

Sports Law

Contributing editors
Centrefield LLP and Laffer Abogados



2019

GETTING THE
DEAL THROUGH

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CONTENTS

Introduction	5	Italy	39
Centrefield Law LLP and Laffer Abogados		Mario Vigna and Giulia Vigna Coccia De Angelis Vecchio & Associati	
Court of Arbitration for Sport (CAS)	6	Japan	44
Matthew Bennett and Stuart Baird Centrefield LLP		Atsushi Igarashi, Yoichiro Kuriyama, Takehiro Kaneko, Kosuke Ojio and Sho Nakayama TMI Associates	
Brazil	11	Russia	49
Simone Lahorgue Nunes, Allan Nascimento Turano and Tiago Soares de Aquino Levy & Salomão Advogados		Valeriy Fedoreev CMS Russia	
Canada	17	Spain	54
Gary Daniel, Josh Jones, David Kruse, Holly Reid, Noemi Blasutta and Andrew Clark Blake, Cassels & Graydon LLP		Rodrigo García Lucas, Jose Lasa Azpeitia, Francisco Salinas Mezquita, Maite Nadal Charco, Javier Gallego Larrubia and Germán Martínez Ferrando Laffer Abogados	
Chile	22	Sweden	60
Jose Joaquin Laso Porzio Rios Garcia		Karl Ole Möller Nordia Law	
Denmark	26	United Kingdom	65
Lars Hilliger and Morten Bro Advice Law Firm		Matthew Bennett, Edward Canty, David Bentham and Stuart Baird Centrefield LLP	
Egypt	31	United States	72
Steve Bainbridge, Ayman S Nour and Laila El Shentenawi Al Tamimi & Company		Karen Hoffman Lent, Anthony Dreyer, David Schwartz and Matthew M Martino Skadden, Arps, Slate, Meagher and Flom LLP and Affiliates	
Germany	35		
Joseph Fesenmair, Martin Schimke and Franz Gernhardt Bird & Bird LLP			

Preface

Sports Law 2019

First edition

Getting the Deal Through is delighted to publish the first edition of *Sports Law*, which is available in print, as an e-Book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Getting the Deal Through titles are published annually in print and online. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to Centrefield Law LLP and Laffer Abogados, the contributing editors, for their assistance in devising and editing this edition.

GETTING THE 
DEAL THROUGH 

London
September 2018

Introduction

Centrefield Law LLP and Laffer Abogados

Centrefield LLP and Laffer Abogados are proud as co-editors to introduce the first edition of *Sports Law* from *Getting the Deal Through*.

Sports law is not a typical area of law. Unlike, for example, anti-trust, contract, company or employment law, each of which is distinct and largely self-contained, sports law covers various laws and regulations, incorporating elements of contract, employment, commercial, intellectual property, criminal, dispute resolution and various other laws. This is supplemented by a continually developing regulatory framework established by the various national and international governing bodies and federations within each sport, creating a complex structure of laws, rules and regulations that constitute sports law.

This is largely unsurprising, given the development of sport as a specific industry sector. Sport ultimately began as a pastime, but has since become a highly sophisticated, professional and commercial industry worth billions globally. It is this increasing commercialisation that has primarily driven the growth of sports law, with sport meriting a more bespoke and industry-specific approach, leading to the gradual development of associated laws, rules and regulations required to manage the related issues that have arisen as the industry has matured.

In many ways, the development of sports law is unique in that much of it has been industry- rather than government-led. While national governments have taken varying approaches to sport, with certain jurisdictions developing specific sporting codes and legislative frameworks, there is broadly a 'hands-off' approach to the national and international regulation of sport. National legislators have generally avoided implementing a defined regulatory framework for sports, but have instead left governing bodies to self-regulate within the wider context of existing national laws. This has led to significant variations in the way different sports are regulated and managed, often within the same jurisdiction, whether it be disciplinary processes, transfer systems, sponsorship and advertising regulations, or even immigration rules. International federations have also actively sought to take the lead setting the regulatory framework for their respective sports, even trying to exclude political influence. Note, for example, the international football governing body, FIFA, has existing rules against political interference in football at a national level. This approach can bring sports regulations into direct conflict with national laws and creates significant complexity for those operating within the industry.

The formation of the Court of Arbitration for Sport (CAS) is a further example of the industry-led approach within sports regulation. The CAS is, for the most part, the primary forum for resolving sporting disputes globally, on account of it being the choice of many international sports federations as a final forum. Given its current importance within the industry, the operation of the CAS is addressed further in its own chapter in this publication. However, despite its pre-eminent position, the CAS is not alone in providing dispute resolution services in sport, with other organisations globally providing arbitration services in sport, such as Sports Resolutions (UK); the World Intellectual Property Office, which offers alternative dispute resolution for sports for resolving intellectual property disputes; and the Qatar Financial Centre Civil and Commercial Courts in Doha, which has been used as a forum for sports dispute resolution (for example, in the case for the International Cricket Council's anti-corruption tribunal in 2011 on spot-fixing during an international test match).

For industry participants, whether acting for a club, governing body, athlete, intermediary or commercial entity operating in the sector, it is important to recognise that the regulatory and legal issues faced by companies and individuals within the sector are often highly complex. Whole books and chapters have been written on many of the individual issues addressed within this publication. However, rather than a definitive legal guide to all aspects of sports law, this publication provides a practical and commercial approach to understanding the sector. Ultimately, working in any industry requires context and we hope that this publication can provide that context through a succinct overview of the key legal issues in sport.

Each chapter covers a broad range of areas, covering issues both on and off the field of play. The initial questions seek to provide an overview of the regulatory framework operating in each jurisdiction and the various mechanisms for dispute resolution in sport. The focus then moves to commercial issues within sport, covering sponsorship, brand management, broadcasting and event organisation. Lastly, the issues affecting the management and protection of individual athletes in sport, including immigration issues, sports unions, employment matters and (briefly) taxation, are addressed.

Finally, we would like to thank each of the authors who have contributed and provided chapters to this publication and whose insight has helped to create what we believe is an informative and practical guide to sports law globally.

Court of Arbitration for Sport (CAS)

Matthew Bennett and Stuart Baird

Centrefield LLP

1 What is CAS?

The Court of Arbitration for Sport (CAS) was founded in 1984 and is an independent organisation that facilitates the resolution of disputes involving sporting organisations and their individual members through mediation and binding arbitration.

CAS has its main seat in Lausanne, Switzerland but also has operational offices in Sydney, Australia and New York, United States.

The day-to-day organisation of CAS is overseen by the International Council of Arbitration for Sport (ICAS), which is responsible for its administrative and financial management, and for safeguarding its independence.

According to its own statistics, CAS oversees around 300 disputes each year, which are referred to it by individual litigants or as a result of its designation as the 'go-to' appeal body in the statutes and regulations of a large number of major international sports federations, including the Union Cycliste Internationale, FIFA and the Fédération Internationale d'Automobile.

Disputes heard by CAS range widely in their subject matter from relatively low-value contractual and tortious disputes between private individuals, to selection and doping related disputes between national federations and participants, to disputes between international associations and their members regarding the interpretation and enforcement of regulations.

CAS boasts a panel of 300 arbitrators, representing almost 90 countries, all of whom have been nominated for their specialist knowledge and experience of sports law and regulatory matters and who represent a broad cross-section of sports, including representatives of players, clubs, national associations and international federations. This includes a specific list of over 90 specialist football arbitrators. CAS also has a list of over 60 specialist sports mediators.

In addition to the ordinary dispute resolution services it provides, CAS has recently become renowned for the ad hoc dispute resolution services it offers at certain major international sporting events such as the Olympic and Commonwealth Games.

2 How is CAS structured?

CAS operates in three separate areas as follows:

- Ordinary arbitration procedure – the arbitration procedure for determining contractual disputes or alleged tortious offences. This can be accessed by any parties involved in sport who agree in writing to submit their dispute to CAS for determination.
- Appeal procedure – the procedure for disputes arising out of decisions taken by sports governing bodies where the rules of such bodies designate CAS as the appellate body.
- Mediation – the procedure by which CAS appoints a mediator with specialist knowledge of the sports industry to assist the parties to a dispute in negotiating and resolving their differences by mutual agreement. CAS mediation services are available on a 'standalone' basis and are also offered to all parties to appeal and ordinary arbitration proceedings before CAS.

Each of the above procedures is overseen and supported from an administrative perspective by the CAS Court Office.

3 What rules govern procedures before CAS?

Ordinary and appeal proceedings before CAS are governed by the Code of Sports-Related Arbitration (the Code). The Code is regularly updated and the current version came into force on 1 January 2017.

The Code governs:

- general matters pertaining to CAS, including the organisational structure of ICAS and CAS, CAS's mission statement and its administrative duties, such as the maintenance of up-to-date lists of arbitrators and mediators;
- procedural provisions such as the scope of the Code, the seat and language of proceedings, the right of parties to be represented, the service of documents and time limits, the appointment and dismissal of arbitrators and the power to impose provisional measures;
- provisions that are specific to the ordinary arbitration procedure, including regulations for the commencement and conduct of the proceedings, formation of the panel, joinder and intervention of third parties, confidentiality, evidence, directions for any oral hearing, applicable law and the expedition of the proceedings;
- provisions that are specific to the appeal procedure, including regulations for the commencement and conduct of proceedings (including time limits), appointment of the panel, confidentiality, evidence, directions for any oral hearing, applicable law and the expedition of the proceedings; and
- provisions relating to the calculation, apportionment and payment of the costs associated with CAS arbitration.

The Code is supplemented by a bank of jurisprudence that has arisen out of published decisions of CAS arbitrators and panels, which can be found in the jurisprudence database on the CAS website. Amendments to the Code have routinely been implemented to codify key areas of CAS jurisprudence.

Mediation procedures before CAS are governed by the CAS Mediation Rules, which were last amended on 1 January 2016. These rules set out the procedure and basis of mediation proceedings.

4 Which parties have standing to bring a claim or appeal before CAS?

CAS will only accept jurisdiction to hear a dispute if a written and binding arbitration agreement exists between the parties in dispute. Such agreement can take several forms, including:

- Contractual provisions – many agreements within sport contain a jurisdiction clause that expressly provides for the exclusive resolution of disputes by CAS. Where disputes arise under such agreements the jurisdiction of CAS is 'automatic' unless the parties subsequently agree otherwise.
- Regulatory provision – the statutes and regulations of many international sports federations confer jurisdiction on CAS for the resolution of particular types of disputes. This includes both first instance disputes (see, for example, article 27 of the General Regulations of the International Skating Union), appeals against disciplinary or anti-doping decisions of the relevant national association (see, for example, Rule C.12.11 of the Constitution of the Fédération Internationale de Natation) and appeals against decisions of the dispute resolution bodies of the relevant international federation in disputes between its members (see, for example, article 44 of the Statutes of the International Canoe Federation).

- Written agreement – the parties to a contractual agreement can enter into a written arbitration agreement that confers jurisdiction on CAS by mutual agreement at any time after such contract has been entered into (including after the dispute itself has arisen), provided the parties are not subject to any regulatory provisions that oblige them to resolve the dispute in an alternative specified forum.

5 What are the key considerations when drafting an arbitration agreement stipulating CAS as the forum?

When drafting an arbitration agreement or clause it will be important to bear in mind the following:

- Freedom – the parties will need to ensure that they are entitled actually to refer disputes to CAS and are not under any obligations pursuant to the regulations of their national association or international federation that compel them to defer to a particular dispute resolution forum.
- Nature – it is important to be specific as to the nature of the disputes to which the arbitration agreement relates. For example, the parties may consider that some types of potential dispute are suitable for determination by CAS, but others are more suitable to be determined under the regulations of the relevant international federation (see, for example, article 12 bis of the FIFA Regulations on the Status and Transfer of Players, which provides an expedited procedure for the recovery of uncontested contractual debts by football clubs, which is likely to be faster and more cost-effective than a debt claim before CAS).
- Procedure – given that the agreement is likely to come into force only when relations between the contracting parties have broken down, it is advisable to agree as much detail as possible about the conduct of the procedure before CAS at the outset. This includes the language and governing law of the proceedings (this is of particular importance given that the Code provides for the application of Swiss law in default of any pre-agreement), whether to appoint a single arbitrator or three-person panel and whether the parties agree to an expedited procedure, including the relevant time frame.

6 How does a party bring a claim before CAS?

The procedure for commencing a claim before CAS varies according to the nature of the claim.

Ordinary claim

A claimant must submit a request for arbitration to the CAS court office along with proof that the mandatory application fee (1,000 Swiss francs at the time of writing) has been paid to CAS.

The request should contain details and contact information for all parties to the dispute, a brief description of the facts of the dispute, the claimant's request for relief, a copy of the arbitration agreement or details of the regulations pursuant to which jurisdiction is conferred on CAS, and the identity of the claimant's proposed arbitrator.

The claimant will subsequently have the opportunity to provide a statement of claim providing full details of the claim, supporting documentation and any witness and expert evidence, so it is not necessary to include this with the request.

The time limit for bringing an ordinary claim before CAS is dictated in each case by the national law applied by CAS.

Appeal

An appellant is required to lodge a statement of appeal with CAS Court Office, along with proof that the mandatory application fee (as above) has been paid to CAS electronically.

The statement should include details and contact information for all parties to the dispute, a brief description of the grounds of appeal, details of the relief requested, a copy of the regulations pursuant to which jurisdiction is conferred on CAS and the identity of the claimant's proposed arbitrator. Where a sporting sanction has been imposed the appellant can make submissions to request that this be stayed pending the outcome of the appeal. A copy of the decision under appeal must be attached to the statement.

The statement is required to be lodged within 21 days of receipt by the appellant of the full written reasons for the decision being appealed, unless an alternative time frame is provided for in the regulations of the body that issued the decision under appeal, which takes precedence.

Within 10 days of the expiry of the time limit for the appeal, the appellant must submit an 'appeal brief' providing full details of the appeal, supporting documentation and any witness and expert evidence.

7 How is the panel constituted in a CAS appeal case?

CAS appeal cases will normally be heard by a three-person panel unless the parties agree to the appointment of a sole arbitrator.

Generally, the more straightforward a dispute, the more suitable it is for determination by a sole arbitrator; however, parties often prefer a three-person panel to ensure that the ultimate decision is as objective as possible and reflects a wider range of views.

Costs considerations are also important when determining the type of panel – in low-value matters or where parties are of limited financial means, a sole arbitrator may be the most appropriate choice.

Even where the parties do not agree on a sole arbitrator, the president of CAS has the power to rule that the case is suitable for determination by a sole arbitrator, but it is rare in practice for the president to overrule the parties' will, and this generally only occurs where there is a dispute between the parties, and the party in favour of a three-person panel has refused to pay its share of the advance of costs.

Where there is a sole arbitrator, his or her identity can be agreed between the parties. The appellant can identify a potential candidate in its statement of appeal and the respondent must acknowledge the same within 10 days of receipt. Where no candidate is proposed or no agreement is reached, the sole arbitrator is selected by the president of CAS.

Where there is a three-person panel, each party proposes its own arbitrator (in accordance with the timescale set out above) and the third arbitrator (who acts as chairman of the panel) is selected by the president of CAS.

A party can challenge the appointment of any arbitrator (whether proposed by another party to the proceedings or by CAS) if they have grounds to believe he or she is not sufficiently independent or impartial.

8 How is the language of proceedings determined in a CAS case?

In accordance with the Code, CAS proceedings are conducted in either French or English (the working languages of CAS) but CAS will have discretion to approve the hearing of proceedings in any other language designated by mutual agreement of the parties. Once the 'official language' has been chosen or ordered, all documents, submissions and evidence must be submitted in that language (in the form of a certified translation where necessary).

The choice of language for CAS proceedings is often expressly set out in the arbitration agreement that confers jurisdiction on CAS. However, where such agreement is silent (and there is no subsequent agreement between the parties) the president of CAS will rule on the choice of language in an order on language.

In appropriate cases, the president may order that a party can make submissions and give evidence in his or her mother tongue, notwithstanding that this is different to the 'official language' designated by the president, provided a suitable panel can be constituted with an adequate command of both languages.

9 How is the choice of law applicable to the merits of a dispute determined in a CAS case?

Ordinary procedure

The merits of a dispute brought under the ordinary arbitration procedure are determined according to the governing law agreed by the parties, or according to Swiss law as default.

As such, any choice of law that is expressly set out in the arbitration agreement, or any national or international association rule pursuant to which jurisdiction is conferred on CAS, will automatically be applied by CAS.

CAS can also apply a choice of law that it considers has been made 'tacitly' by the parties. This can occur where the arbitration agreement is silent but the parties base their submissions on a common understanding that a particular law is applicable to the case. Alternatively, a tacit choice of law can be implied where the dispute has close links to a particular national law and no international element exists, such that the parties are deemed to have a mutual understanding that a particular national law applies.

Appeal procedure

Appeals before CAS are heard according to the applicable regulations (ie, those pursuant to which the decision under appeal was made) and, subsidiarily, the rules of law (whether national law or the regulations of a particular body) chosen by the parties.

The choice of law can be stipulated in the regulatory provision that confers jurisdiction on CAS (see, for example, article 57(2) of the FIFA Statutes), agreed by the parties or, alternatively, the choice of the parties can be tacit, as in ordinary arbitration proceedings.

In default of such choice, the panel may choose to apply the law of the country in which the body that made the decision under appeal is domiciled, or any other 'rules of law which the Panel deems appropriate', provided that reasons are given for its choice.

In appropriate circumstances the panel may decide to apply different rules or laws in respect of different aspects of a dispute, known as *dépeçage*.

Where there are any doubts as to the applicable law in an ordinary or appeal case, it is open to the parties to request that CAS makes a preliminary award on the matter.

10 How are proceedings before CAS conducted?

Generally, CAS proceedings take place by way of written submissions and, where the panel considers it necessary, an oral hearing.

Parties will usually only be given one opportunity each to set out their case, but the panel has the power to order a second round of written submissions (normally limited to responses to points already raised) if it considers that issues raised in the first round of submissions need to be addressed further to afford each party the opportunity to fully set out its case. This is particularly common in cases where there is no oral hearing. Either party is free to request a second round of submissions.

Where a party intends to rely on any witnesses or experts in the proceedings, it is required to name each of them in the written submissions and provide a brief summary of their evidence or attach the witness statement to be relied on.

Either party can request a hearing, which will often be granted by the panel upon receipt of a justified request, including where oral evidence is required and where the legal issues are complex and need to be clarified for the panel. The panel also has the power to order a hearing absent any request from the parties where it has questions of its own.

The hearing will usually take place at the CAS offices in Switzerland, but parties and witnesses can join via video link or conference call upon receipt of permission from the panel, if considered preferable for logistical or costs reasons.

A hearing before CAS can comprise up to six stages: opening remarks of the parties, hearing of witnesses, hearing of experts, examination of the parties by the panel, closing submissions of the parties (including oral pleadings) and the deliberations of the panel.

11 What awards are available from CAS?

In ordinary arbitration cases, CAS has the power to order the payment of a sum of money, as well as to give declaratory relief (albeit such relief is limited to circumstances in which the party claiming relief can show a bona fide legal interest). CAS panels are not, however, entitled to impose sporting sanctions.

In appeal cases, the panel has full power to review the facts and the law on a de novo basis, meaning that the parties are free to introduce new arguments and evidence that were not relied on before the first instance body. CAS will then have the ability to: (i) reject the appeal and uphold the decision under appeal; (ii) annul the decision and make a new decision that replaces the decision under appeal; or (iii) annul the decision and remit the case to the body that made the decision under appeal for reconsideration of the case by it.

CAS also has the ability to make costs awards in ordinary and appeal proceedings.

CAS jurisprudence makes clear that in all cases panels are only entitled to award relief where the relevant party's requests are sufficiently specific to allow the panel to fully understand what is being requested (to avoid it acting ultra vires by misinterpreting the request) and to enable the other party to defend itself against the request.

12 How are CAS fees calculated in arbitration proceedings?

Pursuant to article R64.1 of the Code, fees for arbitration proceedings conducted by CAS are comprised of the following elements:

- CAS court office fee – currently 1,000 Swiss francs;
- administrative costs of CAS – set according to a predetermined fee scale based on the financial value of the relevant dispute and currently ranging from 100 to 25,000 Swiss francs;
- fees of the arbitrators – payable at a standard hourly rate determined by reference to a fee scale based on the financial value of the relevant dispute (pursuant to which the rate ranges from 300 to 500 Swiss francs per hour). This can, however, be increased or decreased if the president considers it appropriate to do so, based on the complexity of the case and the level of work required;
- expenses of the arbitrators – including return travel to the hearing, accommodation and subsistence expenses, subject to certain conditions and restrictions imposed by CAS;
- fees of the ad hoc clerk (if any) – payable at a standard hourly rate of 150 to 200 Swiss francs depending on the level of qualification of the clerk and the nature of the work undertaken;
- a contribution towards the expenses of CAS – set by CAS based on the resources used (eg, courier and printing fees, hearing room); and
- costs of witnesses, experts and interpreters – these are paid by the parties relying on them in the first instance but can be included in any costs award made by the panel.

13 What is the 'advance of costs' and when and how is this paid?

In accordance with article R64.2 of the Code, at the outset of proceedings the CAS Court Office estimates the likely overall cost of the case, based on the scope and nature of the case and the standard fee rates (see above). The parties are required to pay this amount (known as the advance of costs) by way of a deposit against the final fees in the case.

The advance of costs is initially split between the parties, with 50 per cent being payable by the claimant or appellant and 50 per cent payable by the respondent (split between multiple respondents if applicable).

Any party is entitled to refuse to pay its allocated share of the advance of costs, in which case CAS will invite the other parties to pay the share on its behalf. Where the advance of costs is not paid in full within the stipulated time frame (including any extension that is granted by the CAS in its discretion), the claim will automatically be deemed to have been withdrawn. As such, where any respondent refuses to pay its share of the advance of costs, the claimant or appellant usually pays the outstanding share in order to keep its claim or appeal alive.

Upon the conclusion of the proceedings, the overall cost of the case is calculated by CAS and the advance of costs is offset against this.

14 How are the costs of proceedings apportioned between the parties in CAS proceedings?

CAS arbitration panels are empowered under the Code to make a costs award as part of their substantive award in each matter, to confirm which party shall bear the costs of the proceedings, or in what proportion they should be shared.

As a general rule, the fees accrued are borne by the unsuccessful party in the arbitration; however, each panel has the power to depart from the general rule in appropriate cases (for example, where a dispute has arisen because of a lack of clarity in the rules of a governing body, the governing body can be penalised in costs even if it ultimately wins the case).

The panel is also empowered to award the successful party a 'reasonable contribution' towards its legal costs in connection with the arbitration. The nature and amount of such an award is entirely at the discretion of the panel and can be made on a percentage basis or based on the panel's consideration of a statement of costs filed by the successful party. Awards of this nature are, however, generally limited.

A contribution towards legal fees is generally not available where the successful party has not been represented by external legal advisers – in such circumstances any award is likely to be limited to the expenses of the successful party's representatives.

If the proceedings are terminated as a result of settlement between the parties before a final award has been issued, but after costs have been incurred by CAS, such costs will ordinarily be apportioned in the settlement agreement between the parties. In the absence of such agreement, the president of CAS will determine how the costs are apportioned and will do so on the assumption that the party that

brought the appeal or claim is the 'unsuccessful party', with withdrawal of the appeal considered akin to a rejection.

15 What are the timescales for proceedings before CAS?

No time frames are set out in the Code for the conduct of ordinary arbitration proceedings but the CAS estimates that such proceedings last from six to 12 months from commencement of the arbitration to the issuing of an award. This period can vary depending on the complexity of the matter and the availability of the parties and arbitrators to schedule a hearing promptly.

In appeal cases, the Code provides that an award must be rendered within three months of the panel's receipt of the file. However, this target is not always achieved in practice, particularly in complex cases and in cases where there is a three-person panel, making it difficult to promptly arrange a hearing. It can be difficult to enforce article R59 where a decision is not rendered within the stated time frame, as this will usually be for logistical reasons that cannot be avoided.

With the agreement and cooperation of the parties (and subject to the availability of a suitable panel) CAS proceedings can be expedited, such that the matter is dealt with in a number of weeks where a matter is required to be determined urgently.

16 Are CAS proceedings and decisions confidential?

The ordinary arbitration procedure is confidential in accordance with article R43 of the Code. The parties, arbitrators and CAS staff are obliged not to disclose any information connected with the dispute and decisions are not published unless all the parties agree to their publication, or the president of CAS orders publication. Such an order is uncommon and must be justified by clear reasons, which may include the existence of a genuine public interest in the subject matter of the decision.

The emphasis on confidentiality in ordinary proceedings arises out of the fact that in most cases, such matters are private as between the parties and involve sensitive commercial information.

The rules on confidentiality in relation to appeal proceedings before CAS are less restrictive, since such appeals are often cases of a disciplinary nature that have a significant public interest element and are often already in the public domain by the time an appeal is lodged.

Under the Code, CAS is entitled to publish its final award (or, should it prefer, a summary of its findings) unless the parties agree otherwise. The proceedings themselves will remain confidential while they are ongoing, and under the Code, CAS arbitrators are subject to a duty of confidentiality in ongoing proceedings.

17 How, and in what forum can a CAS award be enforced?

Awards of the Ordinary Division and Appeals Division of CAS are internationally recognised arbitration awards that can consequently be enforced through the national courts of any of the 125 member states that are signatories to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention).

18 How, in what circumstances and in what forum can a CAS award be challenged or appealed?

As CAS has its legal seat in Switzerland, its final awards can only be appealed to the Swiss Federal Tribunal (SFT). A right of appeal is available only in very limited circumstances.

An appeal to the SFT is essentially an application to set aside a CAS decision on procedural grounds. The SFT does not have the power to review the merits of a CAS award or to replace it with its own decision. There is no ability to challenge factual findings of the CAS or its application of the law before the SFT, even if the findings of CAS are obviously incorrect, unreasonable or arbitrary.

The grounds on which a party may appeal to the SFT are limited to circumstances where it is alleged that:

- the panel was unlawfully constituted (and this was raised as an issue during the proceedings but not properly dealt with);
- the panel has made an error in accepting or declining jurisdiction in the matter;
- the decision of the panel goes beyond the claim submitted to it or if the panel has failed to decide any part of such claim;
- the proceedings have violated one party's right to equal treatment or right to be heard (albeit it is not permitted to rely on article 6 of the ECHR); or
- the award is contrary to public policy.

Any appeal to the SFT must be brought within 30 days of receipt of the reasoned award of CAS.

19 What is the function of the Ad Hoc Division?

Since the 1996 Olympics, CAS has attended each Olympic (both summer and winter) and Commonwealth Games, as well as other major international sporting events such as the FIFA World Cup, to resolve disputes in the lead-up to and during the competition on an expedited basis. The Ad Hoc Division performs this function, operating out of a temporary on-site office staffed by CAS court office employees at the relevant competition.

