in Sweden. However, this may be due to the COVID-19 pandemic and the previous restrictions imposed on travel, competing abroad and postponed events, etc. The new EU-UK Trade and Cooperation Agreement entered into force on 1 January 2021. The Agreement means that, among other things, free movement of athletes between Sweden and the UK ends.

UK nationals will be exempt from a visa requirement for short-term visits that do not exceed 90 days within any 180-day period. After 31 December 2020, UK athletes who want to come to Sweden for long-term stays or residency have to apply for a residence permit in Sweden in the same way and on the same terms as other athletes who are not EU citizens. As a general rule, such a permit must have been applied for and granted before entry into Sweden. The possibilities of receiving a permit to come to Sweden to work as a professional athlete are generally good.

Contributed by: Karl Ole Möller, Nordia Law

Nordia Law is a Nordic commercial business law firm with offices in Stockholm, Gothenburg, Copenhagen, Oslo and Helsinki, regarded as one of the leading law firms on the Swedish

market with regard to complex litigation and arbitration matters. Nordia offers quality legal services within all areas of commercial law to clients in the Nordic region and abroad.

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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 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).

Antidoping Switzerland 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 to all its member associations. The Doping Statute is accessible here: [Antidoping Switzerland](#).

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 Sports (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 Australian swimmer Shayna Jack (CAS A1/2020) and the Italian MotoGP rider Andrea Iannone (CAS 2020/A/6978 & CAS 2020/A/7068).

1.2 Integrity

Under Swiss law, a distinction is made between misconduct, which directly manipulates sports competitions (“match-fixing” in the more classi-

cal 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 Sports Promotion Act (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 such person exercising a function in a sports competition demands, accepts or allows himself 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

Sport 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 conduct, 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, has been 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 CAS and 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 Code of Conduct and the IOC's Code on the Prevention of the Manipulation of Competitions.

Co-operation

Sports governing bodies often enter into co-operation agreements to protect the integrity of their sport. For example, UEFA signed a memo-

randum 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 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.

In December 2020, the Tennis Integrity Unit, whose decisions may be challenged before the CAS, banned a French tennis line umpire from officiating for 18 months and issued a fine after having found the umpire guilty of placing bets on tennis matches.

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.

In case 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 sport governing body may be appealed before the CAS or another arbitral body, rarely before state courts. Ultimately, decisions of 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

On the contrary, 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 NF may include the following rights of the sponsor in return of 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 sponsor's 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 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.

As a recent 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 sport 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

Sport events take place in privately or publicly owned closed venues (eg, stadiums, sport event halls) or on public open grounds (eg, city marathons).

If the event takes place on a private 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 sport 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 organiser 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 Internal 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. Currently, the introduction of mandatory personalised tickets for football games is being discussed, in order to improve security during matches. The topic, however, remains controversial.

4. CORPORATE

4.1 Legal Sporting Structures

The vast majority of sports governing bodies are organised either 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 the 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. On the contrary, 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 club 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 sport 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.

By way of example, under the UEFA Club Licensing and Financial Fair Play Regulations, to obtain a licence for participating in UEFA's club competitions, clubs have the obligation to balance their revenue and expenses over a period of time and they are not allowed to have "overdue payables". Non-compliance results in the ineligibility to participate in the UEFA competitions, such as the UEFA Champions League, the UEFA Europa League or the UEFA Conference League, and possibly other disciplinary sanctions (fines, etc).

Insolvency

In case of insolvency of a Swiss sporting club, the proceedings are governed by the Federal Debt Collection and Bankruptcy Act. Under this Act, in essence, it is up to the creditor's assembly to decide whether to continue the operation of the sporting activities during the insolvency.

Should the creditor's 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, coaches as well as to Antidoping Switzerland.

Depending on their potential of 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.

In the context of the COVID-19 pandemic, certain extraordinary payments were made, upon application, to sports entities in Switzerland. In addition, the government has opened specific finance support programmes and offered loans and other financial help. Some of those support programmes are still ongoing (either directly or indirectly supporting sports organisations), but for many of them, expiry dates have been fixed.

4.4 Recent Deals/Trends

In a recently published deal, the private equity company CVC has made an investment worth a reported USD300 million with the International Volley Federation (FIVB) in a newly founded joint-venture, VW Volleyball World SA.

The partnership will particularly focus on event-hosting, fan experience, media, data and digital opportunities, as well as sponsorship.

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 Swiss IPI.

Registration Process

Upon payment of a registration fee, the IPI examines if 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.

On the contrary, 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 if 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.

In case the trade mark was originally registered outside of Switzerland and an additional protection through Swiss jurisdiction is sought, the owner shall 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 their 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 the use of 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 latter 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 its 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.

Photographical Reproductions

The Copyright Act has recently been revised and a new category of protection has been introduced. In essence, pictures without individual character (while fulfilling the other requirements) may enjoy protection as photographical 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

The 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 to the assignment of IP rights apply to author's 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.

Vast potential in sports present 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 it for analysis purposes, but also present a new form of fan engagement – the latter leading to 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 has recently undergone a revision in order to be more aligned with the EU General Data Protection Regulation (GDPR).

Revision of the DPA

The revised DPA aims, amongst other things, at strengthening the individual's data protection rights and, as mentioned, aligns Swiss data protection law more closely with the GDPR. As a consequence, the revised DPA will require 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. The revised DPA will likely enter into effect in 2022.

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 outlook (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 rule of the organisation.

Further, the vast majority of sport organisations rely on arbitration as a system to solve sport-related disputes. This is to ensure, on one hand, 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 Court of Arbitration for Sport in Lausanne 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 SFT, it is admitted that an athlete cannot be requested to waive his or her 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)

Most prominent examples of alternative dispute resolution mechanisms are the internal judiciary instances within IFs, such as FIFA and UEFA, including the FIFA Players’ Status Committee, the FIFA Dispute Resolution Chamber 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 sport 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 case 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. Financial Fair Play Regulations enacted by UEFA (see **4.2 Corporate Governance**) 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 sport 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, sport governing bodies usually provide for a detailed set of ethics rules (code of conduct), with respective duties and sanctioning regimes.

In a recent decision, FIFA has sanctioned the former President of the Paraguayan Football Association with a lifetime ban from football and a fine of CHF1 million for bribery, in application of the FIFA Code of Ethics.

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 Overview of Esports

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 e-Sports Federation (SESF), a founding member of the International e-Sports 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 Overview of Women’s Sport

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 broadcasted by SRG SRR, either on TV or livestreamed on their 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.

The Swiss National Olympic Committee (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 Overview of NFTs

Recently, the sports market has seen an increase in cooperation between sports organisations and NFT providers and platforms, respectively. NFTs are typically used to generate additional source 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 to 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 Overview of Regional Issues

While Switzerland is not part of the EU, Switzerland's relations with the UK was governed in the past in key areas, such as trade and migration, based on 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.

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Trends and Developments

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Introduction

In the world of sports, Switzerland continues to be the country in which the International Olympic Committee, many international sports federations (FIFA, UEFA, FIVB, UCI, 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. Because of its unique position in the world of sports, many of the legal and regulatory impacts of the pandemic could be closely observed in Switzerland. We will describe the regulatory approach taken by sports governing bodies in detail, with a specific focus on how this approach may change, now that the world is hopefully coming closer to a post-pandemic situation.

It can be expected that in 2022 we will see an increasing number of international disputes relating to sport, to a large extent triggered, directly or indirectly, by the pandemic. The most pertinent matters at stake in such disputes will be discussed below.

Further recent developments will also be described. Some of these developments have also been caused by the pandemic (eg, changes to the dispute resolution system in sports or recent financial developments), while others are unrelated to it (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 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.

On the one hand, 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 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

In 2020 and 2021, many international sport federations issued specific rules and regulations to preserve the possibility to continue sports activities and events, both on a professional and amateur level.

By way of example, Swiss Tennis was one of the very first Swiss sport federations to issue a COVID-19 protocol and so ensure that practis-

ing 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.

With a recent easing of COVID-related restrictions, it remains to be seen whether some or many of these regulations will no longer be needed. However, there will quite likely be some follow-up effects, as some disputes triggered during the COVID-19 pandemic (eg, related to the cancellation of competitions or matches) remain pending before competent sports bodies or arbitral tribunals.

Matters of Debate

Although, hopefully, the sports legal landscape will no longer be so dominated by COVID-19 in the future, many disputes will still (directly or indirectly) have been caused by circumstances of the pandemic. FIFA continues to adjudicate 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 continue to be pending, and we expect to see a further development of relevant case law for 2022, or 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 caused financial difficulties on various levels in 2020 and 2021, and some of these effects will likely be felt in 2022. Probably most affected 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 funding by the Swiss government.

However, 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. Therefore, having to play the vast majority of matches within a season without spectators had a very detrimental financial impact on professional sports in Switzerland.

For 2022, it remains to be seen whether sports organisations in Switzerland will recover financially and whether their operations can, from a financial perspective, return to a pre-pandemic level – ie, whether gate revenues, TV revenues,

etc, will again increase so that sports in Switzerland will once again be sustainable without large-scale public funding.

Impacts on the Dispute Resolution System in Sport

The pandemic also had an important impact on the dispute resolution system in sport: CAS has conducted a large number of hearings online, and so did other sport judicial bodies. Whether in 2022 – in a world that will hopefully be “post-COVID-19” – hearings will again be held exclusively in person or whether hearings will continue to be conducted online, in particular where costs, travel circumstances or reasons of urgency so demand, is still to be seen. First indications seem to be that arbitration hearings online will remain an important feature.

Other Recent Topics

On a commercial level, the trend to increase interactive possibilities for fans has continued. In summer 2021, the football club BSC Young Boys introduced NFTs for its fans while other sports clubs are examining the possibilities of NFT. There is a vast potential in esports, which has huge market potential, especially for the younger generation.

The head of the Federal Department of Defence, Civil Protection and Sport, Viola Amherd, has proposed to introduce two possibly far-reaching policies in relation to Swiss sports law.

On the one hand, as a condition to receive federal funding, sports associations will have to fulfil a women’s quota of 40% in their governing bodies. The goal of this policy is to promote women in sport governing bodies.

On the other hand, in reaction to recent, well-publicised cases of abuse of athletes, particularly in the sports of gymnastics, the Swiss government and Swiss Olympics have worked out together to come up with an ethical code to which sports associations have to agree in order to keep receiving state funding. Furthermore, it is envisaged to introduce both an independent reporting office with investigatory powers, as well as a disciplinary body with sanctioning powers.

Conclusion

As a last point, events of recent days and weeks have shown that the world of sports is impacted by the tragic events unfolding in Ukraine. It remains to be seen whether, for example, the exclusion of Russian athletes or Russian sports bodies from international competitions or international federations will trigger substantial legal disputes. Most importantly, it must be hoped that hostilities in Ukraine can be resolved quickly, without unnecessary further loss of life – this is far more important than any legal considerations.

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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 entirely whilst higher profile sports such as football or 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 2021, meaning that all sports have been required to review and update their own rules to ensure compliance.

One of the changes is the approach to recreational substances (eg, cannabis and cocaine) where significantly lower sanctions are now possible if the athlete can demonstrate the usage was recreational and out-of-competition. Athletes with an existing sanction for use of recreational substances may be entitled to a review.

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 4x100m 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 further **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, we would expect:

- 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;
- an independent judge to ultimately decide whether an offence was committed and award the appropriate sanction (lifetime bans in serious cases);
- close collaboration with betting operators through memorandums of understanding to ensure relevant data is shared that might evidence fixing; and
- 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 are 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

Whilst it 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. It 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 that is the case, sports governing bodies wish to avoid any suggestion of a lack of integrity in their sport. As a result, a sport's regulations will often prohibit participants from betting on their own sport, usually on a very broad level, and are 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 longstanding 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.

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 further **2. Commercial Rights**).

1.4 Disciplinary Proceedings

Sporting Regulation

Sports governing bodies in the UK will 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**) will also require adherence to the regulations.

These disciplinary proceedings will tend to be before tribunals or judicial bodies that are administered internally by sports governing bodies, albeit that the judges should be independent of the governing body (for example, 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;
- off-field offences (such as the betting offences described in **1.3 Betting**) – it will take longer for such cases to be investigated, proceedings to run their course and decisions to be made; 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 further **2.2 Sponsorship** and **2.3 Broadcasting**) and exploitation of data rights (see further **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 royalty of 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 stadia during the summer of 2021, with live sporting venues no longer facing any restrictions on fan attendances, loss of ticket income during the COVID-19 pandemic has been 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 the 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 resale, 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 stadia and on land controlled by sports rights-holders, wresting much of this income from unofficial providers. By way of example, Tottenham Hotspur FC’s new stadium was designed and built with tailored luxury hos-

pitality 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 about 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 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;
- controls 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 become arguably 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.

Broadcast Rights

In return, sports rights-holders have benefited from exponential growth in the value of their broadcast rights. For example, the domestic broadcast revenues earned by the FA Premier League have risen from GBP191 million earned 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 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 at which they do so.

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 sport 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 exists 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 restric-

tions (eg, to limit sharing of footage from the event and re-selling their tickets to third parties). See also “ticketing” in **2.1 Available Sports-Related Rights**.

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 in which 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 they become 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 without 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 has 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, its 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 its 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 CBSs (community benefit societies, 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 its 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

Whilst 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 law 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 (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 that sports bodies 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 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 Derby County FC, currently playing in the Championship (the second level of English professional football). After high-value debts had not been paid by its owner, the club has now been placed in administration, with some wondering whether it can be saved at all.

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 law. 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 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 aided by the fact that live sport was not put on hold and attendance to 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.