In accordance with the Olympic Charter and its own procedural rules, the Ad Hoc Division has jurisdiction to hear 'any dispute arising on the occasion of, or in connection with, the Olympic Games'. Participants in the competition are required to consent to such jurisdiction by virtue of an arbitration clause in the participation agreement signed by them in advance of the competition.

Proceedings before the Ad Hoc Division are governed by procedural regulations that are designed to ensure the resolution of disputes on an urgent basis. The regulations include competition-specific provisions such as service of documents by hand to a specific on-site address, or service of notices or orders by telephone; lodging claims by completion of a standard form provided by CAS; and provision for a decision to be rendered within 24 hours of the relevant application being lodged. The regulations also specify that Swiss law governs the procedures of the Ad Hoc Division to ensure consistency in the way cases are treated, irrespective of a participant's background.



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The Ad Hoc Division has the power to impose provisional measures, such as staying the effects of an appealed decision, although this is rarely necessary in practice, given the speed with which final decisions are rendered.

Each dispute is determined by a three-man panel or sole arbitrator selected from a limited panel of arbitrators, identified before the competition, who have the relevant expertise and are on standby for the duration of the competition to hear disputes on short notice.

Proceedings undertaken by the Ad Hoc Division are free of charge to the parties.

20 What is the Anti-doping Division?

From the 2016 Olympic Games, CAS has been designated as the first instance dispute resolution body for all matters related to alleged breaches of applicable anti-doping rules arising during the Olympic Games, through the newly implemented Anti-doping Division.

The Anti-doping Division has its own president and deputy president and a designated list of specialist arbitrators who are 'on call' throughout the competition. Like the Ad Hoc Division, proceedings before the Anti-doping Division are administered by members of CAS Court Office 'on-site' at the competition.

Upon an application of the International Olympic Committee, the Anti-doping Division examines alleged infringements by athletes of the applicable anti-doping rules and has the power to impose suspensions on athletes found guilty of breaches of such regulations, as well as withdrawing medals awarded to them. The Anti-doping Division also has the power to impose provisional suspensions on athletes charged with doping offences, pending the outcome of their case.

The procedural regulations of the Anti-doping Division contain many of the same provisions as the Ad Hoc Division as to service, applicable procedural law and the 24-hour time limit for issuing a decision. Proceedings before the Anti-doping Division generally involve an oral hearing where evidence can be provided.

Decisions of the Anti-doping Division can be appealed to CAS through the Ad Hoc Division or in accordance with the ordinary appeal procedure after the end of the competition.

Proceedings undertaken by the Anti-doping Division are free of charge to the parties.

Brazil

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Regulatory

1 What is the regulatory governance structure in professional sport in your jurisdiction?

The main federal statute establishing general rules on sports in Brazil is known as the Pelé Law (Law No. 9,615/98). Among other matters, the Pelé Law regulates article 217 of Brazilian Federal Constitution and determines a decentralised governance structure in professional sport.

The national sport system in Brazil consists of sports governing bodies, leagues and clubs organised in an autonomous and collaborative manner, and integrated by technical criteria pertaining to each sports modality. Such entities are private and autonomous with respect to their organisation and operations. They should act under their mandates as provided for by their respective by-laws (article 16 of the Pelé Law).

Entities of the public administration also play an important role in Brazilian Sport, such as the Ministry of Sport and the National Sports Council. The latter is responsible for approving the Brazilian Sports Code (see question 5) and the Anti-Doping Code (article 4, items I and III and article 11, items VI and VII of the Pelé Law).

In 2015, the Fiscal Responsibility Sports Law (Law No. 13,155/2015) was enacted. This provides for the principles and practices of fiscal and financial responsibility, as well as for the transparent and democratic management of professional football organisations.

2 To what extent are participants protected from liability for their on-field actions under civil and criminal law?

The plain language of law contains no exception, whether in civil or criminal areas, regarding damage or offences caused by athletes by their on-field actions.

The general civil liability rule is set forth by article 186 of the Brazilian Civil Code (Law No. 10,406/02), stating that whoever voluntarily or by omission, negligence or imprudence, violates rights and causes harms to another person, even if the damage is exclusively moral, commits an unlawful act. In such case, the wrongdoer must compensate the aggrieved party, pursuant to article 927 of the Civil Code.

Note that the employer is assigned the responsibility to compensate the wronged party for a harm caused by the employee in the course of his or her work, or as a result of such work, in accordance with article 932, item III of the Civil Code. This indirect liability regime applies to the club-athlete relationship, so that the club may be held liable for athletes' actions. Under the Pelé Law, the clubs are required to hire life and personal accidents insurances to cover risks to which athletes are subject in their professional activities (article 45).

There are grounds to sustain that athletes shall not be held liable for their ordinary on-field actions. As professional players, a possible defence is that they are performing a lawful activity (regular exercise of a right) and also that the normal risks associated therewith (eg, injuries) are known by everyone on pitch (article 188, item I of the Civil Code and article 23, item III of the Decree-Law No. 2,848/1940, the Criminal Code). Causing serious injuries, however, can be considered a crime in certain situations when the athlete acts wilfully.

3 What is the regulatory framework for doping matters in your jurisdiction? Is there also potential secondary liability for doping offences under civil or criminal law?

In 2016, Ordinance No. 1 of the National Sports Council approved the Brazilian Anti-Doping Code, which adopts the WADA Code for doping matters. The body in charge of enforcing doping rules in Brazil is the Brazilian Authority on Doping Control (ABCD). Among other duties, ABCD is responsible for establishing and coordinating the anti-doping system, liaising with international bodies, and enforcing international rules, working together with the Anti-Doping Sports Justice (JAD) (article 48-B, items I to IX and article 55-A of the Pelé Law).

The JAD has authority to (i) judge anti-doping rules violations and impose the relevant sanctions, and (ii) ratify decisions from international bodies in relation to violations of anti-doping rules. Its structure is composed of a court and a prosecution division.

Article 7, item II of the Brazilian Anti-Doping Code determines as a general principle the athlete's strict liability for his or her own actions. Accordingly, article 9, paragraph 1 states that the athlete is liable for any substances inside his or her body, so that the absence of fault or negligence is irrelevant.

As regards secondary liability, articles 16 and 17 of the Brazilian Anti-Doping Code establish the liability of those who give substances to an athlete in competition, or contribute, facilitate or collaborate with the illegal ingestion of substances.

4 What financial controls exist for participant organisations within professional sport?

According to article 40 of the Fiscal Responsibility Sports Law, clubs must fulfil their obligations regarding payment of taxes, labour, salaries and image rights. If such obligations are not complied with, clubs can be forced to play in a lower division of a given championship. In addition, articles 18 and 18-A of the Pelé Law dictate that entities can only benefit from tax exemptions and public subsidies if they are financially healthy and transparent, and have no tax debts. There are no salary caps applicable.

Dispute resolution

5 Who has jurisdiction over the resolution of professional sport disputes in your jurisdiction, and how is this determined?

The Federal Constitution establishes the Sports Justice in article 217 and paragraphs. Paragraph 1 determines that the judiciary power can only assess sport-related matters after the Sports Justice has assessed the claims in a definitive manner.

The Pelé Law dictates that the Sports Justice is independent of the sports governing bodies. The Sports Justice consists of the Superior Court of Sports Justice, the local courts of Sport Justice and their respective disciplinary commissions. Proceedings held before the sports courts are governed by the Brazilian Sports Code. This applies to actions strictly linked to sports practice or management.

The Pelé Law admits arbitration as an alternative method for settling disputes, provided that such disputes do not involve matters related to sports discipline and sports competitions (article 90-C). This provision currently limits the reach of arbitration in sports.

With regard to infringements of world football governing body FIFA's rules, the regulation applicable is FIFA's Disciplinary Code.

FIFA's dispute resolution structure is composed of three bodies: the Disciplinary Committee, the Ethics Committee and the Appeal Committee. The decisions of these committees are subject to further review by the Court of Arbitration for Sport, based in Lausanne, Switzerland.

6 How are decisions of domestic professional sports regulatory bodies enforced?

The Federal Constitution determines that sports governing bodies are autonomous. They have powers to issue binding rulings, impose sanctions (provided that due process is assured) and create their own courts, with jurisdiction limited to the related leagues (article 50). The decisions issued can be subject to review by the Sports Justice (article 40 of the Pelé Law).

7 Can the decisions of professional sports regulatory bodies be challenged or enforced in the national courts?

As mentioned in question 5, article 217, paragraph 1 of the Federal Constitution determines that the judiciary power can only assess sport-related matters after the Sports Justice has assessed the claims in a definitive manner. The Pelé Law adds to it that a ruling from the judiciary cannot affect in any way the sports aspects of the decision (article 52, paragraphs 1 and 2).

Notwithstanding the provisions mentioned above, there are at least two cases where the courts reversed the decision issued by the Sports Justice. The 10th Federal Court of the State of Pernambuco faced a dispute between Clube de Regatas do Flamengo and Sport Club do Recife regarding the winner of the Brazilian Football Championship of 1987. The Court declared the latter the champion, and the Brazilian Federal Supreme Court maintained it in April 2017, after a new appeal from Clube de Regatas do Flamengo.

In another case, in 1999, after being relegated to the second division of the Brazilian Football Championship, Sociedade Esportiva do Gama, a football club from Brasilia, filed a lawsuit trying to void the relegation. The 21st Federal Court of the Federal District rendered a decision in its favour and ordered the Brazilian Football Confederation (CBF) to alter the ranking, and that changed the promotions and relegations of such year.

It is worth noting that the Labour Court usually deals with disputes arising from non-compliance with labour standards involving a professional athlete, including transfer-related matters, grounded on the fact that the right to work is a fundamental right and considered a matter of public interest; therefore, not conditioned to the previous judgments of sports bodies (articles 5, item XXXV and 114, item IX of the Federal Constitution).

Sponsorship and image rights

8 Is the concept of an individual's image right legally recognised in your jurisdiction?

Rights related to image, voice, names, nicknames, physical characteristics, appearance, etc, are personality rights already protected by the Federal Constitution, the Civil Code and the Pelé Law. They do not need any kind of registration to be enforced.

The Federal Constitution declares in article 5, items V and IX, the inviolability of the image rights and the entitlement to compensation for property and moral damage in case of violations. The Civil Code establishes in Articles 12 and 20 the right of any individual to demand that a threat or violation of personality rights cease, as well as to claim compensation for damages.

As a general rule, personality rights cannot be assigned nor waived. However, the exploitation of an individual's image for specific purposes can be granted to third parties by means of licence agreements.

Article 5, item XXVIII, a of the Federal Constitution also provides for the protection of the reproduction of human voices and images, including in sports activities, which shall be regulated by law (see question 9).

9 What are the key legal considerations for the commercialisation and protection of individuals' image rights?

Pursuant to article 42 of the Pelé Law, the right to exploit images captured during the sports event is granted to the sports entities that have

organised the event. The law grants this right to the teams as a way to enable the exploitation of players' images on-field.

Except in cases of a collective convention setting forth a different percentage, 5 per cent of the revenues originated from the exploitation of these rights shall be transferred to the professional athletes' unions. The unions are responsible for distributing the amount among the players that took part in the relevant sports event.

The use of players' individual images for advertising or any other commercial activity depends on previous agreements entered into between the players and the third party willing to exploit their images (see question 8).

For the sake of clarification, players can assign to their teams individual images rights for publicity purposes, but statutory law does not automatically grant this to the teams. In any case, the amount corresponding to the image rights payable by the team cannot surpass 40 per cent of a player's total compensation (ie, the aggregate of salaries and image rights; see sole paragraph of article 87-A of the Pelé Law).

10 How are image rights used commercially by professional organisations within sport?

Athletes' image rights can be used commercially both to promote the club that they play for, through promotional actions of the initiative of the club itself, and to promote third parties' products or services by means of licensing agreements.

As mentioned in question 8, image rights are personality rights, and as such they are considered fundamental rights of the individuals. Because of this, any agreement related to one's image must be interpreted restrictively in a way that it is beneficial to the athlete. Therefore, a given agreement should expressly refer to all the forms of exploitation authorised by the athlete, otherwise such use can be considered unlawful as it lacks proper authorisation.

Recently, several football players have sued companies that develop electronic games because they included them as characters in the games without prior authorisation. The companies argued that they were authorised by the relevant clubs where the athletes play. According to the companies, such authorisation entitled them to exploit athletes' images by any means. However, it was found that the agreements entered into between the clubs and the athletes did not provide for the assignment of their image to third parties. As a result, the courts have prevented said companies from continue to use athletes' images.

11 How can morality clauses be drafted, and are they enforceable?

Employment, licensing and sponsorship agreements can include morality clauses addressing the behaviour of the athlete. Inappropriate behaviour can lead to contractual sanctions, termination or even compensation to be paid by the athlete. Morality clauses are enforceable.

12 Are there any restrictions on sponsorship or marketing in professional sport?

Besides federal laws regarding specific products and services, the regulation of advertisements in Brazil is carried out through self-regulation by the advertising market stakeholders, through the National Council for Self-Regulation of Advertising (CONAR) that issued the Brazilian Advertising Self-Regulation Code, as of 5 May 1980 (the CONAR Code). Although the CONAR Code is an instrument of self-discipline of advertising activity, it is common that authorities and courts mention it as a reference document and subsidiary source in the context of the advertising legal framework.

The CONAR Code states that advertisements of any alcoholic beverages, regardless of the percentage of alcohol, may not make use of Olympic sports uniforms. Publications (including ads) directed at minors may not contain illustrations, photographs, captions, stories or publicity of alcoholic beverages, tobacco, weapons, ammunition, lotteries or improper material (and neither may such products may be presented by minors) and should respect the ethical and social values of the person and family, as well as reflect special attention to safety and good manners.

In addition, gambling and games of chance are forbidden in Brazil and constitute a criminal offence, except for official lotteries and authorised horse racing, which can be advertised. Therefore, gambling-related sponsorship or marketing is not admitted in general.

According to paragraph 5 of article 27-A of the Pelé Law, free-to-air or pay-TV broadcasters are not allowed to advertise their own brands in the uniforms of the teams.

Brand management

13 How can sports organisations protect their brand value?

Leagues, federations and other sports entities usually have their own symbols, insignias and hold intellectual and industrial property rights related to them. Trademarks and other industrial property rights must be registered with the National Institute of Industrial Property (INPI), which according to Law No. 9,279/96 (Industrial Property Law) is the official agency responsible for granting registration of trademarks, patents and industrial designs, etc. Besides registration with the INPI, symbols and names relating to sports events organisers and teams are protected by the Pelé Law in article 87. The Olympic symbol is also protected by the Nairobi Treaty 1981, to which Brazil is a signatory party.

14 How can individuals protect their brands?

Article 87 of the Pelé Law protects the names and nicknames of athletes regardless of previous registration with the INPI. Individuals can also protect their brands through registration as trademarks with the INPI in exceptional cases, when a certain name has become relevant enough to identify certain products or services.

15 How can sports brands and individuals prevent cybersquatting?

In addition to the protection of the Pelé Law, individuals and entities owning sports brands may register their local internet domain names in Brazil, adopting the extension .br. Such registration is made through the website <https://registro.br/>, maintained by the Brazilian Network Information Centre. Besides that, names, product names and corporate logos can be registered as trademarks (see question 14).

16 How can individuals and organisations protect against adverse media coverage?

The Federal Constitution establishes as fundamental rights the freedom of expression and the right of information, but also individual rights, such as the right to privacy, honour and image (article 5, IX, X and XIV). Media coverage must strike a balance between these constitutional rights.

If the press negatively affects the honour or image of an athlete, the aggrieved may file a lawsuit claiming an indemnification for damage (article 927 of the Civil Code). Also, there are other means to have such damage repaired, such as the withdrawal of the offensive publication or the granting of the right to reply.

Serious insults by the media can also constitute crimes against a person's reputation – libel, defamation and slander, pursuant to articles 138, 139 and 140 of the Criminal Code, respectively. The journalist may be sentenced to imprisonment (although in practice this has never happened) or have to pay a fine, or both.

Broadcasting

17 Which broadcasting regulations are particularly relevant to professional sports?

See question 9 with regard to the right to exploit images captured during sports events. An exception to this is the right to exhibit highlights of sports events exclusively for journalistic, sportive or educational purposes, which is permitted provided that: (i) the images are captured in places of the venues reserved to non-rights holders or, if such places are not available, the images are provided by the relevant rights holder; (ii) the exhibition does not exceed 3 per cent of the total duration of the sports event; and (iii) the exhibition of the images is not associated with any kind of sponsorship, publicity or merchandising (article 42, paragraph 2 of the Pelé Law).

18 What means are available to restrict illegal broadcasting of professional sports events?

Sports events rights holders have to enter with judicial proceedings against the wrongdoer, with a request to the judge to issue a preliminary injunction in order to halt unauthorised transmissions of the relevant event.

With regard to content made available online, according to the Brazilian Civil Rights Framework for the Internet (Law No. 12,965/2014) the court may order the internet application providers to immediately block the websites appointed as illegally broadcasting content (article 19).

In addition to the request to stop illegal broadcasting, rights holders usually demand indemnification as a compensation for the damage suffered. According to recent case law, courts are likely to grant both such claims.

Event organisation

19 What are the key regulatory issues for venue hire and event organisation?

Law No. 10,761/03 (the Fan Statute) sets forth the obligations concerning venue hire and event organisation. As a general rule, sports bodies have a duty of transparency and must make available on their website all relevant information on the competition, such as (i) its regulations; (ii) the schedule, location and referees appointed to the upcoming matches; and (iii) the revenues of past matches (article 5).

Sports bodies are also required to inform the date of each match at least 48 hours in advance, as well as hire insurance to cover accidents, take all the necessary health and safety measures (article 16) and ensure fans' accessibility to the stadium (article 27).

Students, elderly people and disabled people are also entitled to special rights, such as half-price tickets. Decree No. 8,537, as of 5 October 2015, which regulates this benefit, states that the organiser must hold at least 40 per cent of the tickets to be sold with such discount (article 9).

Law No. 8,078/90 (the Consumer Defence Code) provides that fans must be protected from any risk to their health and safety, as well as from misleading and abusive advertising or other improper practices (article 6, items I and VI).

20 What protections exist against ambush marketing for events?

Under the Industrial Property Law, ambush marketing is considered a crime of unfair competition, which subjects the offender to imprisonment from three months to one year, as well as the payment of a fine (article 195, item IV).

21 Can restrictions be imposed on ticket sale and resale?

Yes. The Fan Statute criminalises touting and imposes a penalty of two to four years' imprisonment, as well as the payment of a fine (article 41-G). If such crime is committed by a public servant, a club manager, an employee of a sports entity or an employee of the company responsible for selling the tickets, the penalty shall be increased by one-third (article 41-G, sole paragraph). The Fan Statute also states that the home team must implement a security system against fraud in this activity (article 21).

Immigration

22 What is the process for clubs to obtain work permits or visas for foreign professional athletes, and coaching and administrative staff?

The entry and permanent stay of foreigners in Brazil, including professional athletes and administrative staff, are governed by Law No. 13,445/2017 (the Migration Law) and Decree No. 9,199/2017.

In accordance with Normative Resolution 16/2017 of the National Immigration Council (a body of the Brazilian Ministry of Labour and Employment), a temporary visa is granted to athletes, coaching and administrative staff staying more than 90 days in Brazil to participate in events in case of a fixed-term contract.

Clubs intending to hire athletes for regular employment relationships under an employment contract, must seek for a residency authorisation at the Ministry of Labour and Employment and a temporary visa as required in Normative Resolution 21/2017 (NR 21) of the National Immigration Council. See question 24 for further details for both cases.

23 What is the position regarding work permits or visas for foreign professional athletes, and coaching and administrative staff, temporarily competing in your jurisdiction?

Those who wish to participate in a sports competition in Brazil must apply for a visitation visa valid for 90 days (article 29, seventh paragraph

Update and trends

The Bill of Law No. 383/2017 aims at regulating electronic games that encompass the competition between two or more players using electronic devices under round-robin tournament systems, knockout systems or other similar technology. According to this bill, the players are considered athletes. Based on the principle of freedom to practise e-sports, the bill of law encourages intellectual and cultural development to enable the socialisation, entertainment and education of children, teenagers and adults.

of Decree No. 9,199/2017). If they intend to stay in the country for a longer period, a temporary visa must be requested, provided that the person has a contract for a fixed term with a Brazilian entity. See question 22.

24 What residency requirements must foreign professional athletes, and coaching and administrative staff, satisfy to remain in your jurisdiction long term or permanently?

Foreign professional athletes, coaching and administrative staff who wish to settle residence in Brazil for work purposes must obtain the authorisation of the Brazilian Ministry of Labour, as mentioned in question 22.

For this purpose, the minutes of an employment contract lasting at least three months and no longer than five years must be submitted to such authority. The authorisation shall be granted for such period and may be renewed if necessary (articles 3 and 4 of NR 21).

25 Do the family members of foreign professional athletes, and coaching and administrative staff, legally resident in your jurisdiction have the same residency rights?

Neither the Migration Law, Decree No. 9,199/2017 nor NR 21 expressly states that the residency authorisation is extended to the sports professionals' family members. However, it is usually granted to their relatives as well. NR 21 establishes that the person who requests the authorisation must undertake, on his or her behalf and on the behalf of his or her family members, to return to his or her country of origin (article 2, item I, c of NR 21).

Sports unions

26 How are professional sporting unions incorporated and regulated?

A sporting union is incorporated as an association through the register of its by-laws with the Civil Register of Entities located in the same state in which the union is headquartered (article 45 of the Civil Code).

Despite the fact that the Federal Constitution imposes that no authorisation must be required for the creation of a union, its registration with the Brazilian Ministry of Labour is mandatory (article 8, item I).

Unions are regulated by the Decree-law No. 5,452/43, as amended (Consolidation of Labour Laws), which ensures the right to association of employers, employees, self-employed workers, independent agents, and liberal professionals exercising equal or similar professions or activities, aiming to coordinate patrimonial and professional interests (article 511). Besides that, the Pelé Law entitles the athletes to be represented by unions in matters related to employment contracts with sports entities (article 90-D).

27 Can professional sports bodies and clubs restrict union membership?

No.

28 Are there any restrictions on professional sports unions taking strike action?

The right to strike is granted by the Federal Constitution as a fundamental right (article 9) and its exercise is ruled by Law No. 7,783/89 (the Strike Law).

There are no specific restrictions to sports unions engaging in strike actions besides the general ones, such as the prohibition to block access to the club's facilities, as well as threatening or causing any harm to people or their property (article 6, paragraph 3 of the Strike Law).

Employment

29 What is the legal framework for individual transfers? What restrictions can be placed on individuals moving between clubs?

With regard to football, FIFA's Regulations on the Status and Transfer of Players (RSTP) and the CBF's National Regulation of Registers and Transfers of Football Players (the CBF Regulation) rule individual transfers of players moving to or from Brazil.

In accordance with the RSTP:

- a club intending to conclude a contract with a professional must inform the player's current club in writing before entering in negotiations with him or her;
- the athlete will only be able to sign a contract with another club if the contract in force has expired or is due to expire within six months; and
- third parties cannot influence in any aspect of the employment relationship between the clubs and the athletes, including transfer-related matters (article 18 bis).

Likewise, the CBF Regulation sets forth that during the last six months of the employment contract, a player is allowed to sign a pre-contract with another team, provided that the current team is notified in advance (article 25). In such case, the new contract is valid and enforceable, but it will only be effective upon the expiration of the term of the current contract.

Also, when the player terminates the relation with the original club before the end of their contract, both the player and the new team are liable for the payment of an indemnification (article 28 of the Pelé Law). In practice, the latter usually pays it. With regard to national transfers, the contractual indemnification is limited to 2,000 times the monthly compensation paid by the former team. On the other hand, there is no limitation to international transfers (article 28, paragraph 1 of the Pelé Law).

For sports other than football, termination is ruled by the same provisions of the Labour Law, which are applicable to employment relations in general.

30 Can individuals buy their way out of their contractual obligations to professional sports clubs?

Yes, individuals can terminate the relation with professional sports clubs before the end of the current contract, so a new contract can be signed with another team. In such cases, an indemnification is due to the previous club, as explained in question 29.

An indemnification is also due if the athlete quits playing for retirement purposes but then gets back to football within 30 months of the supposed retirement (article 28, item I, b of the Pelé Law).

31 What are the key athlete welfare obligations for employers?

According to the Pelé Law, the employer must (i) provide the athletes with the necessary conditions to take part in the sports competitions, training sessions and other preparatory or instrumental activities; and (ii) submit the athletes to medical and clinical exams required for the practice (article 34, items II and III). Clubs are also required to hire life and personal accidents insurances to cover risks to which athletes are subject in their professional undertakings (article 45).

32 Are there restrictions on the employment and transfer of young athletes?

The Federal Constitution sets forth that working is forbidden for individuals under 16, except if they are hired as apprentices, which is admitted if they are over 14 (article 7, item XXXIII).

The Pelé Law prohibits the professional practice of sports by minors who are under 16 (article 44, III). However, individuals aged between 14 and 20 can be considered non-professional athletes in formation. For them, a formal contract is executed by means of which they shall be entitled to a financial allowance (article 29, paragraph 4 of the Pelé Law). Such contract does not constitute an employment relationship.

The restrictions to international transfer of young athletes provided for the RSTP are applicable in Brazil (article 46 of the CBF Regulation). Therefore, athletes under 18 cannot be transferred (article 19, item 1 of the RSTP). Exceptions are made if the parents of the athlete have moved to the country for reasons not related to practising

football or if the athlete lives in a border region (article 19, item I, a and c of the RSTP).

33 What are the key child protection rules and safeguarding considerations?

The Federal Constitution is the most relevant legislative act that provides for children's rights. It determines that it is the duty of the family, as well as of the society and state, to ensure children's protection (article 227). Also, Law No. 8,069, as of 30 July 1990 (the Children and Adolescent Statute) is the specific Brazilian statutory law protecting children, including the inviolability of their physical, psychological and moral integrity (article 17).

In case of a violation of a disciplinary rule, athletes under 14 years old will not be deemed liable; instead, they will be submitted for educational help (article 162 of the Brazilian Sports Code). If the violation is performed by an athlete under 18, his or her age will be considered as a mitigating factor when applying the penalty (article 180, item I of the Brazilian Sports Code).

Under the Brazilian Sports Code, any athlete younger than 18 is entitled to have defendants nominated to advocate for his or her interests (article 21).

34 What employment relationship issues arise when athletes represent both club and country?

The conditions and matters regarding an athlete representing both club and country shall be defined by an agreement between such entities (article 41 of the Pelé Law).

With regard to football players, the entity that calls the athlete up must indemnify the employer for the period during which the individual is at the national team's disposal (article 41, first paragraph). If the athlete suffers an injury during this period, an indemnification must be paid by the national team to the club until he or she is recovered (article 41, first and second paragraph). For other sports, this indemnification is optional (article 84).