Sport England

Many national governing bodies and sports bodies are eligible for obtaining 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 further **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 of private equity, venture capital and institutional investment and interest. This trend continued in the first quarter of 2022, with investors confidentially backing sports properties – especially now that stadiums are full and rights-holders can 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 acquiring a stake in the rugby Six Nations competition; and
- 49ers Enterprises acquiring a stake in Leeds United FC, with the option to take 100% control of the club.

Mitigating Risk

Private capital investment must navigate governance regulation (in particular around ownership and control – see, for example, **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

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 endorsing 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 (UKIPO), 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 a pattern.

UK trade marks can be filed in up to 34 goods classes and 11 service classes (using the inter-

nationally recognised Nice Classification system).

Refusal

A trade mark application can be refused by the UKIPO on the basis of a statutory “absolute ground” (such as the mark exclusively designating the geographical origin of the goods/services). Recently, 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 UKIPO 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 then oppose an application on the basis of both absolute and “relative grounds” (for example, where the 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.

A prime example of these counterfeit issues can be seen within the Premier League, with an estimated GPG30 million worth of counterfeit merchandise seized over the last 15 years.

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 compared to relying on unregistered rights.

As an example, British Gymnastics successfully argued a trade mark infringement against UK Gymnastics, in reliance to 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 having the ability 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
- 50 years from first publication in respect of broadcasts.

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 will be 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/business are now ineligible to hold database rights in the 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:

- goodwill attributed to their name/image;
- 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
- 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 sporting 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 generating 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 party. In certain instances – for example, in the case of registered trade marks – the assignment must also be recorded at the UKIPO 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, amongst others:

- improve athlete 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 recently 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.

As a snapshot of sports data activities by sports bodies and other stakeholders in the UK over past 12 months alone:

- 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 have 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; and

- 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.

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 (amongst 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 recent ruling in Lloyd v Google slightly reduced the uncertainty around the future of athlete 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 as suggested by the group 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 are 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 GDPR (known as UK GDPR), may all apply to the use and exploitation of sports-related data in the UK.

Post-Brexit, GDPR is only relevant to UK organisations who are continuing to offer goods or services to, or monitoring the behaviour of, EEA individuals (eg, a club which sells merchandise to fans based in EEA countries).

GDPR Impact

The introduction of GDPR has had wide-ranging impacts 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 the use of wearable technology, augmented reality (AR) and virtual reality (VR) or

matchday apps, to name but a few. This has necessitated a sharp focus on the data protection impacts of the use of the same, from the design stage through to the commercialisation thereof.

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) 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 other internal dispute mechanism was not agreed to by the parties or provided for in relevant rules, then the national court system will be competent and parties would therefore not be required to, say, 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 former Tottenham Hotspur FC player Kieran Trippier.

ADR and the National Court System

Even where parties agreed 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 the decision.

However, appeals against 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 were duly exercised (see further **6.2 ADR, including Arbitration** and **6.3 Challenging Sports Governing Bodies**).

6.2 ADR, including Arbitration Matters for Arbitration

The Arbitration Act 1996 (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 accorded 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 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 Resolu-

tions, an independent dispute resolution service that is based in London and that 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, Sports Resolutions (previously the Sports Dispute Resolution Panel) provides sport-specific mediation services. With lower costs, more flexible timeframes and increased confidentiality compared to litigation before national courts or even arbitration, mediation can be appealing to the fast-paced and sensitive nature of often high-profile sports disputes.

6.3 Challenging Sports Governing Bodies

Enforcing Sanctions

It is common for a UK sports governing body to provide in their rules how they 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. As referred to in **6.1 National Court System**, Kieran Trippier 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 to 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 in 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 dependant 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;
- 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.

In February 2021, the English Football League's (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, over the past year, the EFL removed the salary caps for League 1 and League 2 clubs that had been 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 constitution.

This concept is still under debate and could continue to be subject to change in the post-COVID-19 era.

Saracens FC

The salary cap in Premiership Rugby led to an important dispute between Premiership Rugby and Saracens FC. The headlines are as follows:

- the club breached salary cap rules by failing to disclose player payments in the form of investment;
- the investments took the squad's salary payments over the club's permitted GBP7 million threshold;
- Saracens received a 70-point penalty, which saw them relegated to the Rugby Championship for the following season;
- the penalty was the heaviest seen in English rugby, affecting one of Europe's heavyweight rugby union clubs.

Other Rugby Clubs

Since the Saracens breach, there have been examples of other clubs potentially falling foul of the salary cap rules with investigations ongoing. As recently as 15 March 2022, Leicester Tigers were fined GBP310,000 for salary overspend, also suffering consequent damage to their reputation.

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 was considered a permissible restraint.

7.2 Employer/Employee Rights

Statutory Employment Law

Where UK athletes are employees (see further

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 Sports 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 European Economic Area (EEA) enjoyed a 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 is no longer subject to free movement rules and all foreigners (including EEA citizens) require a permit to work in the UK, except for Irish nationals; further, EEA nationals (and certain others) who were already residing in the UK can apply for "settled status" under the EU Settlement Scheme, which allows the individual 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 sports person 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 of 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 Overview of Esports

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 from the O2 Arena in London since 2018. Consequently, many esports teams and game publishers are based in the UK, including Guild Esports – a new 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.

COVID-19 Effect on Esports

COVID-19 has undoubtedly accelerated the professionalism and commercialisation of esports and virtual sport in the UK, as it has across the world. People are spending more time at home and an increasing number have turned to esports as entertainment. For example:

- there has been a reported 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 this year. 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 it was premature. There is definitely a much greater focus being placed internationally on sport inclusion at traditional sport tournaments.

Additional examples include:

- the 2022 FIFA World Cup;
- the 2022 Commonwealth Games will host 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 2 million entries; and
- the virtual Grand National in 2020 attracted peak viewing figures of 4.8 million.

9. WOMEN'S SPORT

9.1 Overview of Women's Sport

There has been a lot of encouraging activity over the past year regarding women's sport, with 2022 set to be one of the biggest years yet.

The Women's Rugby World Cup, UEFA Women's Football Euros, Women's Cricket World Cup and the many female competitors at the Commonwealth Games will all increase the profile of women's sport over the next few months.

Although COVID-19 effectively pressed pause on women's sport in the UK, with far-reaching cancellations and curtailments, there are encouraging signs that women's sport continues to demonstrate mass-market appeal and commercial potential, including the following developments:

- the UK government confirmed GBP2.25 million for elite women's football and GBP4.2 million for netball from its Sport Winter Survival Package;
- on 22 March 2021, the FA, Sky Sports and the BBC announced a three-year landmark rights deal (reported to be in the region of GBP8 million per season) for the Women's Super League (WSL) from the 2021/2022 season – this is the first time that the rights to the WSL have been sold separately from the men's game, with clubs receiving a proportion of revenue to aid their development;
- on 16 March 2021, World Rugby announced WXV, a brand-new global women's competition due to launch in 2023. The creation of WXV is supported by an investment of GBP6.4 million from World Rugby and a dedicated commercial programme which will have a positive impact on each Home Nations team;
- 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 Thomas Sandgaard, the owner of Charlton FC, acquiring Charlton Athletic Women;

- equal prize money in the men's and women's tournaments in cricket's new elite competition, The Hundred;
- multi-sport partnerships, such as the Women's Elite Sport Partnership established in March 2021 by West Ham FC Women, together with five London and Essex-based partners across cricket, netball and basketball;
- the UEFA Women's Football Euro 2022 will be hosted in the UK, with an expected 250 million people set to watch;
- in January, it was confirmed that the new women's football contracts would include their right to maternity leave and long-term sickness benefits;
- the Beijing Olympic games were the most gender-equal Olympics to date with 45% being female athletes; and
- the Women's Cricket World Cup has increased its prize money to USD3.5 million.

With continued investment from rights-holders, broadcasters and sponsors, we expect women's sports to only gain momentum from here.

10. NON-FUNGIBLE TOKENS (NFTS)

10.1 Overview of 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.

Andy Murray and Kevin de Bruyne are examples of athletes who have launched their own

NFT collection. 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).

However, whilst 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 Overview of Regional Issues

The main regional issues impacting sport in the UK are the fallout from Brexit and the ongoing, but slowing, COVID-19 pandemic, 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 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**).

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. 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 sportsmen and sportswomen 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.

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Trends and Developments

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Developments in Sports Law

As we slowly emerge from a pandemic that has lasted over two years, we observe that sport has been impacted in many ways. COVID-19 has posed significant challenges at every level of sport – as in society – but, with restrictions lifting, attention will focus more on the many different developments in sports law rather than compliance with COVID-19 laws.

Breakaway Competitions

“If it ain’t broke, don’t fix it” is a mantra to live life by for many people – except for some in ice skating, ice hockey, swimming, golf and football, who have looked to form “breakaway” competitions and leagues. Domestic and US case law (in ice hockey and swimming) points out that restrictions imposed on athletes who have participated in non-authorized events can be determined to be anti-competitive; in the case of swimming and the application of US domestic law, a trial is yet to be conducted. In ice skating, an EU-derived ruling struck at the eligibility rules as disproportionate and dissuasive to athletes entering non-authorized events (as they surely would be).

However, these cases have been comparatively underdeveloped and do not offer definite conclusions to the legal position applicable to breakaway competitions and anti-competitive practices in sport in jurisdictions throughout the world. Golf and, more prominently, football, have ongoing agitating bodies, seeking to disrupt established sports structures and leagues – and it may be that the stakes at play will become so high that political intervention may result.

Although the proposed football European Super League – announced in April 2021 – appeared to fall apart no sooner than it was announced, as a result of widespread outrage from fans and stakeholders, the spectre of change occurring and a new league being formed remains. Statements made by the Juventus President indicated that, along with his own club, Barcelona and Real Madrid remain committed to the prospect of a new league. Whilst domestic law in one participant’s country cannot positively enable proposals to take place across the European continent, domestic disputes – such as those in Spain involving leading clubs – will have the scope to influence the potential outcome of moves, if domestic rulings inhibit football’s authorities from responding effectively to steps taken in self-interest and not in accordance with football membership.

The notion that the European Parliament may even intervene and seek to preserve the European footballing landscape with legislative measures is one possibility. A host of interested parties will watch these further developments, as certain super-clubs still reeling from the financial impact of COVID-19 continue to look at a lucrative alternative to the Champions League. If disputes were to occur, the intriguing aspect to any dispute would be how competition law would grapple with the specificity of current football sporting structures which are interwoven into communities, nations and, for many, life itself, in a way that is very distinct and different to private business ventures operated purely for profit.

Most sports exist with a tiered system cascading from an international federation. In many countries, public funding is very important in domes-

tic sport settings, to support the activities that underpin the sport within that domestic setting and enabling the growth, health and interest in the sport in question. Are factors such as these to be ignored by law-makers and policy-makers for the interests of the few, who seemingly wish to have the ability to compete within existing structures but at the same time remove themselves for purely private interests? Time will tell.

In golf, so-called “rival” golf leagues are being proposed by different entities, seeking to incentivise players, through enhanced cash and equity reward, to compete in shortened events, with no “cut” (the traditional half-way split that must be passed in any competition to progress and earn any winnings) and to offer a different form of league than the traditional elite tours operated by the PGA of America and the recently rebranded “World Tour” operated out of the USA.

As an individual sport with players competing at their own expense for their own reward, golf’s considerations appear somewhat different. The history and fabric of the sport has been loyally adhered to by many leading players, but some, perhaps at different stages or with different motivations in their sporting career, appear attracted to one last payday. The questions are: will golf’s fans see value in the sporting proposition, and will these leagues be able to sustain interest? As The Open sees its 150th event in St Andrews, Fife, this summer, will a new league attract sufficient interest to sustain the commercial investment required to establish itself on golf’s sporting calendar?

FIFA’s New Player Loan Regulations

Issues of commerce, calendar and sporting regulation collide in FIFA’s new player loan regulations. During the next football transfer window, clubs must observe a new regulatory framework when effecting loans of players. The new FIFA regulations on player loans have the stated aim

to develop young players and promote competitive balance. Although domestic loans are outside of the new regulatory framework, change will be required, with member associations having until 2025 to ensure that their own rules on loans are in line with the principles of the FIFA regulations. The new framework has been under development for several years as one part of the larger FIFA transfer system reform package, developed and endorsed by the Football Stakeholders Committee (FSC). In 2020, FIFA postponed the anticipated introduction of new rules due to the global outbreak of COVID-19. However, following fresh endorsement by the FSC and subject to the final approval of the FIFA Council, the regulations are set to enter into force on 1 July 2022.

The regulations do not seek to prohibit loan moves, with loans still regarded as a valuable and constructive route to allow players to develop, gain experience, return to fitness or provide temporary cover for key positions in the event of injury. However the proliferation of loaned players has long been a concern for football’s authorities, with some clubs (eg, Chelsea FC, Manchester City FC) having many players loaned out, leading to accusations that they are “hoarding” players.

Certain of the key provisions of the new regulations are:

- the maximum duration of international loans will be one year;
- a prohibition on the sub-loaning of players will be applied;
- a phased-in restriction on the number of international loans in and out during each season, on a sliding scale, as follows:
 - (a) season 1 July 2022 to 30 June 2023 – a maximum of eight players;
 - (b) season 1 July 2023 to 30 June 2024 – a maximum of seven players;

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- (c) season 1 July 2024 to 30 June 2025 – a maximum of six players;
- players aged 21 and under and club-trained players will be excluded from the maximum numbers (thus encouraging clubs to continue to develop players); and
- a maximum of three players loaned out to a single club and three loaned in from a single club during a season.

As noted, member associations will have three years to implement regulations in line with the FIFA principles. Serious thinking will need to be undertaken by clubs, agents and players alike, to consider how these regulations will re-shape the game.