35 How are selection and eligibility disputes dealt with by national bodies?

The criteria for selection and eligibility of athletes are determined by each sport's confederation. It varies from individual to group sports. The first category normally requires that the athletes have achieved certain accomplishments throughout their careers, like speed records in sports such as swimming or athletics, and ranking positions in others. In group sports, the eligibility relies on the athletes' professional skills at the sole discretion of the coach.

Taxation

36 What are the key taxation issues for foreign athletes competing in your jurisdiction to be aware of?

Brazil imposes worldwide taxation on the basis of residency (rather than citizenship or nationality). Accordingly, resident individuals are taxed

on a worldwide basis on their income and gains arising both in Brazil and abroad. Non-resident individuals are only subject to taxation in Brazil if they receive income from a Brazilian source.

Thus, assuming the athletes travelling to compete in Brazil are not Brazilian residents, they should not be subject to income taxation in Brazil on their salaries, image rights, arena rights and any other sort of compensation received from foreign sources. Such athletes would only be subject to Brazilian taxation if they receive payments from Brazilian sources.

Service compensation paid, credited, delivered, employed or remitted by a Brazilian source to or in favour of the non-resident athlete is subject to: (i) the Withholding Income Tax (IRRF) at a 25 per cent rate, due by the athlete, which must be withheld and collected by the Brazilian paying party (article 685, II, a, of the Brazilian Income Tax Regulations, approved by Decree No. 3,000/1999, as amended RIR/99); (ii) the Municipal Services Tax (ISS), at a rate of up to 5 per cent, due by the athlete, which should be withheld and collected by the Brazilian paying party - actual ISS rates vary according to the municipality where the services are rendered or where the service importer is located (article 1, paragraph 1, and article 6, paragraph 2, I, of Federal Complementary Law No. 116/2003; and (iii) contributions to the Social Integration Programme and to Social Security Financing (PIS and Cofins), at a total combined rate of 9.25 per cent, due by the Brazilian paying party. According to article 1, paragraph 1, of Law No. 10,865/2004, services imported from overseas are subject to PIS/Cofins when provided by individuals or legal entities resident or domiciled abroad, either executed in Brazil or executed overseas, where the results are verified in Brazil. Any foreign currency exchange transactions entered into in connection with remittances of such compensation overseas would also be subject to the Tax on Financial Transactions (IOF) at a rate of 0.38 per cent, due by the Brazilian paying party (article 15-B, caption, and article 12, of Decree No. 6,306/2007, as amended IOF Regulations). Because of the form of calculation of these taxes, their effective tax burden totals approximately 41 per cent. If the financial burden of IRRF or ISS is contractually transferred to the Brazilian paying party, the calculation basis of these taxes must be grossed up and the effective tax burden increases to approximately 59 per cent in total.

Prizes earned in local competitions by non-residents athletes are also subject to IRRF at a 15 per cent rate, unless the athlete resides in a favoured tax jurisdiction (as defined by Brazilian legislation), in which case IRRF would be levied at a 25 per cent rate (article 685, I, d, of RIR/99). The Brazilian Federal Revenue Service considers that only prizes paid with no connection to the athletes' performance would be subject to IRRF at the reduced 15 per cent rate (Resolution of Conflict Ruling No. 9/2012). If the prize is connected to or dependent upon the athletes' performance, it should be treated as service compensation and thus be subject to IRRF at a 25 per cent rate (the other taxes referred to in the previous paragraph could also be charged in this situation, although not addressed in this specific precedent).

Also, any amounts paid, credited, delivered, employed or remitted as compensation for the exploitation of the athletes' image rights are subject to IRRF at a 15 per cent rate (articles 709 and 710 of RIR/99).

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Any specific provisions of applicable double taxation treaties regarding IRRF would prevail and should be considered, including reduced IRRF rates and tax credits available in the athletes' country of residence for IRRF paid in Brazil.

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Canada

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Regulatory

1 What is the regulatory governance structure in professional sport in your jurisdiction?

Professional sport in Canada is regulated by both provincial and federal legislation, with more specific rules relating to the conduct of the sport governed by the applicable sports bodies. Many professional leagues in Canada are cross-border, involving both US and Canadian teams. Such professional leagues must navigate the laws of each jurisdiction in which they operate.

2 To what extent are participants protected from liability for their on-field actions under civil and criminal law?

Sports participants are generally still responsible for their on-field actions in Canada under both civil and criminal law.

Criminal liability for on-field actions is determined by the nature of the physical contact between participants. Athletes engaged in contact sports are deemed to have impliedly consented to the ordinary risks of the game. Therefore, a physical blow that is incidental to the game will not qualify as assault. Conversely, a physical blow delivered with the intention to cause injury would typically fall outside the scope of implied consent and may qualify as assault. In the case of non-contact sports, athletes are unable to impliedly consent to physical contact.

On-field actions may also create civil liability for participants. An athlete who fails to exercise due care towards another athlete may be found liable in negligence. Such liability is determined by comparing an athlete's conduct to that of a reasonable competitor in his or her place.

3 What is the regulatory framework for doping matters in your jurisdiction? Is there also potential secondary liability for doping offences under civil or criminal law?

In Canada, non-professional sports organisations adhere to the international anti-doping regime, the World Anti-Doping Code (the Code), which is established by the World Anti-Doping Agency. The Canadian Centre for Ethics in Sport implements the Code under the Canadian Anti-Doping Program (CADP). National sports organisations are not required to adopt the CADP, but the CADP must be adopted by an organisation to receive federal funding. If the CADP is adopted, it is incorporated into all of the organisation's agreements with individual athletes, which bind the athletes to the anti-doping rules.

Professional sports organisations typically adhere to the anti-doping regimes established by their applicable sports bodies. However, if members of these leagues partake in events or tournaments under the jurisdiction of organisations that have implemented the Code (ie, National Hockey League players participating in the Olympic Games or at the World Championships) then they must comply with the Code.

While doping is not generally a criminal offence in Canada, doping offences could create secondary liability under criminal law. For example, the use, import or sale of doping substances that are illegal under Canada's federal Controlled Drugs and Substances Act could result in criminal liability.

4 What financial controls exist for participant organisations within professional sport?

Most major professional sports leagues operating in Canada have established rules pertaining to financial controls, including the use of salary

caps, debt limits, limits on losses and revenue sharing. These rules vary among each professional sport league. For example, the National Basketball Association's soft salary cap enables teams to exceed the salary cap and pay a luxury tax to the league, while the National Football League's hard salary cap requires all teams to remain below a salary cap at all times.

Dispute resolution

5 Who has jurisdiction over the resolution of professional sport disputes in your jurisdiction, and how is this determined?

Most major professional sports leagues operating in Canada are governed by a collective bargaining agreement (CBA). Generally, these CBAs provide for mandatory arbitration for disputes, including player contracts and grievances regarding injuries and discipline.

While parties can bring a contractual claim in one of Canada's provincial superior courts, Canadian courts will recognise arbitration agreements and are required to stay an action where one party invokes an arbitration clause.

Provincial labour law also applies to the operation of professional sports leagues in Canada. Provincial labour relations boards have limited jurisdiction to adjudicate certain disputes involving the bargaining rights of league members, including players, referees and other unionised employees.

6 How are decisions of domestic professional sports regulatory bodies enforced?

Most CBAs provide internal enforcement mechanisms by levying fines on players or franchises for breaching the terms of the CBA. The National Hockey League CBA, for example, authorises the league to impose fines of up to C\$5 million for franchises and up to C\$1 million for players for non-compliance with arbitral decisions.

Each province and territory also has its own arbitration legislation to provide for the enforcement of domestic arbitral decisions. For example, Ontario's Arbitration Act, 1991 allows persons entitled to an arbitral award to apply to the Ontario Superior Court for enforcement. The court has the same powers to enforce arbitral awards as it does to enforce its own judgments.

7 Can the decisions of professional sports regulatory bodies be challenged or enforced in the national courts?

Judicial intervention in the arbitral process conducted by professional sports regulatory bodies is often restricted by legislation. For example, arbitration legislation in Ontario, Manitoba and Saskatchewan prohibits courts from interfering with arbitrations except to enforce awards, assist in conducting of arbitrations, or prevent unfair treatment.

Canadian courts generally show deference to sports association decisions and will not consider the merits of a decision. This is because private sports associations are voluntary bodies deriving authority from an internal constitution or by-laws.

In limited circumstances, courts will review a sports association's decision, such as where an association exceeded its powers, shirked its own procedures, or dealt with a member unfairly. Decisions of private clubs and associations have been challenged through civil claims and applications for judicial review, but availability will depend on the laws of the particular province.

Sponsorship and image rights

8 Is the concept of an individual's image right legally recognised in your jurisdiction?

The concept of an individual's image right is legally recognised in Canada in a quasi-trademark sense. Well-known athletes have a unique and valuable commercial asset in their right of self-promotion and authorising the use of their image. This right exists in the common law and has been codified in some provincial legislation.

Image rights are not the subject of registrations in Canada.

9 What are the key legal considerations for the commercialisation and protection of individuals' image rights?

The cause of action of 'appropriation of personality' is recognised in Canada. In order to succeed, the athlete must establish that the defendant intentionally appropriated his or her persona for gain.

10 How are image rights used commercially by professional organisations within sport?

The commercial use of image rights by professional organisations within sport is relatively standardised across sports organisations. The standard player's contracts for most professional sports leagues provide that the club to which a player signs has the right to take and make use of photographs, motion pictures, or electronic images of the player for promotional purposes. Further, through these contracts, players agree not to make public appearances, give interviews, or endorse commercial products without the club's written consent, which is not to be unreasonably withheld.

11 How can morality clauses be drafted, and are they enforceable?

Morality clauses are enforceable but inconsistently across provinces. Generally, in order to be enforceable, the terms of the clause must stipulate the conduct to which it applies. Some clauses only apply to future conduct, while others require what amounts to a warranty of past good conduct. Some clauses enumerate a closed set of specific conduct that will violate the clause, others are vaguer and are drafted in terms of conduct that would bring the counterparty's reputation into disrepute or harm the goodwill associated with them.

12 Are there any restrictions on sponsorship or marketing in professional sport?

There are both contractual and governmental regulatory restrictions on sponsorship and marketing in professional sport. Contractually, where an individual or organisation is engaged in multiple sponsorship agreements, they must watch for conflicting endorsements.

With regard to regulation, there are limitations imposed on the tobacco and alcohol industries that prevent them from promoting or advertising their products in relation to sport. Similar restrictions are expected to apply when regulations regarding cannabis are finalised.

The Canadian Code of Advertising Standards provides an additional layer of consumer protection against misleading advertisements and disingenuous testimonials.

Brand management

13 How can sports organisations protect their brand value?

Sports organisations can protect their brand value by registering their trademarks and enforcing infringement as thereof. When permitting their trademarks to be used by others in Canada, sports organisations should ensure that they have written trademark licence agreements through which they maintain quality control.

14 How can individuals protect their brands?

Individuals can protect their brands much in the same way as sports organisations by registering their trademarks and enforcing actions against infringements thereof. Similarly, when permitting their trademarks to be used by others in Canada, individuals should ensure that they have written trademark licence agreements through which they maintain quality control. Individuals can also license the use of their likeness, image and other personal indicia.

15 How can sports brands and individuals prevent cybersquatting?

The best defence against cybersquatting is to register domain names in the most popular top-level domains (including .ca in Canada) and, where necessary, to bring dispute resolution proceedings. The registration of a trademark in Canada is not mandatory, but very helpful in prevailing in dispute resolution proceedings in the .ca top-level domain.

16 How can individuals and organisations protect against adverse media coverage?

One must carefully monitor media coverage to ensure that the goodwill of the individual athlete or sports organisation is maintained. The retention of a media consultant or publicist can be helpful in this regard. Employment of legal remedies such as those to sue for libel or slander is generally to be seen as a last resort, to be used only in the most extreme circumstances.

Broadcasting

17 Which broadcasting regulations are particularly relevant to professional sports?

The regulations promulgated under the Broadcasting Act govern the broadcasting of sporting events within Canada. These regulations are expansive and include both licensing and distribution-related requirements and are administered by the Canadian Radio-television and Telecommunications Commission (CRTC). In recent years, the CRTC has increased its regulatory practices and expanded the scope of a number of regulations with a view to modernising such rules with the advent of online media platforms.

18 What means are available to restrict illegal broadcasting of professional sports events?

In Canada, broadcasters must purchase the rights to televise professional sports events. If broadcasters do not own the rights to an event, the relevant team or league may require the broadcaster to block delivery of the game in a particular area – a practice otherwise known as a 'blackout'.

Regional rights can be used as a means to restrict illegal broadcasting. Most professional sports leagues in Canada operate under regional rights, which entitle one team to broadcasting rights in a territory. The team with broadcasting rights can prevent other teams from broadcasting in their area. For example, the National Hockey League prohibits the broad distribution of one team's games in another team's market area by imposing regional blackouts.

To enforce restrictions against illegal broadcasting, sports broadcasters and leagues can seek injunctions from a court and may also pursue a claim for damages caused by any illegal broadcasting.

Event organisation

19 What are the key regulatory issues for venue hire and event organisation?

Applicable regulations and jurisprudence pertaining to venue hire and event organisation focus on the safety and security of spectators and athletes. Generally, an event organiser will have a duty pursuant to provincial legislation to ensure that persons and property entering the premises are reasonably safe for their contemplated use. If an event organiser fails to exercise reasonable care in organising and overseeing an event, it may also be liable under civil law for negligence. To minimise the risks associated with organising an event, an event organiser should provide necessary warning pertaining to the event (including through the use of signs and waivers), prevent overcrowding and ensure that the conditions of the venue are not hazardous.

20 What protections exist against ambush marketing for events?

In Canada, the issue of ambush marketing has been infrequently litigated and legal protections are limited. If the instance of ambush marketing involves trademark infringement, then intellectual property law rules can provide recourse to the injured party. However, ambush marketing practices do not usually involve trademark infringement.

Canada's first ambush marketing legislation, the Olympic and Paralympic Marks Act (OMPA), was enacted prior to the 2010 Vancouver Winter Olympic Games. The OMPA established legal recourse for

ambush marketing in the context of the Olympic and Paralympic Games. Additionally, the covenant regarding Vancouver's candidacy for the 2010 Olympic Games stated that if ambush marketing includes false or misleading public representations, then the provisions contained in the Competition Act on misleading representations or deceptive marketing may apply. Aside from these instances, Canadian legislation has not addressed the issue of ambush marketing.

21 Can restrictions be imposed on ticket sale and resale?

Restrictions on ticket sale and resale may be imposed by provincial legislation. Currently, each of Saskatchewan, Ontario, Quebec and Manitoba has some form of legislation imposing restrictions on ticket sale and resale. Such restrictions vary by province and include limits on when tickets may be resold or the pricing of such tickets.

Immigration

22 What is the process for clubs to obtain work permits or visas for foreign professional athletes, and coaching and administrative staff?

Foreign professional athletes, coaching and essential staff who wish to work in Canada must apply for an employer-specific work permit through Immigration, Refugee and Citizenship Canada. The permit will set limits on which employer the applicant can work for, how long the applicant can work for and in which location this work is to take place. An applicant who holds this type of permit can only work for an employer for the length of time and at the location prescribed.

To be eligible for this work permit, an individual must be a professional athlete or coach for a Canadian team and meet the general eligibility requirements for a work permit, which include proving, among other things, that the applicant will leave Canada when the work permit expires, is not a danger to Canada's security, will obey the law and does not have a criminal record, is in good health and will undergo a medical exam if necessary, and is not planning to work for an ineligible employer.

Pursuant to the Immigration and Refugee Protection Regulations, coaches, trainers, professional and semi-professional athletes who work for Canadian-based teams can obtain work permits without testing the labour market (advertising the position in Canada) based on similar reciprocal opportunities for Canadian athletes in the foreign applicant's home country.

Depending on citizenship, the foreign athletes may also need to obtain an eTA (Electronic Travel Authorization) or a temporary resident visa in addition to the work permit. If the foreign athlete has a criminal record, a temporary resident permit may also be required.

23 What is the position regarding work permits or visas for foreign professional athletes, and coaching and administrative staff, temporarily competing in your jurisdiction?

Foreign professional or amateur athletes may participate in sporting activities in Canada, either as individual participants or as members of a foreign-based team, without obtaining a work permit. As mentioned above, depending on citizenship, the athletes may need to obtain an eTA, a temporary resident visa or a temporary resident permit before their arrival in Canada.

24 What residency requirements must foreign professional athletes, and coaching and administrative staff, satisfy to remain in your jurisdiction long term or permanently?

Immigration matters are legislated under the Immigration and Refugee Protection Act and related regulations. To remain in Canada long term or permanently, individuals must apply for permanent resident status. Permanent residents have the right to receive most social benefits; live, work or study anywhere in Canada; apply for Canadian citizenship; and enjoy the protection of the Canadian Charter of Rights and Freedoms.

Professional athletes and coaches can apply for permanent resident status as 'self-employed' persons under the general economic class. A self-employed person is a 'foreign national who has relevant experience and has the intention and ability to be self-employed in Canada and to make a significant contribution to specified economic activities in Canada'. Specified economic activities include athletics. Administrative staff would not fit into this category but rather the 'skilled workers' category of the general economic class.

Update and trends

On 19 June 2018, the Canadian government passed the Cannabis Act, which legalised the possession and distribution of marijuana within a complex regulatory framework at a date to be set by regulation. Currently, the expected date of legalisation is 17 October 2018. However, it is expected that marijuana will remain a prohibited substance under most anti-doping rules and sports leagues' CBAs, meaning any athlete who utilises marijuana may be found in violation of such rules. In addition, the possession or distribution of marijuana is expected to remain illegal in most US states. Given that most professional sports leagues in Canada involve a significant number of US clubs and participants, athletes who utilise marijuana will have to be mindful of the legal status of marijuana in the states in which they are travelling. There have already been incidents of US customs and border officers denying entry to travellers from Canada who admit to utilising marijuana, including even some incidents involving indirect involvement with the marijuana industry in Canada. As the marijuana industry grows in Canada, we expect these issues to continue to develop.

The Immigration and Refugee Protection Act governs residency requirements of permanent residents. To maintain permanent residency status, an individual must live in Canada for at least two years within a five-year period. In certain circumstances, time spent outside of Canada may also count towards the required two years.

25 Do the family members of foreign professional athletes, and coaching and administrative staff, legally resident in your jurisdiction have the same residency rights?

Spouses of foreign athletes on Canadian work permits are eligible for 'open' work permits in Canada. Children under 22 are eligible for study permits. These documents are issued for the same duration as the athlete's work permit.

Family members (spouses and children under 22) of the foreign professional athletes can apply for permanent resident status at the same time as the foreign athlete. They would be subject to the same residency rights once they become permanent residents.

Sports unions

26 How are professional sporting unions incorporated and regulated?

Canadian provinces have constitutional jurisdiction over labour relations matters and so provincial labour laws apply. In Ontario, for example, the Labour Relations Act, 2017 (LRA) will apply. The LRA addresses, among other things, the establishment of bargaining rights; the negotiation, contents, and operation of collective agreements; the termination of bargaining rights; successor rights; and unfair labour practices.

27 Can professional sports bodies and clubs restrict union membership?

Labour relations legislation across Canada recognises the importance of freedom of association and collective bargaining. For example, in Ontario, the LRA provides that every person is free to join a trade union and interference with the formation, selection, or administration of a union or the representation of employees by a union constitutes an unfair labour practice.

28 Are there any restrictions on professional sports unions taking strike action?

While Canadian courts recognise the importance of the right to strike, there are some legislative restrictions on its exercise. For example, in Ontario, strikes are unlawful during the term of a collective bargaining agreement. There are also legislative timelines that must be followed before a union can be in a strike position. The terms of a collective bargaining agreement may also limit a union's ability to strike.

Employment**29 What is the legal framework for individual transfers? What restrictions can be placed on individuals moving between clubs?**

League regulations, collective bargaining agreements, individual player contracts and the common law create the legal framework for individual transfers.

Common contractual terms that may affect the transfer of individual players include:

- an employer's right to assign a contract;
- an employer's option to renew a contract for a specified term; and
- 'no move' or 'no trade' clauses.

League regulations or contractual terms that hinder freedom of employment may be challenged under the common law restraint of trade doctrine. The Competition Act also contains provisions specific to professional sports.

30 Can individuals buy their way out of their contractual obligations to professional sports clubs?

General principles of contract law apply to individuals looking to buy their way out of their contractual obligations to professional sports clubs. A contract may contain an express provision that affords one or both parties the power to cancel the agreement, in some cases subject to certain conditions. For example, certain contracts may allow players to cancel their contract for a pre-determined price that the team seeking to acquire the player would pay. This commonly occurs in European football (soccer) leagues. In North America, league regulations may make it difficult for teams to buy and sell contracts on the open market. Trading, rather than buying or selling, of players is more common. Players may request release during the employer 'buy-out period' in each season to become unrestricted free agents, but employers may not be obligated to comply with such a request.

31 What are the key athlete welfare obligations for employers?

Athlete welfare obligations in Canada stem from both legislation and the common law. Provincial occupational health and safety legislation applies to virtually all employers in Canada. In Ontario, the Occupational Health and Safety Act outlines the duties of employers. These duties include providing appropriate protective equipment, identifying relevant hazards, appointing competent supervisors and developing corporate policies.

Where injury occurs through regular professional play, a player contract may require a team to pay for lost salary and medical expenses. However, where injury occurs because of a club's negligence, a player may be able to successfully claim tort damages on the basis of the employer's breach of the duty to exercise reasonable care. In Ontario,

workers' compensation policy is that coverage will not be provided for any teams or individuals competing in sports.

32 Are there restrictions on the employment and transfer of young athletes?

Restrictions on the employment and transfer of young athletes are found in legislation, league regulations and the common law.

Provincial employment legislation limits youth employment. In the context of high-level sports, education legislation may also limit youth employment by requiring school enrolment. An example of this is British Columbia's School Act.

Professional sports leagues may regulate age eligibility requirements as well, both with respect to the minimum draft age or in connection with player transfers.

Lastly, minors generally lack capacity under the common law, resulting in contracts they enter into being either void or voidable. However, an employment contract may be enforceable by a minor if it is beneficial to his or her interests.

33 What are the key child protection rules and safeguarding considerations?

Various provincial legislation in Canada includes protections for children engaged in sporting activities. For example, in Ontario, the Child, Youth and Family Services Act, 2017 imposes a duty to report when there are reasonable grounds to suspect that a child has suffered, or is likely to suffer, harm. Ontario's Ministry of Tourism, Culture and Sport has explained that this duty applies not only to harm or risk of harm when participating in a sport organisation, but also when the harm or risk thereof arises outside the sport organisation. Ontario recently introduced Rowan's Law (Concussion Safety). This law imposes various duties on sports organisations, coaches, participants, parents and guardians relating, for example, to the review of concussion awareness resources and the establishment of removal and return-from-sport protocols if a concussion is suspected.

34 What employment relationship issues arise when athletes represent both club and country?

Various employment issues can arise when club athletes also wish to represent their country at international athletic events, such as the Olympics. These issues can include the breach of player contracts that require exclusive service and the allocation of risk relating to player injuries. These issues can be dealt with in the collective bargaining agreement between the Players' Association and the league, or in player contracts.

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35 How are selection and eligibility disputes dealt with by national bodies?

Eligibility disputes relate to qualifications for admission to a particular level of competition, while selection disputes usually involve the choice of athletes for teams. These disputes typically involve National Sport Organizations (NSOs), which are the governing bodies for various sports in Canada. In order to be funded by Sport Canada, NSOs must have an internal appeal process and allow disputes to be referred to the Sport Dispute Resolution Centre of Canada (SDRCC). The SDRCC offers mediation and arbitration services through its Dispute Resolution Tribunal. The Canadian Sport Dispute Resolution Code provides rules of procedure for the Tribunal. Parties to arbitration under the code waive their right to seek alternate relief from other judicial bodies.

Taxation**36 What are the key taxation issues for foreign athletes competing in your jurisdiction to be aware of?**

Generally, subject to the application of a tax treaty (as discussed below), a non-resident athlete who competes in Canada is subject to Canadian income tax on income earned from activities performed in Canada and is required to file a Canadian income tax return to report that income. The athlete may also be subject to withholding at source on payments made to the athlete in respect of activities performed in Canada. The portion of an athlete's income that is earned from activities performed in Canada will depend on the athlete's personal circumstances, but may include some of the athlete's signing bonus or other lump sum payments.

Foreign athletes competing in Canada should determine whether Canada has a tax treaty with their country of residence. Most of Canada's tax treaties generally follow the OECD Model Convention with respect to the taxation of athletes, such that Canada is generally permitted to tax athletes on their income from activities in Canada. However, there are important variations among Canada's tax treaties, including in some treaties exemptions for athletes earning only small amounts in Canada. Because of the significant integration of the Canadian and US sports industries, the Canada-US Tax Convention provides a unique exemption from Canadian taxation for a US athlete employed by a team that plays regularly scheduled games in Canada and the US.

Chile

Jose Joaquin Laso

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Regulatory

1 What is the regulatory governance structure in professional sport in your jurisdiction?

The Ministry of Sports, through the National Sports Institute (IND), promotes the practice of sports. In addition, the IND has established and issued the basic guidelines to which all professional sports organisations are subject, in accordance with the rules set forth under Law No. 20,019 that regulates professional sports corporations.

For these purposes, the law created a registry of professional sports organisations, administered by the IND, in which the by-laws of each institution must be registered. The IND supervises both the incorporation, as well as the permanence and elimination from said registry, based on the fulfilment of the legal requirements. On the other hand, the financial and accounting aspects of professional sports organisations are supervised by the Financial Market Commission (CMF), a government agency that is in charge of supervising the proper functioning, development and stability of the financial market, facilitating the participation of market agents and maintaining public trust.

For example, all sports organisations linked to professional football (this being the most relevant professional sports activity), must present their budgets, balance sheets and other financial information before the CMF.

Additionally, professional football is subject to rules dictated by the National Association of Professional Football (ANFP), which is the entity that groups professional football clubs, and is a member of the Federation Internationale de Football Association (FIFA), meaning that the directives issued by FIFA are applicable to the professional football clubs.

The ANFP mainly regulates sport matters, but also regulates financial aspects of the professional football clubs through the Regulation of the Financial Control Unit, which requires, among other matters: (i) presenting an annual operating budget with a result equal to or above zero. If the presented budget shows a negative result, such deficit must be guaranteed by the directors or administrators of the entity; and (ii) that the amount allocated to the remuneration of the professional staff and players does not exceed 70 per cent of the total income of the entity.