How the international provisions sit alongside the domestic provisions will need very careful consideration, and it is likely that the impending changes will immediately impact on football transfers, budgets and planning. Modern elite clubs shape their squads years in advance of where they wish to be, with transfers tracked, courted and acquired; project players who can be released (or acquired) under the new regulatory regime will offer a very different proposition to current arrangements. Developed loan programmes will be impacted and, in time, the landscape will be different. Whether the result will be less movement in the market, more stability in squads and more opportunity for talent to develop internally and to take hold in clubs remains to be seen.

Fan-Led Review of Football Governance

Staying with football, but with issues that will resonate across a number of sports, governance within the game is a topic that is only going to increase in importance in future. The independent fan-led review of football governance announced by the Culture Secretary in 2019 was published in November 2021, making numerous recommendations. The review aimed to “explore

ways of improving the governance, ownership and financial sustainability of clubs in English football” and to “engage extensively with fans to ensure any recommendations are led by fans’ experience and interests”.

The key recommendation arrived at by the review is for a new Independent Regulator (IR) for football in England, established by an Act of Parliament. The idea is to have a licensing system operating for professional men’s football, with key items of club heritage protected via a “golden share” requiring supporters’ consent for certain actions proposed by a club. The report also contained important recommendations on parachute payments, alternative revenue sources for other parts of the pyramid and grassroots football (including a new solidarity transfer levy), women’s football and player welfare.

With the current conflict in the Ukraine, a spotlight has been shone on the Russian billionaire Roman Abramovich and his ownership of Chelsea FC, with complications further occurring in consequence of government sanctions imposed, hindering the sale of the club and threatening its continued survival. With this, difficult questions continue to be posed challenging why persons and entities have taken ownership of football clubs and undertaken influential roles in sport. Political interest is increasing. Recent legal challenges in relation to the Saudi-led takeover of Newcastle FC illustrate that there is not likely to be any easy answer to calls to revisit tests applied to owners and operators of football clubs.

Participation and Gender Recognition

Looking at an entirely different form of participation, UK Sport’s [Guidance for Transgender Inclusion in Domestic Sport](#) was published in September 2021, after years of collaborative work between the home nations’ sports councils and UK Sport, to formulate a set of principles

to encourage inclusion in sport for transgender people. With a set of nine documents in total, the guidance has moved to encourage governing bodies to promote inclusive practices, in which principles of health, safety and fair competition are observed.

The guidance, enabling governing bodies to establish the correct approach for their own domestic sport, is bold in that it does not mandate a particular approach and instead encourages principled thinking to be applied. In a method evocative of great sports coaching – namely, think about the right things and follow the proper process and the outcome will take care of itself – the new guidance points to an inescapable conclusion: a framework and methodology is far better to assist sports find the best answer, given (i) the vast differences in sports themselves and (ii) the differences within sports.

Throughout 2022 and beyond, sports governing bodies and all stakeholders in domestic sport will need to give careful consideration as to how to continue to encourage inclusion in sport, applying the UK Sport guidance – not only to reflect their sport as it is now, but as it and the wider society may develop in the years to come. For example, steps are being taken by the Scottish government to develop the law in relation to gender recognition, with a greater focus on self-determination and declaration rather than medical testing and certification. This thinking represents not only a broader view of gender theory but, more substantially, states that current laws pose significant and unnecessary barriers to transgender people being recognised in the sex they live their lives as, a notion reflected in the IOC Framework that followed UK Sport’s guidance.

The IOC Framework for 2022 for transgender and DSD (“differences in sexual development”) athletes was released not long after UK Sport’s

guidance, with the IOC outlining ten principles that international federations (IFs) are to adhere to and not “pick and choose” from when legislating in relation to transgender participation. The ten principles are:

- inclusion;
- prevention of harm;
- non-discrimination;
- fairness;
- no presumption of advantage;
- evidence-based;
- primacy of health;
- stakeholder-centred;
- privacy; and
- periodic review.

This principles-based approach has been adopted to allow IFs inherent flexibility and encourage inclusion, with the IOC decrying traditional thinking on testosterone affecting performance sport whilst noting the “highly politicised and divisive debate” surrounding transgender and differences in sex development athletes. As with the UK Sport guidance, the IOC framework has moved to a guidance model, encouraging individual thinking by sports, recognising that a “one-size-fits-all” approach does not work. The IOC has also expressed, under the final principle, the need for IFs to recognise and plan to review a fluid and complex subject that may well change in the years ahead.

Participation – Well-being, Freedoms

The forthcoming Online Safety Bill may help address negative societal behaviours impacting on sports people, by introducing a new legal framework for identifying and removing illegal and harmful content from the internet. This is likely to be all the more important if athletes in sport continue to have an increasing platform to actively speak on non-sporting issues.

Contributed by: Bruce Caldwell, Harper Macleod LLP

With increasing “athlete activism” in the form of Rule 50 permissions in the recent Olympics, and more liberal new athlete advocacy rules applicable to the forthcoming Birmingham 2022 Commonwealth Games, sports bodies will need to ensure that there is embedded within their own regulatory approach an informed and up-to-date understanding, not only of this broader regulatory framework, but the legal protections in place for freedoms such as belief and expression that underpin sports people’s rights.

With guidance to participants framed to encourage positive comment and respect the neutrality of the sporting event, there will doubtless be difficulties if the sporting platform is used to express beliefs that are seen as in conflict with other widely held views. Sports bodies and regulators will need to be careful to avoid misconduct prosecutions of sports people that could, of themselves, be seen to be discriminatory.

In entirely different circumstances, a difficult issue connected to a civil prosecution was highlighted recently with the case of David Goodwillie, a professional footballer in Scotland. Goodwillie was successfully pursued in a civil action after the authorities determined that a public prosecution alleging rape would not be sustainable; with a lower burden of proof applicable, the pursuer successfully sued Goodwillie and the court ordered damages to be paid by him to the pursuer. With no criminal conviction, he has continued to play professional football in the lower divisions in Scotland over the last five years, since the conclusion of the court case.

When transferred to Raith Rovers FC in the last transfer window, there was a supporter backlash and a negative response from many interested parties, challenging his participation in football and raising the question of whether participation regulations should be enhanced with morality and behavioural provisions. Morality restric-

tions would need to be capable of withstanding challenge, and deciding where to draw the line may be the most difficult question of all, if it is adopted.

Gambling Sponsorship and Sport

In a similar vein, challenging questions are being asked about the involvement of betting and gaming companies in sports sponsorship. Many sports continue to have a strong contingent of such sponsors, be it in relation to kit sponsorship, title/competition sponsorships, event sponsorship or media advertising. At the turn of the 21st century, gambling advertising was heavily regulated, to the point that little gambling activity could be actively promoted. Football pools, bingo, the National Lottery and other permitted lotteries could be promoted through advertising, but, in consequence of developments flowing from the Budd Report, gambling advertising later became permitted. The industry now spends over GBP1.5 billion a year on advertising.