Finally, the ANFP has issued the Club Licence Regulation, which creates the general framework and requirements that each professional football club must comply with to be able to participate in the professional football league. This general framework was released during 2017 and established various obligations for professional football clubs, most of which are enforceable as of 2018, and others that are subject to a greater investment will be enforceable as of 2019 or 2020.

2 To what extent are participants protected from liability for their on-field actions under civil and criminal law?

There is no special protection for athletes with regard to their liability related to their sport performance under civil or criminal law.

However, Law No. 20,844 establishes the rights and duties of attendees and organisers of professional football shows, and also creates a general framework to avoid and control violence in stadiums. This law also establishes certain specific infractions that may be committed by athletes during sporting events and sanctioned in accordance with the articles it sets forth.

3 What is the regulatory framework for doping matters in your jurisdiction? Is there also potential secondary liability for doping offences under civil or criminal law?

Law No. 20,686 of 2013 created the Ministry of Sports. This law and the Ministry, through the National Doping Control Commission (CNCD), establish the general framework to control and prevent doping.

The Ministry of Sports, complying with its legal mandate and the general anti-doping criteria set forth by the World Anti-Doping Agency, issued ruling No. 437, which established the regulation and enforcement of doping controls. This ruling and its implementing regulations are completely enforceable upon professional sport.

With regard to professional football, not only are the aforementioned regulation and resolution applicable, but also each and every relevant ruling issued by FIFA or the South American Football Confederation (CONMEBOL), which in 2015 released the Anti-Doping Regulation, which is applicable to every international tournament organised by CONMEBOL.

Given that in Chile personal consumption is not a criminal offence, there is no secondary liability under criminal law. However, this does not prevent there being civil effects owing to a possible breach of the contractual obligations enforced because of an employment or commercial contract.

4 What financial controls exist for participant organisations within professional sport?

As mentioned in question 1, with regard to professional football, the internal regulations and rulings of the ANFP establish special limits to the hiring of professional football players, considering the income of each specific football club. Any projected budget must be financed or guaranteed by its directors or administrators.

Dispute resolution

5 Who has jurisdiction over the resolution of professional sport disputes in your jurisdiction, and how is this determined?

Each professional league has its own sport tribunals that are in charge of resolving any professional sport disputes that may arise. Professional football through the ANFP has its own arbitral tribunal, the Patrimonial Affairs Tribunal (TAP), and since the ANFP is part of FIFA, the tribunals of the latter also have jurisdiction to settle professional sport disputes. Jurisdiction is also granted to the Court of Arbitration for Sport (CAS). Even though FIFA prohibits submitting sport matters to the ordinary justice courts, Chilean legislation has not recognised a limitation in this regard.

6 How are decisions of domestic professional sports regulatory bodies enforced?

The rulings issued by the TAP can be of two categories: sport and economic. Sport rulings are executed and enforced by the ANFP itself, through its own rules and sanctions. The sport rulings can be appealed before the jurisdictional entities of FIFA and in a last instance before the CAS. Economic rulings are also executed and enforced by the ANFP itself, since it holds control over the income of television rights of the local tournament and can therefore withhold payments in order to divert them to the favoured party in the arbitral decision.

7 Can the decisions of professional sports regulatory bodies be challenged or enforced in the national courts?

Yes, in the case of arbitration judgments, these may be challenged by the entity in front of the ordinary courts; however, the prohibition mentioned in question 5 must be borne in mind. Additionally, arbitral judgments that are not voluntarily fulfilled can be executed through the ordinary courts, which are the only courts with the capacity to force the compliance of the judgment. Judgments issued by the TAP are enforceable by the TAP, since it holds, through the ANFP, control over the television rights income and its distribution to sport entities, and can therefore withhold such payments to enforce its ruling.

Sponsorship and image rights

8 Is the concept of an individual's image right legally recognised in your jurisdiction?

The concept of the individual's image right is neither specifically recognised nor regulated. However, consistent case law issued by the Supreme Court and Appeals Court recognise that an individual's image right is included as a constitutional right framed in the respect and protection to the privacy of private and public life and the honour of all persons and their families (article 19 No. 4 of the Chilean Constitution).

The same case law recognises that the image right can be enforced before the Appeals Court in the context of the Chilean Constitutional action. If the Appeals Court (or the Supreme Court reviewing the Appeals Court's decision) recognises an infringement of the individual image's right, damages can be sought before ordinary civil courts.

Since the individual's image right is recognised as a 'personal right', Chilean regulations do not provide for any requirement to own or register it.

9 What are the key legal considerations for the commercialisation and protection of individuals' image rights?

Chilean relevant case law recognises two aspects derived from the individual image's right. First, the owner of the image is authorised to capture, reproduce and publish his or her own image, ascribing it to any lawful subject. On the other hand, the owner of the image is entitled to prevent third parties from capturing, reproducing or disseminating that image without his or her due authorisation, for whatever purpose. Limited exceptions are recognised for images taken in public places for new purposes.

Therefore, the owner of an image right has the right to commercialise the image through licences, which can limit the time and purpose for which the image is used. Infringement of the licences can be enforced as a contract breach before ordinary courts.

10 How are image rights used commercially by professional organisations within sport?

Normally, the right of the professional sport organisations (in Chile, normally football professional teams) to use the individual image rights (normally of the players) is a relevant clause in the employment contract between the professional club and the player.

Consequently, the player can limit his or her image right while part of the club, according to, for instance, the club's advertising policies.

11 How can morality clauses be drafted, and are they enforceable?

Morality clauses are considered a 'negative obligation' recognised and regulated in the Civil Code. This covenant can be defined as the duty of refraining to do something that otherwise would be licit to do. If the obligation is breached, damages can be sought or related clauses of the employment contract can be applied.

12 Are there any restrictions on sponsorship or marketing in professional sport?

Restrictions on sponsorship or marketing can be contractual or legal. A contract, such as an employment contract between a sport club and an athlete, can consider restrictions according to the sport club's particular policies.

Special regulations can also consider limitations or prohibitions. For instance, Tabaco Law No. 20,660 bars any kind of advertisement, including advertisement in sport venues such as stadiums, or sponsorship to sport clubs. Alcoholic beverages have different regulations. The sale and consumption of alcoholic beverages is not permitted in sport venues such as stadiums or even, for some critical matches, within the surrounding areas. However, sponsorship or advertisement by alcoholic beverage companies is not prohibited itself. However, indirect restrictions, such as prohibition to advertise alcoholic beverages to underage people or time restrictions for TV advertisement can impact sponsorship or marketing in professional sport in an indirect way.

Brand management

13 How can sports organisations protect their brand value?

From an intellectual property perspective, the Chilean legal system relies heavily on a first-to-file mode, giving capital importance to registered trademarks over unregistered trademarks. For instance, to enforce a trademark it is strictly necessary to hold a valid registration. In addition, once a trademark is registered, there is no use requirement to maintain the validity of the registration or renew it.

In addition, sport organisations can work closely with Chilean customs and police to prevent the import and commercialisation of pirated products, protecting their brand value against unlawful use of trademarks by third parties.

14 How can individuals protect their brands?

The Chilean legal system does not differentiate between the protection of trademarks for organisations and individuals; therefore, see question 6.

15 How can sports brands and individuals prevent cybersquatting?

Prevention is the better way to face cybersquatting. Of course, registering every domain name extension is neither possible nor necessary in every case. A good criteria can be the country code top level domains (ccTLDs) and generic top level domains (gTLDs) according to the business area and the territory of operation. In addition, registering common misspellings might be a good strategy to prevent 'typosquatters'. Sport brands should always be aware of the renewal dates and monitor if any similar domain name is registered.

16 How can individuals and organisations protect against adverse media coverage?

Traditional judicial actions against adverse media coverage or fake news provided by Chilean regulations are criminal actions of defamation, divided into the two categories defamation (any opinion or action with the intention of affecting the honour of certain person) and slander (attributing a false crime to a certain person).

However, considering that fake news or adverse media coverage can be spread widely through the internet and social media, other actions such as take down notices should be considered by exposed individuals. Chilean law does not regulate those measures, but they are administrative measures offered by such media. Moreover, the market currently offers several services of risk management related to adverse media. Those services include monitoring millions of articles from different sources (news related to, for example, crime, corruption, terrorism, money laundering and unethical behaviour).

Broadcasting

17 Which broadcasting regulations are particularly relevant to professional sports?

Except for a minor section in Law No. 18,838 of the Television National Counsel, there is no specific regulation applicable to professional sports broadcasting. This section provides that the official games of the national football team must be broadcasted through free-to-air television.

Besides that, professional sports broadcasting is a matter of private law, regulated in the agreements between those associations or entities in charge of each event, owners of the broadcasting rights, and those interested in broadcasting such events, if any. For example, the professional football teams are affiliated to the ANFP, which is in charge of

Update and trends

A motion to modify Law No. 20,019, which regulates professional sports corporations, is currently being discussed in the National Congress. The motion aims to: (i) increase the inspection standards upon sports clubs through the CMF, regardless of whether the club participates in the open market or not; (ii) control in a better way the possible conflicts of interest in the ownership of the clubs; (iii) allow clubs to be controlled by non-profit institutions; and (iv) consider alternatives to increase the participation of partners and fans in the controlling corporations of the sport clubs through capitalisation processes. This motion is in its early processing stages.

negotiating agreements on television rights of each team, among other duties. Because of this mandate, the ANFP negotiated a joint venture with a private company for the broadcasting of football games of the national championship.

18 What means are available to restrict illegal broadcasting of professional sports events?

Illegal broadcasting may be prevented or sanctioned through a civil or criminal action, as it may be considered a violation of intellectual property rights. The affected party may request the cease and desist of the infringing broadcasting, as well as a compensation for the damage suffered. Law No. 17,336 on Intellectual Property provides for the procedure before courts and the penalties for infringements.

Event organisation

19 What are the key regulatory issues for venue hire and event organisation?

The general framework is set by Law No. 19,496, which regulates and sets the protection of consumer rights, establishing minimum standards in terms of the information that must be provided when offering services or products. Notwithstanding the above, professional football is also regulated through the provisions set forth in Law No. 20,844, which establishes the rights and duties of assistants and organisers of professional football events, a norm that not only sets standards for behaviour, but also minimum requirements for venues that host these types of events and their corresponding organisation.

20 What protections exist against ambush marketing for events?

There are no specific sport regulations regarding this topic. See questions 13 and 14.

21 Can restrictions be imposed on ticket sale and resale?

Yes, Law No. 20,844, article 27 (a) prohibits the resale of tickets. Resale is understood as the sale of a ticket at a price higher than the one paid for its acquisition. The same law establishes sanctions for those who commit crimes within the stadium, with those sanctioned being included in general prohibition register, whereby they are prohibited from attending sports events and acquiring tickets.

Immigration

22 What is the process for clubs to obtain work permits or visas for foreign professional athletes, and coaching and administrative staff?

The same process applicable to any other foreigner, meaning that there are two forms of applications that may be issued at the same time: (i) a tourist work permit, which may be issued for a period of up to 30 days and may be renewed for two additional 30-day periods, only if a tourist visa is still in force, and this is used during and before the time it takes the immigration authority to accept the issuance of a temporary residence; and (ii) a temporary residence, which may range from one to two years. After this, permanent residency applies.

23 What is the position regarding work permits or visas for foreign professional athletes, and coaching and administrative staff, temporarily competing in your jurisdiction?

No special requirement applies. Such individuals are deemed as tourists and a visa is only required for certain nationalities.

24 What residency requirements must foreign professional athletes, and coaching and administrative staff, satisfy to remain in your jurisdiction long term or permanently?

See question 22.

25 Do the family members of foreign professional athletes, and coaching and administrative staff, legally resident in your jurisdiction have the same residency rights?

No. The work permit or visa of the professional athlete, coach or administrative staff does not authorise family members to work or engage in employment, but only to reside. To work or engage in employment, family members must justify occupational positions by themselves.

Sports unions

26 How are professional sporting unions incorporated and regulated?

No special regulations apply. Unions are permitted as in any other company. Sports union exists mainly at an intercompany level. An intercompany union may be formed with 25 employees.

Employees may participate in the formation meeting regardless of their hiring term (eg, permanent, fixed term or project-based) or the location where they provide their services. Employees may join the union after its formation as well.

These statutory regulations only apply to professional football clubs.

27 Can professional sports bodies and clubs restrict union membership?

No.

28 Are there any restrictions on professional sports unions taking strike action?

No.

Employment

29 What is the legal framework for individual transfers? What restrictions can be placed on individuals moving between clubs?

The following statutory regulations only apply to professional football clubs. The first employment agreement term of an individual must range between one season and five years. Each renewal may be agreed for at least one season term.

Training compensation shall be paid to a player's training club or clubs when a player signs his or her first employment agreement as a professional.

Performance incentives must be paid within 90 days of the termination of the season where the incentive was accomplished.

Transfer may imply termination of employment or not. If it does, the individual must obtain compensation in lieu of the agreed term. If not, the assignor club has subsidiary liability if the assignee club fails to pay employment compensations.

Clubs are required to inform the Chilean football supervisor authority of the up-to-date employment and social security compliance status. Failure to do so authorises the individuals to request such authority the withholding of any amount due to the club, whether it is paid to the individuals or otherwise.

Disciplinary action shall not be available for non-employment related situations.

Disciplinary action may not include vacation or time off reduction or training exclusion.

30 Can individuals buy their way out of their contractual obligations to professional sports clubs?

In professional football, yes. However, it is not customary.

31 What are the key athlete welfare obligations for employers?

In professional football, no special obligations apply. Duty of care and protection of health and safety obligations apply.

32 Are there restrictions on the employment and transfer of young athletes?

Not at a local level; however, in professional football FIFA's international restrictions are applicable in relation to the transfer of young football players.

33 What are the key child protection rules and safeguarding considerations?

For professional football, the same as those set forth in FIFA's regulations.

34 What employment relationship issues arise when athletes represent both club and country?

Professional football clubs are required to accept calls made by the national football team. The player, however, is not obliged to assist or concur with the call made by the national football team. If a football player is injured while representing the national football team, the costs, rehabilitation and remunerations of the football player will be funded by the insurance that the ANFP keeps for all the football players that represent the national football team. Finally, if the national football team is representing the country in international tournaments, such as the World Cup or the South American Cup, the international entity (FIFA or CONMEBOL) pays each club a determined amount for each player joining the national football team.

35 How are selection and eligibility disputes dealt with by national bodies?

With regard to professional football, national employment courts have jurisdiction to resolve disputes in spite of any provision to the contrary. Employment matters have a public policy nature.

Taxation**36 What are the key taxation issues for foreign athletes competing in your jurisdiction to be aware of?**

Foreign athletes are subject to a withholding tax, with a tax rate of 20 per cent on services rendered in Chile. Athletes are deemed foreign if they do not have domicile or residence in Chile. That being the case, regular taxation is applicable; foreign athletes will be subject to a progressive tax with a tax rate of up to 35 per cent on the Chilean income.

Constituting domicile or residence will depend on many factors, such as the time spent in Chile and whether family members are living in the country.

Finally, it is important to take into account that during the first three years of domicile or residence in Chile, foreign athletes are subject to taxation exclusively on Chilean source income. Once such time is elapsed, taxation will be applicable on their worldwide income.

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Regulatory

1 What is the regulatory governance structure in professional sport in your jurisdiction?

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

The overarching governing body for competitive sports is the National Olympic Committee and Sports Confederation of Denmark (DIF). DIF organises as an umbrella organisation 62 member federations (national sports federations), some 9,300 sports clubs and more than 1.9 million individual members out of a population of 5.75 million. The Danish Gymnastics and Sports Associations organises over 1.5 million people actively involved in voluntary community sport, while the Danish Federation for Company Sports represents about 80 local company sports associations and some 370,000 members, encouraging workplaces to engage in company sport and healthy lifestyle promotion.

DIF receives its financial support from the Ministry of Culture, but generally the government seldom interferes in sports matters, and the sports sector therefore benefits extensively from being covered by the principle of freedom of association, enjoying a high degree of independence and autonomy.

2 To what extent are participants protected from liability for their on-field actions under civil and criminal law?

An athlete will only rarely incur liability under civil law for on-field actions unless the wrongdoer, for example, caused an injury deliberately or by the use of reckless force, and provided that the wrongdoing has no reasonable link to the specific sporting competition.

If the action is of the above nature, it must be assumed (with caution) that the courts' assessments from a criminal liability point of view will not, as a general rule, differ only because a specific criminal offence has been committed during the practice of a sport. However, we have to some degree seen a tendency of the courts, in their sentencing, to take into account the passion, excitement and intensity that exist during sports practice as partially excusable factors. However, notwithstanding their tendency to take into account the existence of these factors during sports practice, the courts have not regarded them as excusable factors in cases of violence against referees.

3 What is the regulatory framework for doping matters in your jurisdiction? Is there also potential secondary liability for doping offences under civil or criminal law?

Anti Doping Danmark, a non-profit organisation that has been set up to promote the fight against doping in sport, and DIF has accepted and implemented the World Anti-Doping Agency's World Anti-Doping Code and, in 2015, the two organisations adopted the National Anti-Doping Rules. The National Anti-Doping Rules generally apply to all athletes under DIF who engage in competitive sports. They do not apply to athletes who exclusively engage in fitness sports since these athletes are instead covered by the Danish Anti-Doping Rules for Fitness Sports.

Outside the realm of sports, production, import, export, sale, delivery, distribution or possession of particular doping substances (for instance, anabolic steroids, testosterone, derivatives and growth hormones) is an offence punishable by a fine or imprisonment for a term not exceeding two years under the Anti-Doping Act.

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

4 What financial controls exist for participant organisations within professional sport?

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

However, associations as well as limited liability companies are separate legal entities under Danish law and accordingly, in case of bankruptcy, subject to the provisions of the Bankruptcy Act.

With regard to football, UEFA's Financial Fairplay Regulations apply to the Danish Superliga and first division clubs.

Dispute resolution

5 Who has jurisdiction over the resolution of professional sport disputes in your jurisdiction, and how is this determined?

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

In addition, an association or federation is allowed to organise its dispute resolution system at its own discretion. The 62 member federations of DIF have their own dispute resolution body, but DIF's Board of Appeal is the highest judicial sports body in Denmark, with jurisdiction across all of DIF's 62 member federations. This does not, however, apply to decisions made by the arbitration tribunal of a federation.

6 How are decisions of domestic professional sports regulatory bodies enforced?

Decisions made within the sports dispute resolution system, thus decisions made by a member federation's dispute resolution body or by the DIF Board of Appeal can only be enforced on members of DIF and may eventually lead to the expulsion of the member.

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

7 Can the decisions of professional sports regulatory bodies be challenged or enforced in the national courts?

Decisions made by a Danish arbitration tribunal cannot be challenged before the Danish courts. Refusal of recognition or enforcement of an arbitration award is allowed only if the party against whom the award is invoked so requests and proves that one or more formal defects in the proceedings have been specifically identified.

Decisions rendered by DIF can in theory be challenged before the Danish courts, but this practically never occurs.

Sponsorship and image rights

8 Is the concept of an individual's image right legally recognised in your jurisdiction?

The Danish Trademarks Act and the Danish Copyright Act leave famous sports professionals with limited protection of their image rights, including their picture, name, signature or other special features. Instead, protection has been developed through 50 years of case law with reference to the general provision of the Danish Marketing Practices Act (section 1) and the application of general legal principles. An individual's image right is something that occurs in connection with the person becoming known and thus gaining a commercial value, more than something that is easily registered.

9 What are the key legal considerations for the commercialisation and protection of individuals' image rights?

As a sports professional's commercial value increases, he or she may become exposed to third parties potentially trying to take unfair advantage of the professional's name, picture, signature or special feature, which in fact can be detrimental to his or her reputation or privacy. Commercialisation of a person's image rights is therefore considered, roughly speaking, as unauthorised unless consent has been obtained from the person concerned.

10 How are image rights used commercially by professional organisations within sport?

As mentioned above, the athlete's image right is personal and, as a general rule, only available to third parties if consent is obtained by the athlete. Accordingly, image rights agreements are to a large extent drafted to commercialise players' image rights. These image rights agreements must carefully set out the scope of the agreement to prevent the athlete from infringing the rights of his or her club, national team or sponsors on account of overlapping agreements.

11 How can morality clauses be drafted, and are they enforceable?

It is not uncommon for employers to draft a code of conduct as an appendix to the athlete's employment contract. The code of conduct must state the athlete's desired behaviour as well as the kind of behaviour that will be regarded as material breach of contract, for instance, consumption of prohibited substances. The code of conduct and its morality clauses are not enforceable per se, nor are they a condition for terminating a player's contract if he or she has displayed unethical behaviour, for instance by consuming a prohibited substance, but the code will be deemed a key factor in the materiality assessment of the potential breach of a contract.

12 Are there any restrictions on sponsorship or marketing in professional sport?

The Danish Gambling Act has been adopted to protect players by ensuring that gambling is provided in a fair, responsible and transparent manner, for example, by requiring a licence to organise games where participation in such games is subject to the payment of a stake.

With regard to commercial advertising and promotions of sporting events, there are no statutory restrictions that apply specifically. However, all marketing efforts must be socially responsible. As such, and as a general rule, marketing efforts are not allowed to associate alcoholic beverages with 'active participation in sporting activities'. This does not, however, prevent producers of alcoholic beverages from sponsoring sports teams.

Brand management

13 How can sports organisations protect their brand value?

From a legal perspective, brand value is best protected by protecting the organisations' intellectual property rights. Danish laws protecting intellectual property rights are in compliance with EU legislation. Accordingly, trademarks and designs can be registered and protected, either as national registrations or at the EU level. National and EU

registrations are equivalent with regard to enforcement. Subject to the condition being fulfilled, both registered and unregistered trademarks are recognised and protected in Denmark. In addition, Danish law provides for protection against counterfeits under the Marketing Practices Act. Enforcement is handled through the courts, the customs authorities or in some cases by the police if the requirements are met. Turnaround times vary, but action at short notice can be obtained in urgent matters.

14 How can individuals protect their brands?

See question 13.

15 How can sports brands and individuals prevent cybersquatting?

Cybersquatting is regulated by the Danish Internet Domain Act. According to the Act, it is prohibited to register and maintain a domain name registration for the sole purpose of resale or distribution. The statute applies to Danish internet domains (.dk) and internet domains otherwise associated with Denmark.

16 How can individuals and organisations protect against adverse media coverage?

In Denmark we value freedom of speech highly and acknowledge that most adverse media coverage is fair scrutiny that holds individuals and organisations to account. To protect and ensure that the adverse media coverage is in fact informed, true and based on fact, especially when defamatory, Denmark has adopted the Media Liability Act. According to the Act, the content and conduct of the mass media must be in conformity with good press ethics. This includes being critical to news sources and ensuring that information that may be harmful or infringing to anyone is verified and that the information is submitted to the person or organisation concerned before being disclosed to the public. Failure by the mass media to comply with the Act may result in financial compensation or criminal liability.

Broadcasting

17 Which broadcasting regulations are particularly relevant to professional sports?

The Danish Copyright Act provides that radio or TV broadcasts may not be retransmitted to the public without the consent of the broadcaster. The holder of the broadcasting rights has exclusive powers to license public screenings of the particular sporting event.

18 What means are available to restrict illegal broadcasting of professional sports events?

Unauthorised public viewing activities may be challenged through various routes. The holder of the broadcasting rights may choose to bring a private cause action against infringers through the civil courts system by filing claims for injunctive relief and damages. The courts in Denmark are generally liberal in the awarding of preliminary injunctions compared to what is the case in common law jurisdictions. In case of intellectual property infringements, injunctive relief for practical purposes is considered the rights holders' primary remedy. Instead, or in combination, unauthorised public viewing may be pursued through criminal prosecution. Thus, grave infringements of a broadcaster's retransmission rights are punishable by imprisonment.

Event organisation

19 What are the key regulatory issues for venue hire and event organisation?

There are no statutes that specifically regulate matters regarding venue hire or event organisation. Instead, organising and conducting sporting events, whether large or small, in reality involves the formation of a large number of legal relationships and agreements (express as well as implied), including but not limited to agreements on venue, conditions of participation, participants' fees or prizes, and spectator access.

20 What protections exist against ambush marketing for events?

Ambush marketing is combatted by the Danish Marketing Practices Act, which specifically prohibits this type of activity and implements EU Directive 2005/29/EC concerning unfair business-to-consumer

Update and trends

In the autumn of 2017, on top of having won silver medals at the European Championships, heated and protracted negotiations regarding the National Team Agreement between the women's national football team (represented by the Danish Football Players' Association) and the Danish Football Association (DBU) led to the cancellation of the World Cup qualifier against Sweden. The women's national team refused to play unless a new National Team Agreement was in place, and as well as lack of consensus on several financial matters, the parties had not reached an agreement on the Danish Football Players' Association groundbreaking demand that the DBU should in future be regarded as employer of the women's national team. Such a formal status as employees would imply, for example, rules on holidays and equal treatment, including rules on maternity leave, and notice on termination of employment. In the end, the parties came to an agreement that improved the women's national team's financial conditions without changing the formal status of the players and thereby the sports system as we know it. A hot topic now is that the men's national team is about to negotiate its new National Team Agreement with the DBU. As the men's national team is also represented by the Danish Football Players' Association, we are in for an exciting year in Danish football.

commercial practices. Also, in severe instances liability under the Criminal Code may arise.

Proceedings for violation of the Danish Marketing Practices Act may be instituted either by the private entity whose rights are being infringed or by the Consumer Ombudsman. Both may call on other government agencies, such as police and customs authorities, to assist with the enforcement proceedings if needed.

21 Can restrictions be imposed on ticket sale and resale?

The Act on Resale of Tickets for Cultural and Sporting Events prohibits the resale of tickets at a price higher than the price at which the tickets were originally bought (including handling and fees), unless otherwise agreed with the event organiser. Any violation of the provisions of the Act is punishable by a fine, and violation occurs at the time when tickets are offered for sale in contravention of the provisions, regardless of whether such an offer results in a sale. On the other hand, nothing prevents such tickets from being given away for free – for instance, in connection with customer events – or from being offered or sold at a price lower than or equal to the original purchase price paid.

Apart from the above-mentioned Act, there is no legislation that specifically regulates the transfer and use of tickets or accreditation passes for sporting events. Accordingly, terms and conditions applicable to tickets for sporting events are merely governed by general contract law. Under Danish contract law, contract provisions will be upheld unless contrary to mandatory code provisions.

Immigration

22 What is the process for clubs to obtain work permits or visas for foreign professional athletes, and coaching and administrative staff?

As Denmark is a member of the EU, workers and other professionals, including athletes, coaches and administrative staff from other EU member states or from the EEA or Switzerland are free to reside and work in Denmark. Such foreign nationals may reside freely in Denmark for three months, and six months if they are seeking employment. In order to stay for more than three or six months, a foreign EU national or EEA national must obtain a registration certificate. To apply for a registration certificate, athletes and other sports professionals are required to submit various documents. Detailed information can be found at the State Administration's website. Moreover, athletes and other sports professionals are advised to visit an International Citizen Service office in Copenhagen, Aarhus, Odense or Aalborg if they need assistance with the paperwork.