It is not uncommon to hear calls being made to ban gambling advertising in sport, due to the proliferation of problem gambling and the well-publicised personal problems experienced by some sports people. Of that GBP1.5 billion per annum spend, comparatively little is spent on sports. Around half of the spend was online, via direct online marketing means; one-fifth was through marketing affiliates; around one-seventh was TV gambling advertising. With the prospect of further Parliamentary scrutiny and potential for restriction of advertising in certain forms possible, such as on kits or pitch/track side, diversity of sponsor and partner portfolio may become increasingly important to sports entities.

Technology

Looking forward, a whole plethora of technological developments are taking place in sports, which will require greater legal analysis and consideration. Artificial intelligence (AI) is taking

hold in the design and simulation of sports technology, such as the recent partnership between Formula 1 and Amazon Web Services (AWS) to redesign Formula 1 next-generation race cars. Similarly, AI is frequently used to assist coaches in optimising athletes' performance, and this trend is expected to extend to use by athletes themselves this year.

Technology enabling sports people to have the ability to live-stream or upload matches or training sessions gives rise to rights issues and intellectual property considerations. Whilst this may be for the purposes of allowing algorithms to conduct real-time or post-match analysis, by reviewing techniques, ball speeds, comparing to previous matches or plotting progress over time, data would need to be carefully managed – not only to observe rights but also to ensure compliance with data laws and GDPR. Retention, processing and destruction of data would all need to be factored into any permissions shared with athletes for this purpose.

An example of where aspects of these technological developments are colliding is the rapid development of cryptocurrency. From 2021 we have seen an explosion of interest in the sports sector in cryptocurrency-related sponsorships and/or crypto-assets such as “non-fungible tokens” (NFTs) and “fan tokens”. While some commentators consider the entire industry to be without substance, others consider it to represent the technology of the future. Regardless of any scepticism in the industry, for better or worse, it appears unlikely that the growing interest in all things “crypto” will wane anytime soon.

Regulatory bodies in sport will need to determine how to monitor and account for crypto developments. How stakeholders in sports (including lawyers) improve their understanding of this new technology and embrace technological developments across their portfolios will undoubtedly vary. However, foreseeing and establishing who owns the rights behind such assets, between the broadcasters, leagues, associations, clubs and sportspeople, is going to be essential. Where gaps exist in pre-existing agreements and arrangements, attempts should be made to make provision for crypto developments.

Phil Mickelson, a disrupter in recent breakaway leagues in golf, cited as a reason for change that golfers were unable to claim rights over footage of career-defining shots, which would not only be capable of continued traditional exploitation but also, he cited, in the form of cryptocurrency.

The FA Premier League is understood to be undertaking a full review of cryptocurrencies, which may have an impact on clubs using cryptocurrency companies as sponsors/partners.

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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 local, national

and international levels. Sports clients who it has acted for represent a wide range of sporting backgrounds, from football, rugby, tennis and cricket to bowling, shinty and archery, and include clubs, governing bodies, associations and organisations working in the sports sector. Harper Macleod is uniquely placed as advisor 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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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 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. The maximum term of imprisonment under the Rodchenkov Act is ten years, and any sentencing will be determined by the judge assigned to the case.

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 January 1st 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
 - (b) methods such as blood transfusion or manipulation, or intravenous injections in some situations.
- Those that are prohibited only in competition (including but not limited to) stimulants, marijuana, narcotics and glucocorticosteroids.

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. 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. Nearly 20 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 criminalising match-fixing. In large part, states 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. Since the start of 2022, over two dozen states allow sports betting in some form. The final outcome is yet to be determined for sports gambling as legalisation grows in the USA. However, New York is one state that approved online wagering in the state for the first time in 2022, immediately breaking records for the most money wagered on sports betting in a single month.

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. Atlanta Falcons wide receiver Calvin Ridley is the first NFL player to be suspended since Shaw. The NFL announced that Ridley was suspended for at least the 2022 season after placing a legal mobile bet in Florida in 2021 that included a bet on the Falcons to win. Notwithstanding the relatively small size of the bet, Ridley's suspension evidences the NFL's zero tolerance policy on sports wagering by players.

1.4 Disciplinary Proceedings

The steps taken by sports governing bodies 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, have slightly different punishments for similar violations.

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. MLB's clear guidance on the penalties' specific offences contrasts with other leagues' guidelines, such as the NFL's, in which 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 combating 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 pack-

age 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.

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.

Spectator physical 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.

Recently, holding certain sporting events during the COVID-19 pandemic has 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 enters a venue, including athletes, staff, spectators and vendors, are 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 exam-

ple, 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 which set 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 pay 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. 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 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 National Basketball Association (NBA) recently 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 Overview of Women's Sport**).

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. US trade mark rights are

generally based on use in US commerce, not registration. Thus, 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.

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 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 longstanding "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.

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. Because 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 com-

petition 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 sophis-

ticated technology to capture real-time game data, such as MLB's StatCast system, which 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).

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 regiments, 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 Consumer Privacy Act is currently the most extensive such law in the USA and is modelled in part on concepts included in the GDPR. California recently enacted an even more robust Privacy Rights Act that becomes effective in 2023. In addition, all 50 states have data breach-reporting laws.

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 collective bargaining agreement (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 arbitration. 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, Rodger 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, Rodger 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 arbitration, 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 adjudicatory 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 in the arbitrators;
- the arbitrators were guilty of misconduct and 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 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 dis-

ability if they are public accommodations. *PGA Tour, Inc. v Martin*, 532 U.S. 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 law having 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 attention and litigation. See, *Morgan v United States Soccer Fed'n, Inc.*, 445 F. Supp. 3d 635, (C.D. Cal. 2020), cert. denied, No 2:19 Civ. 01717, 2020 WL 4390368 (C.D. Cal. June 23, 2020) (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). 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.

COVID-19

Per guidance issued by the Equal Employment Opportunity Commission, federal discrimination laws permit employer sports organisations to require employees to submit to testing for COVID-19 and/or be vaccinated against COVID-19 unless the employee has a reasonable accommodation because of a disability or sincerely held religious belief or observance. In response to local mandates requiring COVID-19 vaccination of employees and/or as a condition of entry to sporting events and/or venues, some sports organisations are requiring player-employees based in those localities to be vaccinated against COVID-19. Although employer sports organisations must consider requests for temporary or permanent exemptions from COVID-19 vaccination requirements because of protected reasons, employer sports organisations may deny exemptions that would cause them to incur an

undue burden. Additionally, many sports organisations require COVID-19 testing, which may vary depending on the player-employee's vaccination status, whether the player-employee has symptoms attributable to COVID-19 or has been exposed to someone with COVID-19, and/or surges in positivity rates, among other factors.

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 U.S.C. § 158(d).

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 U.S.C. § 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. 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 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 traveling to the USA by air are currently required to establish proof of full vaccination with a Centres 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. All air travellers must also show proof of a negative coronavirus test prior to boarding an aircraft in a foreign country destined for the USA.

8. ESPORTS

8.1 Overview of Esports

In 2020, the traditional sports schedule came to a halt. With nowhere to turn, esports came to the forefront of the global sports scene. Many wondered how esports would fare in 2021 after traditional sports returned. The numbers are in, and in 2021 esports reached approximately 474 million viewers and earned more than USD1 billion in revenue, a 14.5% increase from 2020.

The esports betting market saw significant growth in 2021. New Jersey and Connecticut both legalised esports betting and the Nevada Gaming Control Board appointed several industry insiders to its Esports Technical Advisory Committee in an effort to further increase esports betting in the state. Betting giant DraftKings struck a major partnership deal with the esports organisation Faze Clan. The deal includes a series of content activations, DraftKings' branding on player jerseys and a new podcast. Addi-

tionally, DraftKings will be an official sponsor of Faze Clan's Counter-Strike esports team. This partnership demonstrates the growing popularity of esports betting in the USA, a market that according to Market Insight Reports is expected to reach a value of over USD13 billion by 2025.

Another major development in 2021 was the rise of mobile gaming. Traditionally, esports has been played on PCs, but by the end of 2021 mobile gaming accounted for nearly half of global gaming market revenue. New technologies such as cloud gaming and 5G are making it easier for games to be put on mobile devices without a loss of quality. Capitalising on this trend, Take-Two Interactive recently announced its purchase of mobile publisher Zynga in a deal valued at USD12.7 billion. The transaction could allow Take-Two Interactive to produce mobile versions of popular games such as Grand Theft Auto, Borderlands or BioShock. The deal is one of the largest in video game history and is expected to close in 2023.

Despite the upward trend, esports did have some bumps in the road in 2021. The Overwatch League is being investigated by the US Department of Justice's antitrust division with regards to its soft salary cap policy. If a team exceeds its soft salary cap, then the organisation must pay the excess amount to the league as a luxury tax. The Justice Department is investigating whether this luxury tax discourages organisations from offering esports players competitive salaries, which could be an antitrust violation. Additionally, ESPN cancelled its division dedicated to esports coverage which was started in 2016.

9. WOMEN'S SPORT

9.1 Overview of Women's Sport

The evolution of the sports business landscape has created new opportunities for women athletes as well as for women's sports generally.

The Women's National Basketball Association (WNBA), a high-profile professional women's athletic league, recently completed one of the largest ever capital raises for a women's sports property. The league intends to focus on modernising its distribution and merchandising strategies. In addition, Nike, a current marketing partner of the WNBA, acquired an equity stake as part of the fundraising, reflecting the new emphasis placed on women's sports.

The ongoing competition for sports programming has also created openings for women's sports content. This summer will see the launch of the Women's Sports Network, which intends to provide continuous coverage of female athletes on and off the field. The WSN will cover a range of sports as well as provide original programming and studio shows modelled after ESPN's SportsCenter. Several women's sports organisations, including the LPGA, have partnered with the network and agreed to provide content.

Despite these new opportunities and developments, several challenges still remain for women in sports. The participation of transgender women in women's sports has driven conversation regarding maintaining competitive balance while respecting and recognising transgender rights. Funding discrepancies and disparate treatment at colleges and universities continue to be a source of controversy, exemplified by the stark contrast between the men's and women's work-out centres at last year's college basketball tournaments. Professionally, the salary gap between male and female athletes con-

tinues to grow. These differences have recently been reflected in the CBA negotiations for the men's and women's US national soccer teams, where players for the men's team have historically earned substantially more bonus income than their counterparts on the women's team. The recent settlement regarding the women's national team is an important step toward more equal pay.

10. NON-FUNGIBLE TOKENS (NFTS)

10.1 Overview of 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.

As interest in NFTs continues to increase, NFTs are expanding to new areas and industries. In sports, NFTs have been created for the ownership of video clips, highlights, images of iconic moments and player trading cards. One of the most significant NFT ventures in sports is the NBA's Top Shot product. Top Shot is an NFT marketplace for NBA-related content that has seen over USD750 million in trading volume. 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 sales and transfers are recorded on a blockchain ledger for verification. The NFL and (Ultimate Fight-

ing Championship) UFC have each announced plans for the creation of officially licensed NFTs to be sold on a similar marketplace, and other sports leagues will likely follow with similar products.

NFTs also provide teams and leagues with additional opportunities to further enhance relationships with fans and allow for real-world applications beyond investment. For example, holders of NFTs may be granted special in-person experiences or discounts on merchandise. The NHL's New York Rangers recently announced an NFT auction that would enable holders to claim autographed merchandise and, potentially, tickets to games. In another example, a European soccer league has established an NFT market for fantasy sports, enabling fans to create fantasy line-ups using NFTs they own. In other examples, holders of NFTs have been able to weigh in on decisions such as winners of player awards.

NFTs also provide 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 discussion with leagues and teams going forward.

The NFT market poses 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. Furthermore, investing in NFTs is speculative in nature with limited historical information to make informed decisions. Valuations, based heavily on demand and scarcity, can fluctuate and the ability of others to create new NFTs poses a risk for value retention. Finally, most NFT purchases are made with cryptocurrency, which imposes risks of its own including price volatility and high transaction fees.

11. REGIONAL ISSUES

11.1 Overview of Regional Issues

There are no relevant issues in US sports law not already covered in this chapter.

Contributed by: Irwin A. Kishner, Daniel A. Etna, Joel Wagman and Barry Werbin, Herrick, Feinstein LLP

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 Istanbul, Turkey. Herrick's Sports Law Group works in conjunction with the firm's complementary practice groups on the myriad of corporate, real estate, tax, intellectual property, restructuring, employment, government relations and litigation aspects of sports law for global sports dynasties. Herrick has brought countless novel and transformative concepts to life – including regional sports broadcasting and premium stadium experiences. Its attorneys have guided stakeholders in professional sports as they have entered into transactions to access capital, invested in interests 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 a range of ancillary concerns. Herrick has represented major athletic teams and affiliated entities in transactions totalling over USD100 billion.

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Trends and Developments

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Introduction

This article will focus on two important trends and developments in the sports law world that could have major political and socio-economic ramifications in the future:

- collegiate student-athletes earning money from their name, image, and likeness; and
- the US government criminalising anti-doping by enforcing the “Rodchenkov Act.”

Collegiate Student-Athletes Gain Increased Power

Student-athletes seize NIL opportunities

As noted in the 2021 Sports Law US Trends & Developments article, the opportunity for student-athletes to profit from their name, image, and likeness (NIL) has revolutionised the college sports landscape.

It began last summer when the National Collegiate Athletic Association (NCAA) adopted an interim NIL policy, which suspended the NCAA’s NIL rules for all incoming and current student-athletes. The only restrictions the NCAA left in place were (i) student-athletes could still not receive performance-based payments (ie, payments based on athletic achievement or success), and (ii) student-athletes could still not receive monetary inducements to attend a particular school (ie, payments connected to recruiting). Universities and conferences have stepped into the regulatory void left by the NCAA and sought to supplement these two NCAA rules by passing their own rules in an effort to maintain some order over payment of monies to student-athletes.