Generally, for a non-EU and non-EEA national to be eligible to work and reside in Denmark, the person has to apply for a residence and work permit. However, the special individual qualifications scheme has been introduced to make it easier for non-EU or EEA athletes and coaches to obtain a Danish residence and work permit. To meet the conditions set out in the scheme, (i) employment must be based on athletic

reasons, (ii) salary and terms of employment must comply with Danish standards, (iii) employment must be undertaken for a certain number of hours, and (iv) the relevant sports federation must contribute to the application by providing a statement.

23 What is the position regarding work permits or visas for foreign professional athletes, and coaching and administrative staff, temporarily competing in your jurisdiction?

See question 22 for EU, EEA or Switzerland citizens.

Athletes who are citizens of a country with a visa requirement can apply for a short-term visa for cultural visits to take part in a sporting event. The athlete must be able to document the purpose of the visit. The short-term visa will allow the athlete to stay for a maximum of 90 days in any 180-day period in Denmark and is normally valid for the entire Schengen region.

24 What residency requirements must foreign professional athletes, and coaching and administrative staff, satisfy to remain in your jurisdiction long term or permanently?

Athletes and other sports professionals covered by the EU regulations on freedom of movement can apply for a permanent residence permit after five years of continuous legal residence in Denmark.

Athletes and other sports professionals who are not covered by EU regulations need, as a starting point, to have resided in Denmark legally for eight or more years. In addition, they need to meet several basic requirements such as passing a Danish language test, accept a declaration of integration, provide proof of employment for at least three years and six months, and prove current employment.

25 Do the family members of foreign professional athletes, and coaching and administrative staff, legally resident in your jurisdiction have the same residency rights?

If an athlete or other sports professional obtains a work permit (see question 22), permits may also be granted to his or her spouse, registered or cohabiting partner, and resident children under the age of 18. The accompanying family members must be able to document a relation to the athlete and reside at the same address as the athlete. Furthermore, the family members must have valid passports, including children, and the athlete must be able to support them financially.

Sports unions

26 How are professional sporting unions incorporated and regulated?

Collective agreements are fundamental to the Danish labour market model, and trade unions therefore exist in large numbers in Denmark, each covering different industries and professions. This is no different when the union is focused on sports. A common feature of the sporting unions is that they are non-governmental and fully independent associations, each safeguarding different interests.

27 Can professional sports bodies and clubs restrict union membership?

Restriction of union membership is prohibited according to the Danish Freedom of Association Act. An employer cannot require the employee to join a sporting union either. It is the employee's right to choose whether or not he or she will be a member of a sporting union. If restriction occurs, it is for the employee to prove that his or her membership of a sporting union had an influence on the employment relationship.

Furthermore, discrimination because of membership of political or religious associations is prohibited and regulated by the Danish Act on Prohibition of Discrimination on the Labour Market.

28 Are there any restrictions on professional sports unions taking strike action?

As mentioned above, the Danish labour market model consists of numerous collective agreements. One feature common to these collective agreements is that they impose a duty of truce on the parties until expiry, preventing them from taking strike action or at least regulating the conditions to do so.

With regard to Danish football, a Main Agreement has been made between the Danish Football Player's Association and the League

Association to facilitate the bargaining process and narrow the scope of the collective agreement. The Main Agreement sets out the overall framework for the cooperation between the parties, whereas the collective agreement sets out the player's minimum working and living conditions. Strike and lockout action has been governed by the Main Agreement from since 1999. The Main Agreement decides when, how and on what conditions strike action may be launched.

Employment

29 What is the legal framework for individual transfers? What restrictions can be placed on individuals moving between clubs?

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

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

30 Can individuals buy their way out of their contractual obligations to professional sports clubs?

In contrast to the Danish labour market, which is characterised (and also distinguishes itself from other EU member states) by a high degree of flexibility with respect to termination of employment in terms of ease and low cost, sports contracts are often made non-terminable during the contract period.

Unless the parties, at the time of signing the contract, specifically agree to incorporate such a term into the contract, none of the parties will generally be able to buy their way out of the contract during the contract period.

When a contractual relationship exists between two parties, it will consequently be treated as actionable conduct if a party fails to comply with the agreed terms of the contract.

31 What are the key athlete welfare obligations for employers?

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

As an example of mandatory provisions, the Act on an Employer's Obligation to Inform Employees of the Conditions Applicable to the

Employment Relationship lays down minimum requirements for the amount of information an employer must give in writing to an employee at the time of the formation of the employment relationship, thereby ensuring that documentation is available to prove on a balance of probabilities what has been agreed between the parties.

However, in addition to the minimum requirements set out in the Act, the employer is obliged to inform the employee in writing of all important conditions that, in the world of sport, could include, inter alia, agreements on future transfers, rights and internal disciplinary sanctions.

Any non-compliance with the requirements of the Act imposes on the employer a duty to pay financial compensation to the employee.

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

32 Are there restrictions on the employment and transfer of young athletes?

As a general rule in relation to the conclusion of contracts of employment, young people under 18 cannot validly enter into such contracts under Danish law unless consent is obtained from a custodial parent. In addition, a number of special protective provisions apply to the employment of young people under 18.

33 What are the key child protection rules and safeguarding considerations?

In addition to the above (see question 32), Danish law sets out mandatory provisions requiring sports associations to collect criminal records on employees working with minors under the age of 15. Failure to comply may result in fines or criminal liability for the association.

Furthermore, the member federations themselves are safeguarding minors by sports-specific provisions. For instance, the Danish Football Association (DBU) is subject to the Regulations on the Status and Transfer of Players, including article 19, for the purpose of protecting young players from exploitation and other unfair terms.

34 What employment relationship issues arise when athletes represent both club and country?

The main issue is often whether the club is obliged to release the player for participation in national or officially selected teams. This differs from sport to sport, but is mainly governed by the contract between the athlete and the club or by the Sport Federation's statutes. For instance, section 7 of the DBU model player contract states that 'the Club will release the Player for participation in any training gatherings, international matches, etc. for which the Player is selected by DBU and/or the local Union. If the player is not a Danish citizen, the rules issued by FIFA from time to time in respect of releasing players for international matches will apply.'



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35 How are selection and eligibility disputes dealt with by national bodies?

The Member Federations Dispute Resolution Bodies, as mentioned in question 5, will deal with disputes regarding selection and eligibility. With regard to selection, these disputes are rarely referred to the resolution system since the coach, club or member federations have exclusive competence to set the team.

Taxation**36 What are the key taxation issues for foreign athletes competing in your jurisdiction to be aware of?**

Athletes should be aware that Denmark has the highest income tax rate as a percentage of total tax revenue among OECD countries and that the general tax rules apply to them.

However, some foreign athletes may be entitled to be taxed on particularly favourable tax terms for a limited period according to the tax scheme for foreign research. The tax scheme was originally founded to attract scientist and key employees; however, it is possible to apply the scheme to, inter alia, athletes and coaches provided that they satisfy the qualifying conditions. For example, one requirement is that the employee, within the calendar year, must receive a monthly salary of at least 65,100 kroner (2018 level) before the deduction of ATP contribution (the Danish Labour Market Supplementary Pension Scheme).

Egypt

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Regulatory

1 What is the regulatory governance structure in professional sport in your jurisdiction?

According to Egyptian Sports Law No. 71 of 2017 (the Sports Law), each sports body under the supervision of the Ministry of Youth and Sports has the authority to draft and enact its own statutes that govern and regulate it, provided that its general assembly approves the statutes and its members have no criminal record.

2 To what extent are participants protected from liability for their on-field actions under civil and criminal law?

Although there are no explicit provisions in Egyptian law concerning the liability of participants for their on-field actions, the Sports Law stipulates certain sanctions, including fines and imprisonment for certain on-field actions, regardless of the person's occupation. These include the following:

- A person shall be punished by imprisonment for a period of at least one year and a fine of between 1,000 Egyptian pounds and 3,000 Egyptian pounds, or by either one of these penalties, for cursing, defaming, insulting, or shouting or making obscene gestures at a natural or legal person, or inciting hatred or racial discrimination by any means during the sport activity.
- Disrupting sports activity or influencing the outcome in favour of one party against another shall be punished by imprisonment for a period of no less than one year and a fine of between 50,000 Egyptian pounds and 100,000 Egyptian pounds.

3 What is the regulatory framework for doping matters in your jurisdiction? Is there also potential secondary liability for doping offences under civil or criminal law?

The Egyptian National Anti-Doping Organisation is the sole entity in Egypt that is technically and legally responsible for combating doping, raising awareness against it and carrying out the related testing. The organisation is an independent sports entity affiliated to and a member of the World Anti-Doping Agency (WADA). It is empowered by the International Convention Against Doping in Sports, which was signed by Egypt in 2007; is one of the signatories to the International Anti-Doping Code and abides by the International Code of 2015; and must abide by the international standards and best practices issued by WADA.

4 What financial controls exist for participant organisations within professional sport?

While the Sports Law regulates investment in sports, it does not address the financial controls for participant organisations within professional sports. Accordingly, the relevant corporate and commercial laws apply. In practice, national federations can hold renewal of the clubs' professional licences pending the payment of existing debts or financial obligations.

Dispute resolution

5 Who has jurisdiction over the resolution of professional sport disputes in your jurisdiction, and how is this determined?

Jurisdiction over the resolution of professional sport disputes in Egypt is determined by the Sports Law and by the regulations of the international federations governing the sports. According to the regulations of the international federations, the national federations are required to establish specific systems for the resolution of professional disputes related to the respective federation. Accordingly, such regulations are followed and national federations have their own dispute resolution systems that have jurisdiction over disputes arising out of or in connection with their respective sport or disciplines.

Moreover, articles 66 to 70 of the Sports Law regulate the establishment of a sports dispute resolution centre (the Centre) under the auspices of the Egyptian Olympic Committee. According to article 66 of the Sports Law, the Centre has jurisdiction on cases relating to sports bodies, legal entities and persons that are regulated under the Sports Law. The dispute resolution mechanisms to be applied by the Centre are mediation, conciliation and arbitration.

The original decision to establish the Centre in accordance with the Sports Law was taken during an emergency meeting held by the Board of Directors of the Egyptian Olympic Committee on 26 July 2017. According to this decision, the Centre was established and its board was appointed for a period of four years.

According to article 67 of the Sports Law, the Centre has jurisdiction if the parties choose to refer their disputes to it by including it in a clause in their contract or agreeing to its jurisdiction in a submission clause, and if the Centre's jurisdiction is provided in a sports body's statutes or sports regulations. The Centre has jurisdiction over disputes relating to the application of the Sports Law, and statutes and regulations of the Egyptian Olympic Committee, the Egyptian Parliament Committee, sports clubs, and federations, as well as the general assemblies related to such federations. The Centre also has jurisdiction over disputes relating to the interpretation and enforcement of sports contracts, such as broadcasting contracts; sponsorship agreements; intellectual property agreements; advertising agreements; photo licensing agreements; employment contracts involving clubs, trainers, athletes, agents and intermediaries; contracts involving agents organising sports events; and other sports-related disputes.

In an article published by *AlMasry AlYoum*, a reputable Egyptian newspaper, it stated that the Egyptian Ministry of Sports is considering proposing amendments to different articles of the Sports Law, including articles 66 to 70. However, a draft of the proposed amendments has not yet been published.

6 How are decisions of domestic professional sports regulatory bodies enforced?

Decisions of domestic professional bodies are enforced through the relevant internal committees within the sports bodies, whether they are administrative or sportive. The decisions may be appealed before the Centre if it has jurisdiction and after exhausting the internal appeal process. In such event, an arbitral award is issued and may be enforced through the relevant internal committees or the local courts in accordance with the Egyptian Arbitration Law. However, this remains to be tested, given that the Sports Law has only been issued recently.

7 Can the decisions of professional sports regulatory bodies be challenged or enforced in the national courts?

Before the issuance of the Sports Law, it was possible to challenge or enforce decisions of professional sports regulatory bodies before the Egyptian Administrative Courts (eg, decisions relating to elections of board members, disciplinary decisions or significant suspensions). The Sports Law coming into effect means that the Centre should replace the local courts and the intervention of local courts should be limited. Again, however, this remains to be tested.

Sponsorship and image rights

8 Is the concept of an individual's image right legally recognised in your jurisdiction?

Law No. 82 of 2002 on the Protection of Intellectual Property Rights regulates image rights and stipulates in article 178 that an individual's image rights cannot be used without his or her permission, unless agreed otherwise.

9 What are the key legal considerations for the commercialisation and protection of individuals' image rights?

The Civil Code's provisions (article 221) apply if the image is not registered – namely the obligation to compensate on lost profits and incurred losses. If the image is registered as intellectual property or a trademark, then the Criminal Code applies, as this is considered a form of theft.

10 How are image rights used commercially by professional organisations within sport?

Generally, professional organisations seek the prior approval of the athlete to use his or her image rights. This can, of course, be fulfilled by virtue of a contract.

11 How can morality clauses be drafted, and are they enforceable?

The codes of conduct of individual sports associations are generally obligatory for athletes. However, if morality clauses are to be added then they must not infringe on the athlete's personal freedoms and rights, or contradict public order.

12 Are there any restrictions on sponsorship or marketing in professional sport?

There are no explicit provisions that impose restrictions on sponsorship or marketing in professional sport. However, sponsorship or marketing practices must not be contrary to public order or public morality. In addition, the Sports Law provides that each sports body may not gamble with its money. It is also prohibited to introduce, serve and advertise alcohol in the sports body, clubs and establishments affiliated with it.

Brand management

13 How can sports organisations protect their brand value?

Under Law No. 82 of 2002 on the Protection of Intellectual Property Rights, there are options to protect the brand value: the first option is to register in the Department of Trade Registry as a trademark, or to register as a copyright if the brand contains a design, and the second option is to register as a patent – these options will provide the protection needed to the brand value.

14 How can individuals protect their brands?

The protection provided in the intellectual property law does not differentiate between natural persons and legal entities. Therefore, the same legal rules will be applied.

15 How can sports brands and individuals prevent cybersquatting?

To prevent cybersquatting, two steps can be taken. First, a registration certificate must be obtained, whether for a trademark, copyright or patent, and second, a report against the infringer must be filed to the Computer Crime Department within the Ministry of Interior.

16 How can individuals and organisations protect against adverse media coverage?

To prevent adverse media coverage, two steps can be taken. First, a registration certificate must be obtained, and second, the injured person can choose to file a lawsuit against the infringer to claim for compensation.

Broadcasting

17 Which broadcasting regulations are particularly relevant to professional sports?

There are currently no specific broadcasting regulations concerning professional sports. However, the Sports Law provides that sports bodies alone are entitled to all rights relating to the public's access to the sporting event to which they are directly or indirectly connected by means of wire, wireless, radio or television, or through all digital rights and all copyrights, or parts thereof.

18 What means are available to restrict illegal broadcasting of professional sports events?

In principle, the relevant licences providing broadcasting rights must be obtained in order to broadcast professional sports events. In case of illegal broadcasting of events, a party may wish to resort to the local courts, whether through filing a lawsuit or requesting an emergency measure. Given the requirement of an immediate action in the event of illegal broadcasting, in practice, parties prefer resorting to the relevant regional or international federation solely or in parallel to resorting to local courts.

Event organisation

19 What are the key regulatory issues for venue hire and event organisation?

The Sports Law is silent with regard to venue hire and event organisation. However, it does regulate fans' conduct, which includes the conduct of fans during organised events. The Sports Law establishes sanctions and fines relating to fans' conduct.

The general legal framework applies to venue hire and event organisation, as well as obtaining the relevant permits from the Ministry of Interior and the Ministry of Defence when applicable.

20 What protections exist against ambush marketing for events?

Ambush marketing for events violates consumer rights that are regulated and protected by the Consumer Protection Law No. 67 of 2006, as well as the intellectual property of the event's organiser over the trademark. Law No. 82 of 2002 on the Protection of Intellectual Property Rights, article 113 states that:

Without prejudice to any more severe punishment under any other law, shall be punishable by imprisonment for a period of not less than two months and by a fine of not less than 5,000 Egyptian pounds and not more than 20,000 Egyptian pounds, or by either punishment, any person who: . . . (3) fraudulently affixes to his products a trademark belonging to a third party; (4) knowingly sells, offers for sale or distributes, or acquires for the purpose of sale, products bearing a counterfeit or imitated mark, or on which the mark was unlawfully affixed.

21 Can restrictions be imposed on ticket sale and resale?

According to the Sports Law, the sale of tickets must be consistent with the rules of the sports' bodies' statutes. A person who sells or resells tickets for a sport activity contrary to the statute of the concerned sports body shall be liable to imprisonment for a period of up to three months or a fine of between 5,000 Egyptian pounds and 30,000 Egyptian pounds.

Immigration

22 What is the process for clubs to obtain work permits or visas for foreign professional athletes, and coaching and administrative staff?

Clubs must obtain an approval from the Ministry of Sports and Youth as well as the relevant sports association, in addition to security clearance

for the individual, and submit these approvals to the Ministry of Manpower.

23 What is the position regarding work permits or visas for foreign professional athletes, and coaching and administrative staff, temporarily competing in your jurisdiction?

The regular entry visa regulations apply to foreign athletes, coaches and administrative staff who are temporarily competing in Egypt. Visas are provided on arrival for some nationalities or obtained via the relevant Egyptian Embassy. Currently, there is no requirement to obtain extra work permits to temporarily compete at events in Egypt.

24 What residency requirements must foreign professional athletes, and coaching and administrative staff, satisfy to remain in your jurisdiction long term or permanently?

Foreign professional athletes, coaches and administrative staff who wish to reside in Egypt must hold, *inter alia*, a valid employment agreement, a work permit and a residency visa issued by the relevant administrative authority.

25 Do the family members of foreign professional athletes, and coaching and administrative staff, legally resident in your jurisdiction have the same residency rights?

The residency visas of the family members of foreign professional athletes, and coaching and administrative staff, are tied to the athlete's, coach's or administrative staff's residency visa. They fall under the spouse- or guardian-sponsored residency visa category and are subject to termination upon the expiration of the visa of the primary visa holder. Therefore, if the individual is no longer working with the club or relevant entity, they must leave with their families upon the expiry of their residency visas.

Sports unions

26 How are professional sporting unions incorporated and regulated?

Professional sports unions are incorporated in accordance with the Sports Law. Each sports union that organises professional contests shall establish a regulation governing its work, in line with the regulations of the relevant local laws, including the Sports Law.

27 Can professional sports bodies and clubs restrict union membership?

Sports bodies and clubs may not restrict union membership as that would be a direct violation of the freedom of association granted by articles 75 to 77 of the 2014 Egyptian Constitution.

However, a new member should fulfil the conditions and criteria requested by the Sports Union to become a member.

28 Are there any restrictions on professional sports unions taking strike action?

According to Egyptian Labour Law No. 12 of 2003, all employees have the right to strike (articles 192 to 194). Moreover, article 15 of the Egyptian Constitution states that peaceful strikes are a right regulated by law. Workers shall have the right to strike peacefully and strikes shall be declared and organised through the workers' trade union organisations in defence of their professional, economic and social interests within the limits prescribed in this law.

If the workers of the establishment of the trade union committee intend to strike, the trade union committee, after approval by a two-thirds majority, shall notify both the employer and the competent administrative authority at least 10 days before the date of the strike with a registered letter and acknowledgment of receipt. The notification shall include the reasons for the strike and the time limit.

If the establishment does not have a trade union committee, the intention of the workers to strike shall be notified to the general union, and the latter shall, after the approval of its board of directors by the aforementioned majority, make the two above-mentioned notifications.

Workers shall not strike with a view to amending the Collective Labour Convention during the period of its validity, as well as during all stages and procedures of mediation and arbitration.

Update and trends

With the issuance of the Sports Law, unregulated issues are currently regulated and the Law is to be tested to discover its pros and cons. The sports market in Egypt currently has several hot topics, including:

- allegations of illegal broadcasting of the FIFA 2018 World Cup matches;
- establishment of the dispute resolution centre (the Centre) and the media release relating to possible amendments of the Sports Law with regard to the functioning of the Centre;
- the sale of a football club, which is currently creating a new football team by buying players and entering into agreements with unprecedented remuneration and transfer amounts in comparison to similar agreements in the market; and
- the illegal use of image rights of a famous Egyptian football player prior to the commencement of the Russia 2018 World Cup.

Employment

29 What is the legal framework for individual transfers? What restrictions can be placed on individuals moving between clubs?

Every sport has its own regulations, but, for example, when observing the statute of the Egyptian Football Association, article 3 refers to FIFA's rules on regulating the players' transfers, and the rules of the association.

30 Can individuals buy their way out of their contractual obligations to professional sports clubs?

A buy-out clause may be negotiated and included in the athlete's contract. A buy-out clause has to specify the possible timing for termination and the financial consequences to buy their way out. The inclusion of a buy-out clause in the athlete's contract is not a mandatory obligation under the law and is discretionary to the parties.

31 What are the key athlete welfare obligations for employers?

Every sport has its own regulations and rules. For example, the football association's contract provides for certain obligations imposed on the player as well as on the employer, providing that:

- clubs are obliged to make insurance policies for accidents, sickness and death;
- clubs should allow players to continue their studies;
- clubs are obliged to make periodic health examinations to prevent injuries or health problems that athletes may be at risk of, including those that are due to authorised or unauthorised substances; and
- if a player becomes disabled to the extent that he or she can no longer compete, confirmed by the medical committee, he or she will be entitled to his or her financial benefits.

Other obligations can be imposed, subject to the parties' agreement.

32 Are there restrictions on the employment and transfer of young athletes?

The employment and transfer of young athletes are not regulated under the Sports Law. However, the general restrictions under the Egyptian Labour Laws relating to the employment of minors are applicable. In practice, very little attention is given to such restrictions and they remain to be regulated.

Articles 64-69 of the Child Law No. 12 of 1996 state that it is prohibited to employ children under 15 except upon the approval of the Minister of Education, and an authorisation by the competent minister is required to employ children aged between 13 and 15 in seasonal work that does not harm their health or growth and does not prejudice their education.

It is prohibited to employ a child in any kind of work that, by its nature or circumstances, could jeopardise the health, safety or morals of the child, and the employer is required to insure the child against the harm of the profession during his or her period of employment. The employer must provide at the workplace all occupational health and safety precautions and train the child to observe them.

33 What are the key child protection rules and safeguarding considerations?

Articles 64–69 of the Child Law No. 12 of 1996 state that a child's annual leave shall be increased by seven working days to 28 days and shall not be postponed or denied for any reason. The child may not be employed for more than six hours a day, for more than four consecutive hours or between 7pm and 7am. Working overtime is also prohibited.

The employer must inform the competent administrative authority of the names of the children and the persons assigned to monitor their work. The employer must provide separate accommodation for child workers than for adults if their working conditions require their stay, and shall hand over the child's remuneration to child him- or herself, or to one of his or her parents.

34 What employment relationship issues arise when athletes represent both club and country?

As a general rule, a club is obliged to release its registered players for representative teams of the country for which the player is eligible to play or has been called up by the relevant national association. Players and clubs cannot enter into an agreement to the contrary. A mandatory release is applicable for matches set out in the coordinated International Match Calendar and covers the specified training period. A release for a match that is not on the International Match Calendar is discretionary. Employment relationship issues that may arise when athletes represent both a club and a country include:

- events where an athlete refuses to play a match (mainly for the fear of injury, or in case of conflict with another match with the club or an important training session);

- events when an athlete gets injured while training or playing with the national team;
- events where an athlete announces retirement from the national team yet continues to play with the club; and
- issues relating to insurance against illness and accidents during the period of release.

35 How are selection and eligibility disputes dealt with by national bodies?

In general, selection and eligibility are regulated by the relevant national sports federations and the disputes in connection thereto are governed by the internal dispute resolution bodies of the relevant federation or sports body. In practice, very few, if any, disputes are officially filed by collective players or individual players with regard to selection and eligibility. This could be attributed to the uncertainty of the system, which hinders or limits access to sports justice.

Taxation**36 What are the key taxation issues for foreign athletes competing in your jurisdiction to be aware of?**

Foreign athletes in Egypt are subject to Egyptian tax laws. Taxes are deducted from their remuneration directly by their employers. Egypt is party to several double tax treaties that should be applied on a case-by-case basis depending on the nationality of the athlete.

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Regulatory

1 What is the regulatory governance structure in professional sport in your jurisdiction?

The responsibility for governance in Germany primarily lies with the sports bodies. This is because of the autonomy granted to clubs and federations by the German constitution. Although there is no specific regulatory governance of professional sport by the state, the general legal framework (civil law, public law, criminal law, etc) does apply to it.

2 To what extent are participants protected from liability for their on-field actions under civil and criminal law?

Civil liability

Participants are generally only held liable for on-field actions that are considered serious breaches of the rules of the respective sport or that are unfair (according to the German Federal Court of Justice). A simple breach of the rules would therefore not lead to civil liability. It is to be kept in mind, however, that if civil claims for damages are brought against an individual athlete, the athlete's insurer (or the event organiser for which the athlete is participating) might be directly sued for damages.

Criminal liability

It depends on the sport in question. But criminal liability will generally not be incurred unless the athlete commits a wilful act to injure an opponent or an official.

In addition to the liability for injuries caused by an athlete, liability (civil and criminal) can also be incurred for on-field actions if the athlete is involved in unlawful betting activities.

3 What is the regulatory framework for doping matters in your jurisdiction? Is there also potential secondary liability for doping offences under civil or criminal law?

The Anti-Doping Act came into force in 2015 (amended in 2017). Under this, athletes who test positive for performance-enhancing drugs (PEDs), are found guilty of applying forbidden methods, or are found to be in possession of PEDs, face prison terms of up to three years. Those who provide them with the substances face sentences of up to 10 years.

There is no case law on secondary liability. The only possibility for imposing secondary liability for doping offences is under the regular provisions on aiding and abetting or on inciting another person to wilfully commit a crime. In addition to the aforementioned punishment for providing athletes with PEDs, other profession-related disciplinary measures may apply (for example, the professional rules applicable to physicians who engage in unlawful conduct).

4 What financial controls exist for participant organisations within professional sport?

In Germany, clubs within a league system have to undergo a licensing process. To obtain a licence, the team or the relevant club has to prove that it has a stable economic base. No financial limits or restrictions are imposed as long as this stable economic base is documented. German football has introduced a regulation for clubs that operate in the form of commercial companies. According to this regulation, the majority

of the voting shares of such companies must be held by their member-controlled parent associations (the '50+1 rule'). This rule is meant to protect German football clubs from the (anticipated) adverse effects of outside influences. It is particularly meant to safeguard the economic stability of the clubs, the relationship between professional and amateur sport within the clubs, and the integrity and credibility of competitive sports.

The Bundesliga has also enacted regulations that prevent minority ownership in more than one club. This is meant to prevent investors from having significant stakes in several different clubs. The UEFA Financial Fair Play Regulations also exist in the area of football. According to these regulations, clubs taking part in professional football must meet the 'break-even' requirements.

Dispute resolution

5 Who has jurisdiction over the resolution of professional sport disputes in your jurisdiction, and how is this determined?

Basically professional sport disputes are matters that fall within the regular legal jurisdiction. However, most of the relevant sports governing bodies have established arbitration regimes.

Therefore, in most cases where a club, an association or a player is involved, any sports-related disputes or claims are being dealt with by specific arbitration courts that apply the respective arbitration rules. The arbitration court must be provided for in the statutes of the association or the club and must be independent of such association or club.

6 How are decisions of domestic professional sports regulatory bodies enforced?

The enforcement of the decisions of the specific courts is carried out by the regulatory bodies themselves. The detailed workings of such enforcement depends on the individual sports body and on the nature of the arbitration regime (see question 7).

7 Can the decisions of professional sports regulatory bodies be challenged or enforced in the national courts?

Only in specific cases where a decision of a sports arbitration court is based on a major breach of procedural rules can such decision be challenged in a national court. An exhaustive list of these cases is found in paragraph 1059 of the German Civil Procedure Code (ZPO). Paragraph 1059 only applies, according to paragraph 1066, however, to decisions made by the 'true' arbitration courts, which are arbitration courts made up of external arbitrators. 'False' arbitration courts, also known as internal arbitration courts, are those made up of arbitrators from within the institutional body that established the arbitration court.

In certain urgent instances, the regular courts may also have jurisdiction over a matter originating in sports law.

Sponsorship and image rights

8 Is the concept of an individual's image right legally recognised in your jurisdiction?

Image rights are protected under German law as part of the individual's personality rights. The right to one's own image stems partially from the German Act on Copyright in Works of Visual Art and Photography and from constitutional law. There is no register of image rights.

In general, the athlete's consent is required for any use of a picture of him or her unless the picture is being used for reporting purposes in the media. Such consent is mandatory if the picture is used for commercial purposes.

9 What are the key legal considerations for the commercialisation and protection of individuals' image rights?

The commercial exploitation of a person's image rights must be consented to by the person. This applies not only to the image itself but also to some aspects of the person's personality rights (his or her name, voice, etc). An unlawful use of these rights entitles the person to seek a cease-and-desist order and to sue for damages and information.

10 How are image rights used commercially by professional organisations within sport?

The use of an athlete's image rights in Germany is restricted to a certain extent because athletes do not normally grant such licences directly to professional organisations. Direct licences to exploit their image rights are usually granted by the players to the clubs or league organisations they play for. These licences are then transferred by such clubs or league organisations to the professional organisations.

However, the sublicences then held by the professional organisations are not without restriction either. In many cases, the sponsorship of the player's club clashes with the sponsorship of the organisation for which the player plays. In such cases, the club or the league organisation has to come to an agreement with the professional organisation to settle their opposing interests.

The commercial exploitation of a player's image rights therefore depends on the agreement of the organisation with the clubs or league organisation. It also depends on the extent of the licence granted by the player to the club to exploit his or her image rights in accordance with the applicable legal provisions.

11 How can morality clauses be drafted, and are they enforceable?

Because of the principle of the freedom of contract in Germany, morality clauses can be included in a sponsorship contract. But they need to be negotiated individually and cannot be drafted as standard terms and conditions of the contract. If implemented as standard terms and conditions, the clause will be held legally void on the basis of paragraph 307 of the German Civil Code (BGB). In addition, the morality clause has to be directly connected to the sponsorship obligations of the individual.

If the clause is included in the correct manner, a breach of the provisions of it can be enforced through a contractual penalty or by a termination of the contract with immediate effect.

12 Are there any restrictions on sponsorship or marketing in professional sport?

There are no restrictions in Germany regarding the sponsorship of alcohol or gambling brands as long as it does not involve the sponsorship of illegal gambling practices.

The sponsorship of tobacco products is prohibited in general under EU law (Directive 2003/33/EC) and under German law (paragraph 19 of the Tobacco Products Act). Additional rules of the Interstate Gambling Treaty may also apply.

Age-related restrictions only exist with respect to minors (persons under 18), who in general can only conclude contracts with the consent of their legal guardians (paragraph 107 BGB).

Brand management

13 How can sports organisations protect their brand value?

The easiest and most common way for sports organisations to protect their brand values is by seeking trademark protection for their brands. Protection is available for logos and word signs (including abbreviations) as long as the designation to be protected enjoys original distinctiveness (paragraph 8 of the German trademark act or article 7 of Regulation (EU) 2017/1001 on the European Union trademark). By seeking trademark protection, brand owners can further ensure that only authorised licensees (for example, broadcasting companies, official sponsors and partners) are able to use the protected logos and words.

14 How can individuals protect their brands?

As in the case of sports organisations, individuals are also able to protect their brands by seeking protection of their names as words or logos. There are high legal hurdles for obtaining such word protection in Germany because in most cases the individual's name lacks the distinctiveness needed for such protection. But by creating a specific logo, the logo may be eligible for trademark protection and may later be licensed to partner companies for merchandising purposes.

15 How can sports brands and individuals prevent cybersquatting?

In addition to the enforcement of their trademark rights, sports organisations and branded individuals can rely on their name right pursuant to paragraph 12 BGB to prevent cybersquatting. The name right provides the holder of it with protection similar to trademark protection, and is particularly helpful in disputes concerning domain registrations or impersonations.

16 How can individuals and organisations protect against adverse media coverage?

Because of the constitutional freedom of the press anchored in the German constitution (article 5 of the Basic Law (GG)), there is little room for protection from adverse media coverage.

Legal action may be taken in cases where the facts reported are demonstrably false. Possible remedies include cease-and-desist orders, and the right to reply or to present counterarguments. These remedies are only possible, however, if the press coverage is demonstrably false.

Coverage that is simply negative or unfavourable is constitutionally protected in Germany. There are, therefore, very few ways of protecting oneself from negative media coverage from a purely legal point of view.

Broadcasting

17 Which broadcasting regulations are particularly relevant to professional sports?

There is a variety of legislation at both the federal and federal-state levels that regulates the general rights and obligations of broadcasters and the content broadcast by them. In addition to specific legislation dealing with the protection of minors, the most relevant provisions for professional sports authorities are found in the Interstate Broadcasting Treaty (RStV).

The RStV also contains very specific provisions on advertising, the basic principles of which are found in paragraph 7, as well as a white list for certain events that must be broadcast free-to-air, which is in paragraph 4.

The most prominent examples of white list events are certain FIFA World Cup games and some competitions of the summer and winter Olympic Games.

18 What means are available to restrict illegal broadcasting of professional sports events?

The most common way to block unauthorised live streaming on online platforms is to contact the platform providers and inform them about the unlawful nature of the content. To restrict access to the stream, it will be protected by safety measures and only available to licence holders.

What has to be kept in mind, however, is the new portability Regulation of the European Union, Regulation (EU) 2017/1128 on cross-border portability of online content services in the internal market.

The goal of this Regulation is to ensure that consumers are able to use the online content that they have acquired in one country in all member states of the European Union. This results in a set of rules according to which providers of paid-for online content services (such as online movie, TV or music streaming services) have to provide their subscribers with the same service in all other member states as in the member state of residence of the customer.

Event organisation

19 What are the key regulatory issues for venue hire and event organisation?

In addition to the basic provisions of the BGB on the renting of an event location, special attention must also be paid to security measures.

These include such things as the observance of safety standards and fire protection standards. Because of the numerous regulations that exist at both the local and federal-state levels, it is advisable to contact all of the relevant public authorities at the earliest stages of the organisational process to ensure that all of their requirements are being satisfied as early as possible.

20 What protections exist against ambush marketing for events?

The best way to protect against ambush marketing is to obtain trademark protection for the event being organised. This may enable an event organiser to ensure that only authorised licensees are able to advertise during the event. Another very good way to combat ambush marketing is to force the athletes to agree to prohibit their private sponsors from using them in advertising spots during the event, in particular, to refrain from using the logo of the event the athlete is competing in (see, for example, Rule 40 of the Olympic Charter).

In cases where the ambush marketing is too aggressive, a last resort in Germany would be to bring an action based on the Unfair Competition Act in the case of third-party advertising during the event.

21 Can restrictions be imposed on ticket sale and resale?

Yes, in Germany they can. But because the provisions of the BGB apply to the standard terms and conditions of sale and resale of the tickets, the careful wording of such terms and conditions is of utmost importance. The legal test is whether such standard terms and conditions unjustly restrict the ticket holder, which means they must be drafted in such a way that they do not restrict the ticket holder.

Immigration

22 What is the process for clubs to obtain work permits or visas for foreign professional athletes, and coaching and administrative staff?

There are different ways in Germany for clubs to obtain work permits or visas for foreign athletes and for the coaching and administrative staff depending on the nationality of the individual persons. Because of the unrestricted freedom of movement of workers in the EU, EU nationals are not subject to any restrictions regarding work permits. They do not need to obtain residence permits, nor do they have any reporting obligations if their stay in Germany does not exceed three months.

Nationals from countries outside the EU must obtain a residence title (eg, visa, residence permit, EU Blue Card). This can be applied for at the consulates or embassies in the individual's home country before coming to Germany. Depending on the home country, it may even be applied for at a German Agency for Foreigners after entering Germany. Paragraph 18(2) of the Residence Act lays down the general necessity of also obtaining the approval of the Federal Employment Agency (BA) if working in Germany is involved.

23 What is the position regarding work permits or visas for foreign professional athletes, and coaching and administrative staff, temporarily competing in your jurisdiction?

For foreign professional athletes and for coaching or administrative staff members from countries outside the EU who are temporarily competing or working in Germany, the relevant regulations on the necessity of obtaining a residence permit are found in paragraphs 17 and 37 of the Residence Regulation (AufenthV). Although the general rule is that foreigners must obtain residence permits, paragraph 17(2) AufenthV provides an exception to this. If a foreigner is employed for less than 90 days during a 12-month period, he or she does not need to obtain a residence title as long as the requirements of paragraph 22, No. 4 of the Regulation on the Employment of Foreign Nationals (BeschV) are complied with (see question 24).

24 What residency requirements must foreign professional athletes, and coaching and administrative staff, satisfy to remain in your jurisdiction long term or permanently?

Foreign professional athletes can obtain residence permits without the approval of the Employment Agency if they fulfil the requirements set out in paragraph 22 BeschV. This paragraph states that a foreign athlete or coach must be older than 16 and must be part of a sports association

that pays a gross salary of at least 50 per cent of the income threshold of the social security scheme. In addition, the competent umbrella organisation must confirm the athlete's or the coach's sporting qualifications. The residence permit issued is linked to the purpose of the person's stay (eg, to the particular sporting event of a professional athlete). It can therefore only be valid for a restricted period of time. The work permit can also be conditional (eg, conditioned on the person qualifying for an athletic event or on the employing club remaining in a certain division). A general work permit is not required if the athlete or coach satisfies the residence permit requirements set out in paragraph 22 BeschV.

25 Do the family members of foreign professional athletes, and coaching and administrative staff, legally resident in your jurisdiction have the same residency rights?

The rights of residency of the family members of foreign athletes or coaches does not differ from those applicable to the relatives of other employees. The basic right arises from paragraphs 27 to 36 of the Residence Act.

Sports unions

26 How are professional sporting unions incorporated and regulated?

The role played by trade unions in the area of sports is a relatively new phenomenon in Germany. There are very few collective organisations in this area. One of them is a trade union for football players, the VDV. Discussions are currently ongoing regarding the establishment of a new trade union for athletes in general, but it is still unclear whether or when this will happen.

Most trade unions in Germany are organised in the form of registered or unregistered associations. Their by-laws generally contain clauses allowing them to enter into negotiations on collective bargaining agreements (paragraph 2 of the Act on Collective Bargaining Agreements).

27 Can professional sports bodies and clubs restrict union membership?

No, this is not possible in Germany. There are very specific and very strict regulations regarding the rights of trade unions under German labour law. Every worker has the fundamental right of association – ie, the right to be a member of an organised trade union. This right of association is also anchored in the German constitution (article 9 GG).

28 Are there any restrictions on professional sports unions taking strike action?

If professional athletes were to be organised in trade unions, these trade unions would be subject to the same strike restrictions that other trade unions are subject to. Strikes would therefore only be permitted in specific, exceptional circumstances, for example, if both sides are in dispute regarding the terms of the collective bargaining agreement. But, as mentioned in question 26, this is a very new topic in Germany.

Employment

29 What is the legal framework for individual transfers? What restrictions can be placed on individuals moving between clubs?

In Germany, the relationship between professional athletes and their clubs is based on employment contracts entered into by the parties, as set out in paragraph 611a BGB. Therefore, when a player is transferred, the player's employment contract with the former club has to be terminated and an employment contract with the new club entered into. Although the employment contract can in general place restrictions on the individual, these restrictions are limited by paragraph 138 BGB. Paragraph 138 BGB states that any legal transaction contrary to public policy is void. Additional restrictions can arise from other sources, such as the Financial Fair Play Regulations, transfer bans imposed on the club, and the Regulations on the Status and Transfer of Players. Another restriction is in the case of minors.

30 Can individuals buy their way out of their contractual obligations to professional sports clubs?

In light of the principle of *pacta sunt servanda*, individuals are usually not allowed to buy their way out of the contractual obligations owed to their professional sports clubs. One way around this, however, would be to include a buy-out clause in the employment contract. Another way to mutually end the contractual relationship is to enter into an agreement to terminate it.

31 What are the key athlete welfare obligations for employers?

The employer's duty of care includes a wide range of obligations regarding the safeguarding of the welfare of the employer's athletes (employees). One example is found in paragraph 618 BGB, according to which the employer is obligated to safeguard the safety and health of the employees. The employer must therefore instruct and inform the employees, take care of the belongings the employees bring with them and protect the employee's basic personal rights.

32 Are there restrictions on the employment and transfer of young athletes?

The employment of minors is restricted in Germany under the Act to Protect the Employed Youth (JArbSchG) and under the Child Labour Protection Regulation (KindArbSchV). The aim of these statutes is to protect young people under the age of 18 from work that is too difficult, too dangerous or unsuitable for them. Special provisions of a federation may also apply, such as article 19 of the FIFA Regulations on the Status and Transfer of Players, which prohibits the international transfer of minors, apart from in certain exceptional cases.

33 What are the key child protection rules and safeguarding considerations?

As stated above, the key child protection rules in Germany are found in the JArbSchG and the KindArbSchV. The former contains special stipulations regarding the number and length of work breaks and leisure time, and it also limits the number of working hours for underage employees. Section 8(1) JArbSchG states that minors are only allowed to work eight hours per day, 40 hours per week, and between the hours of 6am and 8pm. There is no explicit exemption in sports law from these requirements. The duty of care the employer owes to minors is more comprehensive than for adults.

34 What employment relationship issues arise when athletes represent both club and country?

Athletes that represent both their clubs and their countries still have contractual relationships with their clubs. Clubs are obligated to send their registered players to their national teams. The players are

obligated to accept the invitations from the national teams. During their time with the national team, players continue to be paid by their clubs, which are also responsible for insuring them. Any bonuses paid by the national associations to the national players are done on a voluntary basis. Therefore the clubs still bear the major risk (eg, injuries) during the games with the national teams. Although a system of remuneration for the clubs exists, conflicts often arise between the national associations and the clubs with respect to who is liable for a player's injuries. From a legal point of view, the club's obligation to send the players to the national teams is questionable at least from an antitrust point of view, since it could be perceived as an abuse of a market-dominating position.

35 How are selection and eligibility disputes dealt with by national bodies?

Athletes who meet the specific selection requirements can claim their proposals for selection from their respective sporting associations. Based on these proposals, the German Olympic Sports Federation, which is recognised by the IOC as a National Olympic Committee as per article 44.2 Olympic Charter, is competent to submit entries for competitors at the Olympic Games. The IOC, in a third step, is competent to authorise the submitted entries. Appeals brought by an athlete against an unlawful nomination will generally be dealt with by an arbitration court, provided that an arbitration clause exists. If no such clause exists, the state courts have jurisdiction to settle the dispute.

Taxation

36 What are the key taxation issues for foreign athletes competing in your jurisdiction to be aware of?

According to paragraph 1(1) of the German Income Tax Act (EStG), athletes are subject to income tax if they reside in Germany (paragraph 8 of the Tax Code) or if their habitual residence is in Germany. According to paragraph 9 of the Tax Code, an athlete's habitual residence is in Germany if he or she resides there for more than six months during a year, whereby short-term interruptions are irrelevant. The income categories in paragraph 2(1) EStG are listed according to sources of income, which include commercial income, income from self-employment or income from dependent employment. The income from the different sources is subject to different taxation rules. These rules determine how, when and at what rate the income is to be taxed. This calculation is based on the total worldwide income of the athlete residing in Germany. Double taxation of income earned outside Germany (which is also taxed in the foreign country) is generally avoided on the basis of paragraph 34c EStG or on the basis of double taxation treaties with the foreign countries. For foreign athletes who do not reside in Germany, only the income that has a special domestic connection to Germany is taxable (paragraph 49 EStG).

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Regulatory

1 What is the regulatory governance structure in professional sport in your jurisdiction?

Sports governance lies with the Italian Olympic Committee (CONI), a public entity established in 1914. Under Law Decree No. 15 of 2004, CONI is the Confederation of Sports Federations, the Sports Promotion Bodies and the Associated Sports Disciplines and has the power to establish the fundamental rules and principles to which such bodies must conform.

Under article 20 of the CONI Statute, the national federations must regulate their respective sports activities in compliance with the provisions set forth by the relevant international federations, provided that the latter are not contrary to the provisions of the International Olympic Committee (IOC) and CONI. Additionally, it must be noted that Law No. 280 of 2003 expressly acknowledges the autonomy of the national sports judiciary system as part of the international sports system under the umbrella of the IOC.

2 To what extent are participants protected from liability for their on-field actions under civil and criminal law?

Athletes may be held liable for their on-field actions under both civil and criminal law. The general rule on civil liability is enshrined in article 2043 of the Italian Civil Code. Under this article, a person who commits any fraudulent, malicious or negligent act that causes an unjustified damage to another person must compensate the injured party for the damage suffered. There is no civil liability if the athlete's conduct is not malicious and falls within the 'acceptable risk' of the sport in question (even if technically the conduct is against the rules of the game).

Criminal liability may arise if an on-field action damages another athlete. However, the damage may give rise to such liability only if the following conditions are met:

- the action falls beyond and outside the scope of the rules of the game; and
- the athlete responsible for the violation either consciously and maliciously deviated from the rules, or acted negligently and outside the above-mentioned acceptable risk.

3 What is the regulatory framework for doping matters in your jurisdiction? Is there also potential secondary liability for doping offences under civil or criminal law?

Under Law No. 376 of 2000, doping is a criminal offence. The use of prohibited substances, and the administration and trafficking of products containing prohibited substances, as well as aiding and abetting the use of doping, is sanctioned with economic sanctions and imprisonment proportional to the seriousness of the offence.

Doping disciplinary matters are the exclusive competence of the Italian National Anti-Doping Organization (NADO Italia), which is a signatory to the WADA Anti-Doping Code and applies the National Anti-Doping Rules. All sports anti-doping activities (eg, testing and result management) are carried out in compliance with the WADA Code and its standards.

4 What financial controls exist for participant organisations within professional sport?

There are no overarching financial controls concerning sports organisations. Therefore, each national federation tends to issue its own financial regulatory system. Some national federations (eg, football and basketball) have established a supervisory internal committee with the specific task of checking that the clubs comply with their payment obligations and the relevant principles of sound financial management.

National federations can condition the eligibility to participate in national competitions on the clubs' compliance with the established financial control provisions. For instance, football clubs wishing to participate in the A League competition have the obligation to prove that they have no overdue payables towards other clubs or employees, or towards tax authorities. Moreover, beginning from the 2018/2019 sporting season, such football clubs must be able to demonstrate that their balance sheets abide by the break-even requirements issued by the National Football Federation, which highly resemble the criteria laid down under the UEFA Club Licensing and Financial Fair Play Regulations.

Dispute resolution

5 Who has jurisdiction over the resolution of professional sport disputes in your jurisdiction, and how is this determined?

Professional sports disputes can, depending on the subject matter, be dealt with either by sports adjudicatory bodies within the sports adjudicatory system or by state courts.

As to the sports jurisdiction, the Code of Sports Justice of CONI sets out the procedural rules that each national federation shall implement into its own internal Code of Justice, thereby achieving harmonisation within the sports system. Pursuant to the Code, depending on the subject matter, disputes may be adjudicated by:

- sports judges, whose decisions may be appealed before the Sports Courts of Appeal – they deal with matters related to on-field conducts and the regularity of the competitions; or
- federal tribunals, whose decisions may be appealed before the Federal Courts of Appeal – they hear disputes concerning matters that do not fall within the competence of the sports judge (eg, other disciplinary matters in general, match-fixing, financial or membership irregularities).

Doping matters do not fall within the scope of application of the Code of Sports Justice or other rules adopted by national federations, falling instead under the exclusive competence of NADO Italia.

Pursuant to Law No. 280 of 2003, there are instances in which sports-related disputes can be adjudicated by ordinary courts. In particular, once the internal remedies of the sports system of justice have been exhausted, economic disputes between persons or entities related to the sports system are reserved to the ordinary courts, and administrative issues are reserved to the administrative courts.

6 How are decisions of domestic professional sports regulatory bodies enforced?

All the individuals and legal entities who are members or affiliated with the sports system must abide by the decisions issued by the sports hearing bodies. Indeed, when registering for, affiliating with, or

carrying out activities that are relevant to their sport association, such persons and legal entities are bound by the rules of the sport association concerned. In case of non-compliance with a decision rendered by a domestic sports hearing body, the sports regulatory body can exercise its disciplinary power and impose an additional sanction to ensure full compliance with its decisions.

If an economic decision is not complied with, the successful party may, after being authorised from the national federation, file a claim before a state court requesting a payment order against the losing party.

7 Can the decisions of professional sports regulatory bodies be challenged or enforced in the national courts?

In principle, as mentioned above, the Italian state jurisdiction has recognised the autonomy of the Italian sports jurisdiction in technical (related to the rules of the game) and disciplinary (related to the rules or statutes of the relevant sports bodies) matters.

Therefore, as a general rule, decisions rendered by sports bodies in such areas of autonomy cannot be challenged before national courts.

Nevertheless, after all sports internal remedies have been exhausted, a decision rendered by sports regulatory bodies can be challenged before national courts. In particular, decisions rendered within the sports jurisdiction that may affect a person's life or interests that are worthy of protection by the state and go beyond the scope of the sports system can be challenged before the Italian administrative courts. The latter can issue a decision that compensates the injured party for the damage suffered as a result of such decision. It is worth noting, however, that the court cannot review the merits of the sports decision (eg, it cannot amend the duration of a disciplinary sanction).

Sponsorship and image rights

8 Is the concept of an individual's image right legally recognised in your jurisdiction?

Under Italian law, an individual's image right consists of two aspects: (i) the owner's right to show its image at any time and to whomever it wishes, and (ii) the right to protect its image against unauthorised use by third parties. Article 10 of the Civil Code affords protection against unauthorised use of someone's image, specifying that in such case the image rights owner can request that the competent judicial authority issue an order for cessation and award damages.

Furthermore, articles 96 and 97 of Law No. 633 of 1941 (the Italian Copyright Law) mandate that, as a rule, someone's image can be reproduced and commercially exploited only with the owner's consent. Lacking such consent, use may be allowed only if it is justified on narrow grounds. In this respect, a robust public interest or the degree of notoriety of the person concerned may be relied upon, provided that there is no exclusive or prevalent commercial aim. In any case, reproduction is not justified if carried out in contrast with the owner's good name and reputation.

9 What are the key legal considerations for the commercialisation and protection of individuals' image rights?

As mentioned above, an individual's image rights lie with his or her owner and need no further protection if the latter does not express its consent to anyone's use or exploitation.

Should the owner wish its image to be commercially exploited by third parties, it can opt for two different solutions, which are detailed below.

Both Italian doctrine and jurisprudence strenuously argue against the transfer of the image right per se, given its personal nature. Therefore, the owner will only be able to license or assign the right commercial exploitation of the image by:

- entering into a detailed licence agreement. Under this approach, the licensor remains the owner of the image right and agrees to the licensee's use or exploitation of its image in exchange for a fee. If the licence is non-exclusive, the licensor may also enter into a licence agreement with third parties; or
- assigning the use or commercial exploitation of its image. The assignor (eg, the athlete) can give all or part of its right to use and commercial exploitation of its image to the assignee (eg, a club, a national federation or a company) for a fee; in such case, the

assignee is better protected against third parties' abuses and can further license its right to third parties.

10 How are image rights used commercially by professional organisations within sport?

As a premise, a distinction must be drawn between the athlete's 'sports' image and the athlete's 'private' image.

The first one refers to the exploitation of the athlete's image related to his or her team (eg, pictures taken during the official games and competitions). The second one refers to the exploitation of the athlete's image outside team activity (eg, his or her promotion of a watch). Professional sports organisations – clubs in particular – are generally only entitled to commercially exploit the athlete's sport image.

11 How can morality clauses be drafted, and are they enforceable?

Moral clauses are commonly found in image rights licence or assignment contracts. This is because the club that acquires the commercial use of such rights generally wishes to protect its investment against misbehaviours of the image rights' owner, for example, the athlete committing an anti-doping rule violation, receiving a sports disciplinary sanction, being involved in criminal proceedings or behaving in an immoral way. The enforceability of such clauses belongs to contract law. In the event that the athlete commits an immoral act, the club may seek compensation for breach of contract. Interestingly, in cases where the athlete has strong bargaining power – usually owing to fame – the contract may include a 'reverse' moral clause regarding the reputation of the club or the sponsor and its representatives.

12 Are there any restrictions on sponsorship or marketing in professional sport?

Prohibitions of the kind are found in Italian laws concerning advertising agreements. For instance, the Legislative Decree No. 300 of 2004 sanctions the sponsoring of any tobacco product. Moreover, the recent Law Decree No. 87 of 2018 prohibits all forms of sponsorship of gambling and betting through any media, with few exceptions (eg, the national lottery). In addition, national federations may implement internal regulations related to sponsorship (eg, the Italian Equestrian Federation has issued a regulation on sponsorship and merchandising).

Brand management

13 How can sports organisations protect their brand value?

The most reliable tool for a sports organisation (eg, a club) to protect the value of its brand is registering its sign as trademark. Indeed, registration entails that no third party can use such sign without the consent of the proprietor of the trademark registration.