Also, many schools have sought to empower their student-athletes by creating online platforms that allow student-athletes to interact directly with potential sponsors seeking to forge NIL partnerships with student-athletes.

Here’s how the university-based NIL platforms work to empower student-athletes: Businesses and other interested parties seeking to partner with student-athletes are required to register and gain approval from the university’s athletic department. Once the business and/or other interested party is accepted, the platform allows the third-party to use a searchable database to identify a potential student-athlete partner. They can then reach out to student-athletes directly to negotiate an NIL endorsement deal. Neither the university nor the athletic department is involved in the negotiations, which is legally significant because the university’s logo or trade mark cannot be included in the NIL deal. The NIL contract is strictly an agreement between the student-athlete and the third-party, where a student-athlete earns compensation by licensing their NIL in an endorsement contract.

If the NCAA suspects an NIL deal violates its rules it will initiate an investigation, which could lead to serious consequences for the student-athlete. Universities and conferences are seeking to educate their student-athletes to avoid such consequences. For example, educational materials have been made readily available for student-athletes to help them understand how to operate and navigate within the new NIL world. Sessions are being taught to provide student-athletes with basics on contract law, the role of agents in NIL deals and image-branding strategies (which sometimes even includes data ana-

lytics measuring the student-athlete's audience engagement). Moreover, because student-athletes are now receiving income, schools are providing assistance to student-athletes to explain their tax reporting obligations.

To date, student-athletes who play American football and basketball have generated the most revenue for themselves: football players accounted for 46% of total compensation while women's and men's basketball players generated 26% and 18% of the total compensation, respectively. As the most extreme example, Bryce Young, the Heisman Trophy winning quarterback for the University of Alabama, pocketed nearly USD1 million through NIL endorsement deals prior to the start of the season. Not surprisingly, most student-athletes are making far less: the average Division I student-athlete is being paid around USD700 per NIL agreement, whereas the average Division II and Division III student-athlete is being paid around USD100 per agreement.

In all, the new NIL rules are providing student-athletes with new opportunities to make money. It bears watching whether the NCAA will seek to intervene and regulate the NIL market and/or whether Congress will pass a law bringing uniformity to the NIL industry.

"Free agency" comes to college sports

The NCAA was under significant pressure to modernise its rules and allow student-athletes in the most high-profile sports (like football) to transfer more easily. In response, the NCAA:

- got rid of its rule that required student-athletes to receive permission from their current coach to contact other schools;
- created a Transfer Portal allowing student-athletes to put their names "in the portal" and easily contact other schools (or vice versa); and

- abolished its rule that forced student-athletes in the most high-profile sports (eg, basketball, football, and baseball) to sit out a year after transferring.

Instead, in 2022, all Division I student-athletes, regardless of sport, are eligible to transfer and compete immediately provided they meet certain academic requirements, can certify (along with the head coach at the new school) that no tampering took place, and declare their intent to transfer in writing by May 1st for fall and winter athletes and by July 1st for spring athletes.

This new regulation has created what many consider to be "free agency" in college sports. Athletes can now transfer without penalty and seek a fresh start at a new school. The transfer portal was busy in 2021: more than 1,700 student-athletes transferred (which is more than double the amount who transferred in 2018 when the Transfer Portal was first established).

While many student-athletes see this as an opportunity for a second chance, a shot to play on a better team, and/or the chance to earn more money through NIL deals, coaches are wary of the lasting impact of "collegiate free agency." Coaches fear that:

- so called "mid-major" schools will lose prominent players to "top" Division I schools;
- fewer schools will recruit kids out of high school because they will instead seek out only college-ready transfers; and
- student-athletes will be manipulated through improper recruitment, which will potentially leave student-athletes stuck in bad situations after they use their one "free transfer" (student-athletes who transfer a second time still have to sit out an entire year after transferring to another school).

Although still in its early stages, the changes to the NCAA's transfer policy has massively impacted the collegiate sports world. It is worth monitoring how this area evolves and what, if any, new regulations are adopted by the NCAA in an effort to curb issues seen as "problematic" that arise out of the NCAA's version of "free agency".

The USA Criminalises Anti-doping by Enforcing the "Rodchenkov Act"

The second important emerging development in the sports law world that could have major political and socio-economic ramifications in the future is the federal government's enforcement of the Rodchenkov Anti-Doping Act (Rodchenkov Act). Named after the famed Russian whistleblower, Grigory Rodchenkov (the former Director of the World Anti-Doping Agency-accredited Moscow Laboratory who was granted asylum in the USA after helping uncover Russia's state-sponsored doping programme), the Rodchenkov Act was officially signed into law in the USA on 4 December 2020.

The Act makes it a crime for "any person, other than an athlete, to knowingly carry into effect, attempt to carry into effect, or conspire with any other person to carry into effect a scheme in commerce to influence by use of a prohibited substance or prohibited method any major international sports competition". The Act gives the USA extraterritorial jurisdiction. This has led to heavy criticism by many anti-doping stakeholders outside the USA, especially the World Anti-Doping Agency, over concerns that the USA's assertion of extraterritorial jurisdiction will negatively affect the global anti-doping system.

The fear among WADA and other foreign anti-doping stakeholders is that the Act will jeopardise critical partnerships and co-operation

between nations. Moreover, WADA fears that the Act will deter whistle-blowers from coming forward (since their admissions might expose them to potential prosecution). In addition, WADA is concerned that, if successful, the Act will encourage other countries to enact similar laws, leading to politically motivated criminal sanctions for doping offences (which are not criminal under the World Anti-Doping Code). In sum, there is fear internationally of how the Act will be used.

The new law was finally put into action on December 29, 2021, when the FBI charged Eric Lira, a "naturopathic" therapist, for providing various performance enhancing drugs to athletes prior to and for the purpose of intentional use during the 2020 Tokyo Olympic Games. Although the controversial extraterritorial aspect of the Act was not needed in this case since Mr Lira was based in Texas, this case will be a good first test to examine the effectiveness of the Act.

The Act surfaced again during the Winter Olympic Games in Beijing after 15-year-old Russian figure skater Kamila Valieva tested positive for a banned substance and her entourage (including her coach) was seen as a potential target of the Act for conspiring to influence the Olympics by use of a prohibited substance. Such a case would test the extraterritorial jurisdiction of the Act and its ability to indict foreigners. It is certainly a development to keep an eye on throughout 2022 and beyond.

Conclusion

Both (i) the newly gained rights of collegiate athletes to earn money and transfer to a different school without penalty, and (ii) the use of the Rodchenkov Act to criminalise anti-doping in the USA bear watching in the coming year.

Global Sports Advocates (GSA), based in coastal Portland, Maine, is a sports law firm devoted to the protection of athletes' rights, the delivery of trusted advice on sports regulation and the management of crisis situations in the sports world. GSA has successfully represented athletes competing in a wide variety of sports from all parts of the world as well as sport governing bodies in both the US and abroad. As a

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