Therefore, clubs usually tend to register their brands as trademarks and then license their use to third parties through a detailed licence agreement. In such way, clubs both protect their brands against unauthorised use and maximise their profits from the use licensed to third parties.

14 How can individuals protect their brands?

As mentioned above, the best way to protect someone's brand is to duly register a trademark and, as a further step, regulate its commercial use through detailed licence agreements.

Individuals usually register their distinguishing signs (eg, logos or an autograph) as trademarks and then license them to companies that take care of their commercial exploitation. An individual can register not only an invented graphical sign but also its portrait and name.

15 How can sports brands and individuals prevent cybersquatting?

The most reliable way to obtain protection against cybersquatting is to register the brand as a trademark. As a further step, one can register one or more domain names associated with it. However, for reasons of speed and efficiency, when an applicant requests the registration of a domain name there is no control as to the possibility that such domain name may infringe third parties' previously registered trademarks. Therefore, an applicant, who may be a cybersquatter, can obtain a domain name registration in violation of a pre-existing trademark. In

such a case, the trademark owner is entitled to go before the World Intellectual Property Organization, the national internet authority or state courts to obtain the cancellation of the domain name or its transfer to the trademark owner.

16 How can individuals and organisations protect against adverse media coverage?

The individual or organisation can turn to criminal law provisions against defamation. Notably, article 595 of the Criminal Code defines and sanctions defamation as the conduct of damaging a person's reputation by communicating with third people while such person is absent or cannot hear the damaging comments being made.

Defamation through the media is punished with harsher sanctions. However, obtaining a verdict of defamation requires the judge to conduct a balance of interest test between publication and some constitutionally guaranteed fundamental rights.

On the one hand, one deserves protection against damaging comments reported on the media; on the other hand, the Italian Constitution enshrines fundamental freedom of expression under its article 21. Accordingly, adverse media coverage will not be sanctioned if the competent court finds that the public interest to be informed of it outweighs the person's interest in protecting his, her or its reputation.

Broadcasting

17 Which broadcasting regulations are particularly relevant to professional sports?

Broadcasting rights related to Italian team sports competitions in national federations with a professional sector are regulated by the Legislative Decree No. 9 of 2008 (the Decree). Pursuant to article 3 of the Decree, the organiser of the competition (eg, the League) and the organiser of the single sports event (eg, the club participating in the competition) are co-owners of broadcasting rights of the events related to such competition.

The single competition organisers also regulate the commercial use of such rights and adopt competitive procedures in order to offer them to communication operators. The contract between the organiser of the competition and the communication operator that win the sports media rights bid cannot last more than three years.

18 What means are available to restrict illegal broadcasting of professional sports events?

Sports broadcasting rights are afforded copyright protection pursuant to article 78-querter of the Italian Copyright Law.

Therefore, illegal or unauthorised broadcasting can be considered copyright infringement. Notably, article 171-ter of the Italian Copyright Law sanctions the unauthorised reproduction, display and commercial exploitation of works protected by copyright. National courts tend to sanction the aforementioned conduct only if the author had a profit-making purpose.

In addition, the Italian Communication Authority is competent to restrict illegal broadcasting sports events, since it has the power, for instance, to disable access to websites providing unauthorised sports contents.

Event organisation

19 What are the key regulatory issues for venue hire and event organisation?

All sports events taking place in a venue that is either public or freely accessible by the public must be authorised by the relevant public authority. To that end, the organiser of the event shall abide by the relevant provisions on public security and provide medical services to deal with potential accidents or injuries.

The event organiser may be held liable for harm or injury suffered by the athletes while on-field, or be sued for breach of contract by spectators. Event organisers are responsible for harm or injury to athletes that happen beyond the 'acceptable risk' of a specific sport (see question 2). Moreover, since by purchasing a ticket the spectator enters into a contract with the event organiser, spectators are entitled to file a claim for breach of contract against the event organiser if the latter does not put in place reliable security measures.

20 What protections exist against ambush marketing for events?

There is no law provision or regulation specifically drafted to deal with the issue of ambush marketing in sports events. However, the provisions against trademark infringement can be relied upon. For instance, if the ambusher owns a trademark that is similar to that of the official sponsor of the event, likelihood of confusion can be claimed, since the public may be induced to believe that the ambusher is the legitimate sponsor of the event. Moreover, in some cases ambush marketing can be considered an unfair competition practice under articles 2598-2600 of the Civil Code. If so, a damaged party can request compensation for damage before a state court. In addition, the judge can issue a restraining order against such acts and declare that their effects be removed.

21 Can restrictions be imposed on ticket sale and resale?

The Ministerial Decree No. 150 of 2003 regulates ticket sales in the context of football events. Notably, article 2 mandates that the organising club is responsible for ticketing of the event. As such, it shall not sell a number of tickets that exceeds the capacity of the stadium or arena. Moreover, this number may be reduced in the case of events where a high number of spectators is expected, if so determined by the public security authorities.

Furthermore, article 1 paragraph 545 of Law No. 232 of 2016 and the Decree of the Ministry of Finance of 12 March 2018 deal with the issue of secondary ticketing with reference to online ticketing systems. Notably, such provisions sanction ticket resale carried out by persons other than the owner of the authorised ticketing system. This Decree does not apply to natural persons who occasionally sell tickets without profit purposes.

Immigration

22 What is the process for clubs to obtain work permits or visas for foreign professional athletes, and coaching and administrative staff?

A distinction must be drawn between foreign European (EU) athletes and non-European (non-EU) ones.

Since Italy is part of the European Union, article 45 of the Treaty on the European Union protects the fundamental freedom of movement for workers and forbids any discrimination based on nationality between workers of member states. Therefore, there is no need for either work permits or visas for foreign EU athletes.

With regard to non-EU athletes, each year a Decree of the President of the Council of Ministers, under the proposals of CONI, establishes the maximum number of non-EU athletes that can be registered for a national federation.

Accordingly, each national federation can accept visa requests until it reaches the maximum number of athletes assigned to it. There are differences between clubs belonging to a national federation that has a 'professional sector' and those that do not. The first type of club shall file a contract of residence and work permit for athletes and coaches. The second type does not have the possibility of signing professional employment contracts with athletes or coaches, and those clubs shall file a simple request for clearance with all information on the non-EU person.

In both cases, the drafts will be checked by the national federation and transmitted to CONI, which will request a permit from the competent immigration office at the police headquarters and then communicate the information to the immigration desk.

23 What is the position regarding work permits or visas for foreign professional athletes, and coaching and administrative staff, temporarily competing in your jurisdiction?

If non-EU athletes, coaches and administrative staff (not coming from countries that have specific agreements with Italy) wish to perform their sports activity in the Italian jurisdiction for a period of less than 90 days, they can obtain a sport competition visa, provided that they communicate all their personal information and the place where they intend to stay.

In any case, if the visa owners remain in Italy for more than eight days, they must request a residence permit and report to the competent Police Authority (ie, Questura).

Athletes or coaches with such visa cannot perform their sports activities on a continuous basis for an Italian club.

Update and trends

A new regulation on sports agents will enter into force in 2019 and discipline the conduct of sports agents within national federations having a professional sector. The regulation mandates that sports agents shall pass a general exam on sports, private and administrative law, and a special one organised by the national federations. Agents that successfully pass the exams and meet the relevant requirements shall be registered in both the CONI and the national federations' registers of sports agents.

By the end of summer 2018, CONI will reform the principles of sports justice that were issued in 2014, a set of procedural rules that, under its Code of Sports Justice, must be applied by all national federations.

24 What residency requirements must foreign professional athletes, and coaching and administrative staff, satisfy to remain in your jurisdiction long term or permanently?

Non-EU persons wishing to remain in Italy must obtain a residence permit. Clubs must request their renewal within 60 days of their expiry.

25 Do the family members of foreign professional athletes, and coaching and administrative staff, legally resident in your jurisdiction have the same residency rights?

For relatives to have residency rights in Italy, the athlete or coach legitimately holding a residence permit for a period of at least one year shall file an application for family reunification with the immigration desk. Such application may include the spouse, minor children, adult children or partners dependent on the applicant. When the application is granted, the aforementioned persons are entitled to legally reside in Italy, provided that they request a residence permit within eight days of their arrival.

Sports unions

26 How are professional sporting unions incorporated and regulated?

Players' and clubs' sporting unions are, as all workers' unions, regulated by the Civil Code as non-recognised associations. Notably, under articles 36 ff of the Civil Code, such associations are not recognised as entities with legal personality and are thus regulated pursuant to the provisions of the Civil Code and through agreements among their members.

27 Can professional sports bodies and clubs restrict union membership?

The Italian Constitution protects both the broader freedom of association under article 18 and the trade union freedom under article 39. The latter is a fundamental freedom that cannot be restricted in any way by either professional sports bodies or clubs.

28 Are there any restrictions on professional sports unions taking strike action?

Article 40 of the Italian Constitution enshrines the right to strike, provided that it is exercised within the boundaries of the laws that regulate them. There are no specific laws dealing with sports unions' right to strike.

However, some law provisions are in place to sanction some hypotheses of strikes. For instance, article 503 of the Italian Criminal Code prohibits strikes aimed at subverting the democratic constitutional order. Furthermore, article 505 of the Italian Criminal Code sanctions strikes that are held as a protest with no aim or for solidarity with other strikes. In the latter case, however, solidarity is justified if it has the rationale of allowing a demand to be satisfied thanks to a greater and stronger strike initiative.

Employment

29 What is the legal framework for individual transfers? What restrictions can be placed on individuals moving between clubs?

There is no one-size-fits-all approach to individual transfers from one club to another in Italian sports. Each sport is regulated in a different way to resemble its peculiarities. Therefore, each national federation will draft its transfer regulations, which in turn shall comply with the rules and directions of the relevant international federation and CONI.

National federations tend to impose limits on individual transfers based on the following criteria:

- the age of the athlete;
- the athlete's nationality, with a distinction between Italian, European and non-European nationals; and
- the period of the sporting season, meaning that the national federation usually establishes a determined 'window' within which such transfers can take place.

30 Can individuals buy their way out of their contractual obligations to professional sports clubs?

In some national federations that have a professional sector, such as football or basketball, the club and the player may draft a 'buy-out' or 'release' clause within the employment contract.

Such clauses, which originated in Spanish law, have the rationale of pre-determining the amount to be paid by a player or a third club in order to have the player released from his or her contractual obligations. Accordingly, payment of the buy-out fee causes the termination of the employment contract.

31 What are the key athlete welfare obligations for employers?

Under Italian law, only professional athletes that are registered for a limited number of national federations can be considered as workers and sign a proper employment contract with the club or team. Notably, only clubs that are affiliated with a national federation that has a professional sector in accordance with Law No. 91 of 1981 (on the relationship between club and professional athletes) can have a proper employment relationship with an athlete. Conversely, sports activities carried out by athletes belonging to other national federations will not count as work. To date, the national federations providing for such possibility are those representing basketball, cycling, football and golf.

In those contexts, pursuant to articles 7–9 of Law No. 91 of 1981, the athletes shall be granted the following welfare rights: healthcare and protection, insurance covering death and major injuries that may be prejudicial to their career and pension benefits. Other sports players are considered 'amateur' for the purposes of Law 91 of 1981.

32 Are there restrictions on the employment and transfer of young athletes?

There are no overarching provisions concerning employment and transfer of young athletes that concern all the national federations. Each of them establishes its own system.

As for athletes' transfer, under most national federations, a young athlete registering with a national federation through a club is bound by such club for one year. Then, at the end of the sporting season, it is free to be transferred to another club. However, most national federations provide that, from a certain age (eg, 14 in volleyball) the young athlete becomes tied to its registering club until a certain age (eg, 24 in volleyball). Therefore, within this period, the athlete cannot be transferred to another club without the consent of the registering one.

33 What are the key child protection rules and safeguarding considerations?

Under article 3 of Law No. 977 of 1967, child labour is prohibited until the child is subject to compulsory full-time schooling and, in any case, before the age of 15.

In the sports system, when a child becomes entitled to enter into an employment agreement (eg, at 16 in professional football), the employer (namely the club) must guarantee the child's safety and psychophysical integrity. Furthermore, it shall verify the child's attendance of school or professional orientation programmes.

Employment agreements with minors are subject to parental authorisation; furthermore, they shall obtain the approval of the local labour office, which has the task of establishing whether the job could be in conflict with the interests of the child. Lastly, the minor shall present a medical certificate to prove that he or she has the physical and mental requirements.

34 What employment relationship issues arise when athletes represent both club and country?

Under article 29 paragraph 6 of the Statutes of CONI, clubs and teams must release athletes that are selected to join the national team of their national federation.

In light of the above, when an athlete is summoned, he or she cannot, for the period during which he or she is on duty with the national team, participate in any activity of the club, save for those that are duly and expressly authorised by the national federation.

Therefore, the employment contract with the club stays in place even during the period in which the athlete is on duty for the national team. In this respect, some major issues may arise. For instance, the athlete's insurance policy is one of the obligations of the club (see question 31) and covers the sports activities done in the interest of the club. Therefore, injuries occurring while the athlete is summoned by the national federation are not covered. Such circumstance is not always taken into account by national federations, which may not provide an additional insurance policy for the activities done by the summoned athlete. Consequently, the club may have to extend its insurance policy. Moreover, issues may arise if the national team's competition overlaps with the regular season of the club, thereby putting the athlete in the uncomfortable position of having to choose where to play.

35 How are selection and eligibility disputes dealt with by national bodies?

Each national federation issues the selection and eligibility rules that best resemble the features of the sport concerned and enforce them through their internal adjudicatory bodies.

Additionally, there may be room for intervention by national courts. Indeed, under Law No. 280 of 2003, decisions rendered by the sports adjudicatory bodies or circulars issued by the national federation that affect some individual rights worthy of protection within the state jurisdiction may be appealed before the national administrative courts (see question 7).

Therefore, decisions or circulars related to clubs' eligibility or athletes' circulars may be challenged before the competent administrative state court. Notably, the appellant may request the annulment of the challenged decision or circular, along with compensatory damages.

Taxation

36 What are the key taxation issues for foreign athletes competing in your jurisdiction to be aware of?

As a premise, one needs to distinguish between athletes that compete in the Italian jurisdiction as part of a national federation that has a professional sector and athletes that are registered as amateur for different national federations. Athletes performing a sports service for a professional federation are entitled to sign an employment agreement, and their income will count as income of an employment nature.

In this respect, under article 23, paragraph 1 (c) of the Italian Income Tax Code (Presidential Decree No. 917 of 1986), income from work that is performed in Italy by either an Italian or a foreign employed athlete shall be subject to Italian taxation, provided that such athletes are residents of Italy. Accordingly, under article 2 of the Presidential Decree, an athlete is treated as a resident if he or she spends more than 183 days in a year in Italy.

Notably, both fixed revenue and bonuses are considered as taxable incomes.

In any case, the aforementioned law provisions shall be applied taking into account the existence, if any, of bilateral treaties against double taxation.

However, athletes performing their sports services under all the other national federations cannot be considered employed persons and generally receive compensation and reimbursement of costs. Therefore, if they receive some consideration for their activity from their club or team, such amount will not be treated as a salary, but rather it will be subject to a preferential tax income treatment. In particular, pursuant to articles 11, 67 and 69 of the Presidential Decree, any income falling under the amount of €10,000 per annum will be exempt from taxation, whereas any amount above that threshold will be taxed, beginning from a 23 per cent tax rate.

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Japan

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Regulatory

1 What is the regulatory governance structure in professional sport in your jurisdiction?

The Japan Sports Agency exists as an administrative agency that oversees Japanese sports in general.

The responsibility for regulatory oversight over the Japanese professional football league is the Japan Professional Football League (the J.League), a public interest incorporated association. The J.League is under the jurisdiction of the Japan Football Association (JFA), a public interest incorporated foundation incorporated in Japan that manages the Japanese national team.

The responsibility for regulatory oversight of professional baseball in Japan is the Nippon Professional Baseball Organisation (NPB), a general incorporated association.

2 To what extent are participants protected from liability for their on-field actions under civil and criminal law?

The perpetrator will not be held responsible for civil liability if the conduct is within reasonable bounds. Whether the conduct is within reasonable bounds is often judged by 'whether the act is appropriate in general societal terms or not'. It depends comprehensively on (i) whether the manner and method of the misconduct were considerable in light of the rules of the sport, (ii) whether or not it remains within the range of injuries that can normally occur in the sport and (iii) the degree of negligence of the party at fault. One may be held criminally responsible, especially if the act is considered malicious.

3 What is the regulatory framework for doping matters in your jurisdiction? Is there also potential secondary liability for doping offences under civil or criminal law?

In Japan, the Japan Anti-Doping Agency (JADA) conducts doping inspections based on the Japan Anti-Doping Code (JADC). If an athlete tests positive, a hearing will be held at the Japan Anti-Doping Disciplinary Panel and sanctions (suspension of qualification, etc) will be decided. The decision may be appealed to the Japan Sports Arbitration Agency (JSAA) or the Court of Arbitration for Sports (CAS). Each sports organisation may also impose separate sanctions on the subjects for whom violations are recognised.

There is no provision for the imposition of criminal penalties on athletic doping. Prior to the enactment of the Act on Promotion of Doping Prevention Activities in Sports, there were discussions to introduce criminal punishment, but the enactment of the provisions on criminal punishment was suspended.

The NPB is not a member of JADA, and the NPB Anti-Doping Commission conducts its own doping inspection.

4 What financial controls exist for participant organisations within professional sport?

In the J.League, there are certain limitations on players' salaries, according to their contract types. A salary cap of ¥6.7 million applies to Professional A contract players in their first year, but there is no cap from the second contract year. A salary cap of ¥4.6 million applies to Professional B and Professional C contract players regardless of their contract year. Furthermore, there are financial requirements for each club under the club licence system, such as the 'do not fall into excess

debt' rule. However, there is no salary cap for the total salary of the club, nor a luxury tax rule.

In the NPB, there is a limitation on the first-year's salary for any new Japanese players, which is ¥100 million plus any incentive up to 50 per cent of the salary. This is the only financial control in place, and there is no salary cap for the total salary of the team nor a luxury tax.

Dispute resolution

5 Who has jurisdiction over the resolution of professional sport disputes in your jurisdiction, and how is this determined?

In the J.League, a chairman is placed as a representative and supervises J.League operations under the J.League rules. The chairman has the authority to render final decisions concerning the settlements of disputes, as well as sanctions for J.League-affiliated organisations and individuals.

In the NPB, a Japanese professional baseball organisation is established under the NPB's Board of Directors, and a commissioner is placed in the baseball organisation, based on the NPB Constitution.

The commissioner can impose sanctions on stakeholders (see question 6).

6 How are decisions of domestic professional sports regulatory bodies enforced?

In the J.League, an advisory body to the chairman, known as an arbitration committee, has been established. The chairman can investigate the facts by himself or herself, or with the assistance of the consultative and mediatory committee or the standing committee. Generally, sanctions are decided by the chairman through advice of the consultative and mediatory committee. In cases where the parties to the dispute settle, there is a system in place to deem the content of the settlement as final when the consultative and mediatory committee accepts the details of the settlement to be reasonable.

In the NPB, the commissioner entrusts the investigation to the investigation committee for facts and the like that go against the Japanese professional baseball agreement, and receives a dispositive opinion on the result. Thereafter, the commissioner imposes sanctions on the relevant parties. There is also a mediation system that functions as a dispute resolution procedure regarding players' remuneration.

7 Can the decisions of professional sports regulatory bodies be challenged or enforced in the national courts?

In the J.League, the decision made by chairman is a final decision, and all parties and individuals belonging to the party, as well as the J.League, are bound by the decision. Even if a party is dissatisfied with the decision of chairman, it cannot appeal to the court or any other third party.

In the NPB, the commissioner's orders, decisions, rulings and sanctions are said to be final decisions and it is stipulated that one cannot appeal to a judicial organ.

However, the general theory is that legal disputes can be resolved by trial. For example, the court can resolve cases involving damages for sports accidents and disputes concerning contracts. On the other hand, disputes such as those concerning player selection, league and team management, and dispositions rendered by the league are regarded as having no applicable legal dispute and will be difficult to be resolved by the court.

Moreover, athletes may file a petition for arbitration to the JSAA or the CAS on dispositions rendered by the sports organisation to the athletes based on arbitration agreement by the parties.

Sponsorship and image rights

8 Is the concept of an individual's image right legally recognised in your jurisdiction?

An individual's image is protected by way of 'image rights' and 'publicity rights' in Japan. There is no registration system for these rights, and no requirement that these rights be owned. The Supreme Court of Japan has held that publicity rights originate from personal rights and, therefore, are non-transferable and cannot be waived. However, publicity rights can be licensed or managed by a third party, as is often the case with professional athletes. Therefore, many athlete's clubs, leagues and management companies generally manage and control the athletes' image rights and publicity rights.

9 What are the key legal considerations for the commercialisation and protection of individuals' image rights?

According to the Supreme Court of Japan, the unauthorised use of athletes' images rises to the level of infringement when the use is recognised as being mainly for the purpose of exploiting such image in order to attract an audience or customers. For example, the following are examples of publicity rights infringement:

- using one's likeness itself as an object of appreciation;
- putting one's likeness on goods to differentiate them from other goods; and
- using one's likeness to advertise goods and services.

10 How are image rights used commercially by professional organisations within sport?

In general, an athlete's image rights belong to the athlete. However, the professional player contract normally stipulates that the player must license to and cooperate with the club whenever the club makes a request to commercially use the player's image. It is also normally stipulated in the player contract that the player must get approval from his or her club when making appearances in media and advertisement.

In the J.League, it is also provided that not only the club but also J.League can ask the players to cooperate with commercial use of the player's image without any fees or charges if several players' images are used together.

11 How can morality clauses be drafted, and are they enforceable?

The J.League rule provides that '[players] shall not conduct any activity that interferes with J.League's objective achievement and that is contrary to the public order and morals', and if the player violates this clause, the player can be sanctioned by the J.League. Player contracts also stipulate that if the player violates any criminal laws or corrupts the morals of his club, the club may sanction the player or terminate his contract.

The NPB rule provides that the 'Club, Commissioner or both can impose fines, or suspend the player for a certain period of time due to any player's misconduct'. However, in contrast to contracts in the J.League, there is generally no morality clause in individual player contracts.

These provisions are executed every now and then, and players have been sanctioned according to these clauses.

12 Are there any restrictions on sponsorship or marketing in professional sport?

There are no general legal restrictions on sponsorship or marketing in professional sports. However, the tobacco industry and the alcohol industry have developed self-imposed regulations providing that they should not sponsor any event targeted at minors or promote their products in such events. However, most professional sporting events are not considered as such events.

The J.League has its own rules providing that any pachinko company or slot machine company cannot be a J.League or club sponsor.

Brand management

13 How can sports organisations protect their brand value?

Brand value is protected by the Trademark Act, the Unfair Competition Prevention Act, the Copyright Act, the Civil Code and other laws. Under the Trademark Act, sports organisations can protect the symbols of the brand (eg, names, logos) if they are registered in advance.

If there is an infringement of rights under such laws, sports organisations can demand an injunction and claim compensation for damage. In some cases, such acts of infringement of rights are subject to criminal charges.

Under the Civil Code, sports organisations can protect their brands against defamation by demanding injunctions against such actions and claiming compensation for damage.

14 How can individuals protect their brands?

See question 13. Individuals can also protect their brands by the same means.

In addition, a means of protection specific to individuals is the protection of publicity rights. See questions 8 and 9.

15 How can sports brands and individuals prevent cybersquatting?

Cybersquatting is restricted under the Unfair Competition Prevention Act, and claims for damages and injunctions can be made under this Act.

In addition, by filing a claim to the Japan Intellectual Property Arbitration Centre, a request to transfer the domain name or to cancel its registration can be made under the Japan Domain Name Dispute Resolution Policy if the registrant does not have legitimate interests in the domain name, and the domain name is registered or used in bad faith.

16 How can individuals and organisations protect against adverse media coverage?

Individuals can make a claim for damages and injunctions based on defamation or infringement of privacy rights. Other measures, such as a request for an apology letter to restore honour and reputation, are also available.

However, as a result of freedom of expression, the requirements for an injunction are considered to be strict. It is therefore rare that an injunction is granted.

Broadcasting

17 Which broadcasting regulations are particularly relevant to professional sports?

There are no specific legal restrictions on the broadcasting of professional sports, including regulations similar to those based on the UK's universal access rights.

18 What means are available to restrict illegal broadcasting of professional sports events?

In cases of illegal rebroadcasting or unauthorised public viewing, it is possible to seek damages or an injunction for copyright infringement or violation of neighbouring rights. In addition, if illegal broadcasting is done through an internet medium, the right holder can apply for deletion of the content to the medium.

As sports events and games themselves are not copyrightable, in cases where people illegally record sports events, an organisation cannot claim the copyright infringement or a violation of neighbouring rights. However, based on ownership or facility management rights, recording may be prohibited by the ticket agreement or other means, and legal action may be taken as a result of a violation thereof.

Event organisation

19 What are the key regulatory issues for venue hire and event organisation?

Permission based on the Food Sanitation Act is necessary when providing food and drinks at an event. When installing a facility that uses fire, such as a gas stove, it is necessary to comply with the standards of the Fire Service Act. Furthermore, when outdoor advertisements

Update and trends

Japanese version of the NCAA

In Japan, there is currently no supervisory organisation for university sports. However, preparations are currently being made with a schedule date of February 2019 for the establishment of a new association based on the American NCAA that will oversee university sports.

are posted outside of the venue, restrictions based on the Outdoor Advertisement Act and By-law may also be imposed.

When an event organiser wishes to use a public facility for a long period (for example, when a football club uses a public stadium as its home stadium), the event organiser may be entrusted with management in accordance with the Local Autonomy Act.

20 What protections exist against ambush marketing for events?

Although the enactment of a special law against ambush marketing has been considered for major international sports events that will be held in Japan, there is no such special law at the time of writing. However, traditional intellectual property laws, including the Trademark Act, the Unfair Competition Prevention Act and the Copyright Act, offer some protection against ambushers. At the 2002 FIFA World Cup, there were no special laws in place, but ambushers were dealt with using existing laws and legislations.

21 Can restrictions be imposed on ticket sale and resale?

Purchasing tickets with the intention of reselling or reselling tickets at 'public places' is prohibited under the Ordinance to Prevent Public Nuisances.

In addition, permission under the Second-hand Articles Dealer Act is necessary when conducting business as a resale dealer, and resales are forbidden without such permission.

In recent years, there have been criminal cases in which fraud charges were applied because of actions involving resale intent when purchasing tickets.

At the time of writing, there are no other special laws against ticket sales and resales; however, enactment of a special law to restrict ticket resale is currently being considered.

Event organisers typically prohibit resales by ticket agreements.

To prevent online resales, organisers normally ask the operator of the secondary ticketing website and auction website to delete the tickets and prohibit the resale.

Immigration

22 What is the process for clubs to obtain work permits or visas for foreign professional athletes, and coaching and administrative staff?

It is desirable for Japanese clubs to apply for and obtain a Certificate of Eligibility (COE) for foreign professional athletes (and coaching and administrative staff), whereby the Minister of Justice certifies conformance with their status of residence in advance of their arrival in Japan. This would allow them to obtain visas and pass through immigration and passport control inspections smoothly.

After the COE is issued, the athlete shall apply for a visa in person at the Consulate-General of Japan closest to their residence and receive a seal of verification on their passport.

The athlete must bring the COE and their valid passport with visa to Japan and undergo standard immigration and passport inspections at the port of entry. When they are permitted to enter Japan, the immigration inspector affixes a seal of verification for entrance in their passport that specifies their status of residence and period of stay. If their period of stay is longer than three months, they will receive a residence card. The athlete must carry either their passport or residence card with them at all times.

The athlete must notify the local city, ward or town office within 14 days of establishing a residence. If a notification of residence is not made within 90 days of entering Japan, it will become a reason to cancel his or her residence status.

23 What is the position regarding work permits or visas for foreign professional athletes, and coaching and administrative staff, temporarily competing in your jurisdiction?

The athlete's status of residence is 'entertainer' – like actors, performers, singers and dancers. Their period of stay can be three years, one year, six months, three months or 15 days, depending on the term of the player contract, as well as the content and form of the entertainment activities.

Coaches and trainers are viewed as being connected to the athletes and share the same entertainer status.

24 What residency requirements must foreign professional athletes, and coaching and administrative staff, satisfy to remain in your jurisdiction long term or permanently?

If foreign professional athletes wish to stay permanently, they must apply to the Ministry of Justice for permission to obtain 'permanent residence'. The Minister may grant permission only when it finds that (i) the athlete's behaviour and conduct are good, (ii) the athlete has sufficient assets or skills to make an independent living, and (iii) the athlete's permanent residence will be in accordance with the interests of Japan. In principle, athletes must stay in Japan continuously for more than 10 years, but there are exceptions.

Once permanent residence is granted, none of the residence activities or the period of stay are restricted.

25 Do the family members of foreign professional athletes, and coaching and administrative staff, legally resident in your jurisdiction have the same residency rights?

A spouse or child supported by athletes staying in Japan with an 'entertainer' residence status will be granted the status of residence as a 'dependant' for the same term as the athlete.

Sports unions

26 How are professional sporting unions incorporated and regulated?

Generally, professional sporting unions are incorporated by sports and are regulated by the Labour Union Act. The term 'workers' in that Act is defined as 'those persons who live on their wages, salaries, or other equivalent income, regardless of the kind of occupation', and both professional football players and baseball players are included under this definition. The Japan Professional Baseball Players Association was certified as a union by the Tokyo Labour Relations Commission in 1985, and the Japan Pro-Footballers Association was certified in 2011.

27 Can professional sports bodies and clubs restrict union membership?

If professional athletes are recognised as workers under the Labour Union Act, clubs and teams cannot restrict union membership. This is because article 7 of the Labour Union Act prohibits, as an unfair labour practice, an employer (club or team) from '[making] it a condition of employment that the worker shall not join or shall withdraw from a labor union'.

28 Are there any restrictions on professional sports unions taking strike action?

See question 6. If a professional athlete is considered to be a worker under the Labour Union Act, since the right of collective action is recognised, there is no legal restriction on the strike as long as its legitimacy is recognised, and legal protections such as civil exemptions, criminal exemptions and protections from prejudicial treatment resulting from going on strike are available.

Legitimacy as used herein is generally said to be judged from four aspects: (i) subject, (ii) object, (iii) procedure and (iv) means. For example, strikes (i) by individuals who cannot become parties to collective bargaining, (ii) not for the purpose of collective bargaining such as for working conditions, (iii) not conducted through the process of collective bargaining, and (iv) that use violence, are each denied legitimacy.

Employment**29 What is the legal framework for individual transfers? What restrictions can be placed on individuals moving between clubs?**

In the J.League, under the JFA's Regulations on contracts, registration and transfer of professional football players, when a player transfers within the J.League before the contract term expires, an agreement on transfer compensation with both the original club and the new club is required. If a player transfers without reaching this agreement, a prohibition on additional player registrations for a certain period may be imposed on the new club. The player may also face suspension for up to six months.

Players can only register during registration windows, which occur twice per year.

In the NPB, the 'reserve system' prohibits the transfer of a player. As a result, players cannot negotiate contracts or otherwise participate in practices designed to result in the transfer to other teams, regardless of whether the new team is a domestic team or one based in a foreign country. An exception to this system is the free agent (FA) system. There are domestic FAs and foreign FAs, and each can transfer to a domestic or foreign team by satisfying certain entrance conditions. If a player is transferred under the FA system, the original team may request monetary compensation or compensation in human resources from the new team. There is also a posting system based on the United States - Japanese Player Contract Agreement, agreed to by the MLB and the NPB, which is a system that allows players who do not meet the conditions of foreign FA rights to be transferred to the United States.

30 Can individuals buy their way out of their contractual obligations to professional sports clubs?

If an individual player becomes a party to a contract with the club, the player is bound by the contract.

Regarding transfers, there is a reserve system in the NPB, and once a contract with a team is concluded, the player cannot, in principle, negotiate a contract with another team. The only exception is the FA system, whereby a player can exercise the FA right and negotiate a contract with another team if certain requirements are met. However, in order to exercise the FA right and transfer to another team, the other team is required to pay a certain FA compensation to the original team. (See question 29.)

There is no such reserve system in the J.League, and players can freely negotiate transfers with other teams from six months prior to the expiration of the contract with the original club. However, players cannot transfer in the middle of the contract term, unless an agreement on penalty is made between the original club and the new club.

31 What are the key athlete welfare obligations for employers?

Since professional athletes are not recognised as workers under the Labour Standards Act, clubs and teams are not obliged to subscribe to workers' accident insurance, employment insurance, health insurance and other employment-related insurance.

However, a team or club may have certain contractual obligations regarding welfare benefits. For example, in the player contracts for the J.League and professional baseball, obligations to bear medical costs are set forth for teams and clubs for when players suffer injuries or illness. In addition, in such contract for professional baseball, the team is obliged to pay disability compensation if the player suffers a physical impairment, and in the J.League player contract, there are provisions concerning their own welfare programmes, such as 'relief games' for the purpose of relieving promising athletes who become unable to play because of injury or illness from economically dire conditions.

32 Are there restrictions on the employment and transfer of young athletes?

In the J.League, young athletes cannot become professional athletes until they are 16. In addition, a player who is under 20 must obtain the consent of a legal representative to enter into a contract. Furthermore, there is a cap on his or her annual salary. Regarding transfers, there are no original regulations of the J.League, and it follows the applicable FIFA regulations.

Young athletes interested in playing in the NPB cannot become professional athletes until they reach the end of compulsory education (ie, junior high school graduation). In addition, a player who is under the age of 20 must obtain the consent of a legal representative to enter into a contract.

33 What are the key child protection rules and safeguarding considerations?

In both the J.League and the NPB, the requirement of the consent of a legal representative is intended to ensure that players who are minors are protected from unreasonable contracts.

There are also regulations concerning the lower limit of age-related eligibility, as referenced in question 32. These regulations are intended to protect children by preventing them from becoming professional athletes while their minds and bodies are still developing. There are also regulations that limit the amount of control an organisation can have over a young athlete. For example, in the J.League, players under the age of 18 can only enter into a contract for a maximum period of three years.

The length of practice and other associated activities are not restricted according to age. Activities in these areas are left to the discretion of the contracting organisations.



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34 What employment relationship issues arise when athletes represent both club and country?

With regard to compensation in cases where a national representative player becomes injured or sick in an international match, the JFA has established an accident insurance system and an income compensation system. Further, the JFA paid approximately ¥120 million to the players based on the income compensation system for about 15 years, and the clubs also received compensation up until the players returned.

35 How are selection and eligibility disputes dealt with by national bodies?

See question 7.

Taxation

36 What are the key taxation issues for foreign athletes competing in your jurisdiction to be aware of?

If a non-resident foreign athlete participating in a competition, such as a golf, tennis tournament or boxing event, receives remuneration for participating or a supplementary prize, such as a car or a watch, from an organiser in Japan, any such compensation is considered as 'compensation for the provision of personal services' under the Income Tax Law, and is subject to separate tax withholding at the source at a rate of 20.42 per cent.

If a tax treaty exists between Japan and the country where the foreign athlete resides, tax exemptions may be available. Therefore, it is necessary to confirm the relevant tax treaty in force. For example, there is an exemption in the Convention Between Japan and the US for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income. Specifically, there is no withholding tax if the total income from his or her activities as an athlete received in the tax year is less than US\$10,000. On the other hand, there is no provision for reduction or exemption of tax liability under the tax treaty between Japan and the United Kingdom, and taxes should be withheld by the organiser at a rate of 20.42 per cent.

If the supplementary prize is a product, such as an automobile or a watch, it is valued at 60 per cent of the retail price for tax purposes.

In cases where a sporting event organiser withholds income tax from remuneration, the tax liability will be limited to such withholding, and foreign athletes do not need to file a tax return.

In cases where a non-resident foreign athlete signs a contract with a Japanese club or team and the contract provides for remuneration for the player, the athlete's remuneration is also considered as 'compensation for the provision of personal services' under the Income Tax Law. Therefore, the club or team will withhold income tax, and these foreign athletes do not need to file a final return as explained above.

* *The authors would like to thank Shun Maruyama and Gaku Shikata of TMI Associates for their contributions to this chapter.*

Russia

Valeriy Fedorev

CMS Russia

Regulatory

1 What is the regulatory governance structure in professional sport in your jurisdiction?

The regulatory governance structure in professional sport is made up of several levels. General legal, organisational, economic and social issues in the area of sport are regulated by the Russian Ministry of Sport and other federal ministries and authorities as per their authority provided for by Russian Federal Law of 4 December 2007 No. 329-FZ on Physical Culture and Sport (the Sports Law). However, the primary regulation of the majority of specific sport issues is done at the level of the relevant sport bodies for each sport, namely national sport federations, unions and leagues.

2 To what extent are participants protected from liability for their on-field actions under civil and criminal law?

There are no specific provisions directly regulating issues of athletes' liability for their on-field actions under civil and criminal law.

From a criminal law perspective, athletes may be liable for actions where their primary and only intent was damaging other athletes' health rather than winning the competition. If causing the damage was the only intention of the athlete then he or she may be subject to criminal liability.

From a civil law perspective the athlete may be released from the on-field actions damage liability based on a general rule of article 1064 of the Russian Civil Code. It allows rejecting liability claims where the damage was caused by a person acting under agreement with the victim. It is assumed that by voluntarily taking part in a sport competition, all athletes agree to take the risk of being unintentionally injured during it.

3 What is the regulatory framework for doping matters in your jurisdiction? Is there also potential secondary liability for doping offences under civil or criminal law?

The Russian anti-doping regulatory framework consists of a number of interrelated pieces of legislation, including international treaties ratified by the Russian Federation, such as the UNESCO International Convention against Doping in Sport, Council of Europe Anti-Doping Convention, Russian federal laws, supplemental pieces of legislation issued by Russian authorities, as well as policies and regulations of different sport organisations, leagues and federations.

Specific pieces of Russian national anti-doping legislation include:

- the All Russia Anti-Doping Rules;
- certain articles of the Russian Criminal Code, the Labour Code and the Code of Administrative Violations related to penalties for doping violations;
- orders, decrees and regulations, regulating different anti-doping related issues, issued by federal state authorities, such as the federal government, the Russian Ministry of Sport and other federal ministries and authorities involved in anti-doping issues; and
- specific rules and regulations issued by the Russian Anti-Doping Agency.

Athletes, coaches and athlete support personnel may be subject to sport sanctions (eg, disqualification) for doping violations.

Coaches, sport doctors and other athlete support staff, in addition to sport sanctions, may be criminally and administrative liable for specific doping violations.

Contrary to their support staff, athletes are not subject to administrative and criminal penalties for using doping, but they may be subject to additional employment-related penalties, such as early termination of contract with payment to the employer of certain monetary compensation.

4 What financial controls exist for participant organisations within professional sport?

There are no financial control restrictions set at the federal level. However, specific financial control mechanisms may be established at the level of professional sport organisation (ie, federation or league). For example, salary limits exist in the Continental Hockey League.

Russian sport clubs participating in competitions organised by international sport organisations may also be subject to financial control requirements of those international organisations. For example, Russian football clubs participating in UEFA competitions, as the UEFA Champions League or UEFA Europa League, must comply with the UEFA Financial Fair Play Regulations.

Dispute resolution

5 Who has jurisdiction over the resolution of professional sport disputes in your jurisdiction, and how is this determined?

There is no single dispute resolution body for Russian sport disputes at the national level. Each sport federation determines in its internal regulatory documents which body has jurisdiction over disputes in its sport. Usually, the federations create their own internal dispute resolution chambers or committees.

Decisions of dispute resolution bodies established by Russian sport federations may be further appealed in the Court of Arbitration for Sport or in one of the commercial sport arbitration courts in Russia. Currently there are several arbitration courts of such kind, established by different organisations.

6 How are decisions of domestic professional sports regulatory bodies enforced?

Decisions of domestic professional sport regulatory bodies are enforced by sport federations or leagues through sport sanctions. Any athlete, coach or sport club that does not comply with decisions of the sport regulatory body may be prohibited from participating in the sport competitions and tournaments conducted by the respective sport federation or league.

7 Can the decisions of professional sports regulatory bodies be challenged or enforced in the national courts?

In theory, a decision of a professional sport regulatory body may be challenged in Russian state courts. However, most sport federations directly prohibit their athletes and clubs from taking disputes to state courts. Failure to comply with such prohibition may lead to sport sanctions imposed by the federation on the athletes or clubs. They may be expelled from the tournaments conducted by the respective sport federation.

Sponsorship and image rights

8 Is the concept of an individual's image right legally recognised in your jurisdiction?

An individual's image rights are legally recognised in Russia and belong to the individual concerned. However, they are not subject to state registration.

In accordance with article 152.1 of the Russian Civil Code, the use of an individual's image (including in photos and videos) is only allowed subject to the consent of the individual. Consent is not required if: (i) the individual's image (ie, a photo or video) is used in state or public interests; (ii) the picture is taken in public places and at public events, including sport events (except for cases where the individual is the primary object of the picture); and (iii) if the individual was paid for taking a picture of him or her.

9 What are the key legal considerations for the commercialisation and protection of individuals' image rights?

Third parties who want to use an individual's image must receive the consent of the individual. In practice, individual athletes or coaches give such consent within a framework of their agreement with the sponsor.

Based on article 152.1 of the Civil Code, any material carriers containing the image of the individual who did not give the consent for use of his or her image by the respective third parties (in those cases where such consent is required by law), shall be taken out of the circulation by the decision of the court and destroyed without any compensation to the owner of such material carriers.

An individual whose image was used by third parties on the internet without his or her consent may demand removal of the image, as well as prohibition of its further distribution.

An individual whose image has been illegally used by third parties may claim moral damages through a Russian court.

10 How are image rights used commercially by professional organisations within sport?

As a matter of common practice, athletes issue to the sport organisation they belong to an unconditional consent allowing the club to use the image of the athlete. Such consent is usually a part of the employment contract of each respective athlete. The club may use athletes' images for any business of the club, including for the purpose of agreements with the club's sponsors.

In practice, the most famous athletes sometimes only give the club limited consent to the use of their images. The clubs may use it for sport events but may not use it for the club's sponsors. Such limited consent gives famous athletes more options for personal sponsorship contracts.

11 How can morality clauses be drafted, and are they enforceable?

Morality clauses may be part of individual sponsorship contracts and should be drafted quite carefully. Those clauses are enforceable only if they do not violate basic human rights guaranteed by the Russian Constitution.

Violation of contractual morality obligations (such as doping or heavy drinking in public places) may cause penalties provided for by the contract (eg, monetary penalties or termination of contract).

12 Are there any restrictions on sponsorship or marketing in professional sport?

Sponsorship and marketing in professional sports in Russia are subject to general rules, with some exceptions. There are some items that are fully prohibited from marketing or advertising. They include narcotic drugs, explosives, products and goods that are subject to special registration or licensing if the required registration or licence was not received, and other products whose production or circulation is prohibited in Russia.

The advertising of cigarettes, tobacco products and smoking accessories, including pipes, hookahs and lighters, is prohibited, including at sports events. Marketing and advertising of alcohol, except for beer and beer products, is also prohibited at sports events. Beer advertising is temporarily allowed at sport venues until 1 January 2019.

Marketing and advertising restrictions with respect to betting companies in Russian sport were lifted in April 2017. However, only betting companies that are licensed in Russia are allowed to sponsor Russian professional sport.

Brand management

13 How can sports organisations protect their brand value?

The brand value of a Russian sport entity may be protected mostly through protection of its company name or trademark.

Company name

The company name of a Russian sport organisation is indicated in the corporate documents, and it is reflected in the Unified State Register of Legal Entities. The company name is protected in Russia upon the registration of the sport organisation (eg, the sport club) as a legal entity with the tax authorities.

The exclusive right over its company name allows the sport entity to use the name freely, in particular:

- on signs;
- on letterheads;
- on official documents;
- in advertising;
- on products;
- on packaging; and
- on the internet.

Trademark

A trademark is used to distinguish the goods or services of companies. A trademark can be a word, figure or three-dimensional design, or a combination of all of these elements. The company name may also be registered and protected as a trademark.

To be protected in Russia, the trademark needs to be registered with the Russian patent body, Rospatent, in the Register of Trademarks. Alternatively, it may be protected in Russia under the Madrid System of the International Registration of Marks.

The maximum duration of trademark protection is 10 years, which is calculated from the date of filing of the application with Rospatent. There is an option to renew this 10-year protection period, subject to the necessary petition and payment being made.

Trademark protection may be terminated early if the trademark is not sufficiently used during any three consecutive years after the date of registration. Any interested person may file an application for non-use invalidation with the Chamber of Patent Disputes under Rospatent.

14 How can individuals protect their brands?

There is no concept of an individual's brand (trademark) in Russia. The brand may belong to a company or an individual who is registered as an independent entrepreneur. Therefore, for the individual athlete to protect his or her name as a brand, he or she needs to get a commercial status of independent entrepreneur and register the name of the individual as the trademark belonging to the independent entrepreneur.

15 How can sports brands and individuals prevent cybersquatting?

Registration of domain names in Russia is made on a first come, first served basis. Therefore, the most effective ways to prevent cybersquatting is to register the domain name as early as possible.

If the respective domain name has already been taken by a cybersquatter then an option for fighting it would be to register a corresponding trademark and on this basis try to argue the right to the corresponding domain name in a Russian court. In practice, this option may be quite lengthy and burdensome to implement.

16 How can individuals and organisations protect against adverse media coverage?

If a media source (eg, newspaper, TV channel or website) distributes untrue information about the individual or organisation, the latter may file a lawsuit against the media source claiming damages arising from distribution of untrue information. Moral damages may be claimed by the individual and reputational damages by the organisation.

Moreover, by the decision of the court the media source may be ordered to publish a refutation of initial information.

In case of intentional defamation about the individual or organisation, responsible officers of the media source may be subject to a criminal fine of up to 1 million roubles or compulsory work for up to 240 hours.

Broadcasting

17 Which broadcasting regulations are particularly relevant to professional sports?

Based on article 20 of the Sports Law, broadcasting rights to sport events and competitions belong to the organisers (eg, sport federations and leagues) of the relevant sport event or competition. Third parties may broadcast sport events only subject to permission received from the organiser or written broadcasting licence agreements with the organiser.

Foreign ownership of mass media companies doing audiovisual broadcasting is limited. Online audiovisual platforms for broadcasting through the internet is also subject to specific regulations. Such platforms can only be owned by Russian legal entities or Russian citizens who are not also citizens of other countries. Foreigners are permitted to own such Russian legal entities but there are some limitations on specific foreign operators.

18 What means are available to restrict illegal broadcasting of professional sports events?

In the case of the illegal broadcasting of a sport event by a third party, the organiser of the event may require to block the broadcast and claim full damages, including lost profit, from the illegal broadcaster.

Broadcasting right may qualify as a neighbouring right. Therefore, based on article 1311 of the Civil Code, the owner of the broadcasting right may, instead of claiming the damages, choose to claim a fixed compensation of up to 5 million roubles or twice the market value of the broadcasting right being violated.

Event organisation

19 What are the key regulatory issues for venue hire and event organisation?

Based on the Sports Law, the venue for a sport event must comply with technical requirements set by the event organiser. The venue should also satisfy public safety requirements set by Russian law and the relevant sport federation. The organiser of the sport event must notify local police no later than 30 days in advance about the exact place, date and period of use of the venue.

Organisers of the sport events and the owners of the venues are together liable for non-compliance with public safety rules. Organisers of the event may establish additional safety measures, including additional entrance-control measures such as selling tickets by ID or allowing spectators to the sport venue only subject to presenting their ID.

20 What protections exist against ambush marketing for events?

Under article 20.1 of the Russian Sports Law, ambush marketing activities related to sport events qualify as unfair competition. As a consequence, legal entities found guilty of ambush marketing may be subject to administrative penalties provided for unfair competition cases, including fines of up to 500,000 roubles.

21 Can restrictions be imposed on ticket sale and resale?

Based on the Sports Law, organisers of sport events (ie, leagues and federations) may set specific rules for the sale of tickets to their events. In certain cases they are allowed to request ID from the spectators who buy the tickets.

The organisers of sport events may delegate their right to sell tickets to special ticketing agencies, who usually act on behalf of organisers under special agency agreements. Nevertheless, generally, there is no liability for sale and resale of tickets by non-authorised entities or individuals.

Certain exceptions may apply to selected sport events. The restriction on sale and resale of tickets by non-authorised persons may be enacted by special laws related to the specific sport event. For example, sale and resale of tickets to FIFA 2018 World Cup by entities or individuals not authorised by FIFA was prohibited. Under article 14.15.2 of the Russian Code of Administrative Violations, illegal sale and resale of

2018 World Cup tickets could lead to severe administrative fines of up to 30 times of the price of illegally sold tickets.

Similar restrictions were enacted in Russia for sale and resale of tickets for the 2014 Winter Olympic Games.

Immigration

22 What is the process for clubs to obtain work permits or visas for foreign professional athletes, and coaching and administrative staff?

Foreign professional athletes, coaches and athlete support personnel may enjoy a simplified work permit procedure. They may obtain a highly qualified specialist work permit and work visa. This type of work permit is issued for three years. It may be obtained within 14 working days. Under this simplified work permit procedure, the club, as the employer, is exempt from fulfilling a significant number of formalities (obtaining a migration quota, general authorisation to recruit foreign employees, etc).

The highly qualified specialist regime is available to sport organisations being Russian commercial legal entities as well as to Russian-based duly accredited branches and representative offices of foreign legal entities.

The monthly remuneration paid to a highly qualified specialist must be at least 167,000 roubles gross, unless a lower amount is set by law or in international agreements for certain nationals.

If the above criteria are not met, then foreign professional athletes, coaches and athlete support personnel shall be subject to a regular work permit procedure, which is more burdensome and usually takes between 12 and 14 weeks to complete. However, in practice, the general work permit process is extremely rare for foreign athletes, coaches or administrative staff in professional sport in Russia.

Citizens of countries that are members of the Eurasian Economic Union (currently Armenia, Belarus, Kazakhstan and Kyrgyzstan have joined the Union with Russia) and those holding a permanent Russian residence permit or a temporary residence permit are exempt for the work permit requirement.

23 What is the position regarding work permits or visas for foreign professional athletes, and coaching and administrative staff, temporarily competing in your jurisdiction?

There is no work permit required for foreign athletes, coaches and administrative personnel temporarily coming to Russia for participating in sport competitions. However, they do require a special type of humanitarian visa issued for visiting Russia for sport purposes.

24 What residency requirements must foreign professional athletes, and coaching and administrative staff, satisfy to remain in your jurisdiction long term or permanently?

Athletes, coaches and administrative staff may work in Russia for three years under the highly qualified work permit. However, if they want to be able to stay in Russia for a long time without work permit and visa, then they may apply for a temporary residence permit.

A temporary residence permit is issued for a term of three years. It allows working only in the region or city where it was issued. The process of issuance of the temporary residence permit takes about four to six months. A foreigner under the temporary residence permit may not be absent from Russia for more than six months during each year of the temporary residence permit.

Following expiration of the temporary residence permit the foreigner may either receive the new one or apply for the permanent residence permit. It is issued for a term of five years. It gives the right to work in any region of Russian without the work permit and visa. It also gives the foreigner an access to the Russian social system, which includes state medical insurance, a state pension and other social guarantees. Upon expiration of the initial permanent residence permit, the foreigner may obtain a new one.

25 Do the family members of foreign professional athletes, and coaching and administrative staff, legally resident in your jurisdiction have the same residency rights?

The family members of foreign athletes, coaches and administrative staff may enjoy similar residency rights.

Sports unions

26 How are professional sporting unions incorporated and regulated?

Professional sport trade unions are regulated under general rules of Russian Federal Law of 10 January 1996 No. 10 – FZ on trade unions, their rights and guarantees of their activities, and other legislation regulating trade unions.

A trade union may be established by any three individual athletes, coaches or administrative staff. There are no restrictions on the number of unions established within one organisation or each sport. For example, there are several trade unions in Russian football. The individual may be a member of several unions at the same time.

A trade union that includes more than 50 per cent of employees (ie, athletes, coaches and administrative staff) of a sport organisation or club may initiate a collective bargaining agreement with the sport organisation or club. In such collective agreement the trade union usually bargains an increased level of protection and guarantees to the athletes, coaches and administrative staff compared with what is provided by general law or specific regulations of the sport organisation concerned.

27 Can professional sports bodies and clubs restrict union membership?

An individual's right to create or join a union is guaranteed by article 30 of the Russian Constitution. Consequently, any restrictions on union membership imposed by sport bodies on athletes, coaches or support personnel are illegal.

28 Are there any restrictions on professional sports unions taking strike action?

There are no restrictions on Russian professional sport trade unions taking strike actions. They may take strike actions just as any other professional union.

Employment

29 What is the legal framework for individual transfers? What restrictions can be placed on individuals moving between clubs?

Transfer of individual athletes and coaches are subject to specific rules of Chapter 54.1 of the Russian Labour Code, as well as specific transfer rules and regulations of each respective sport federation.

Usually transfer of players between the clubs is subject to the conclusion of: (i) the transfer agreement between the clubs; (ii) termination of employment of the athlete with the current club; and (iii) entering into the employment agreement with the new club. Before the commencement of employment with a foreign player, the new club must receive the player's work permit.

Once the contractual documentation has been finalised, the acquiring club must register the right to the new player in a special players' register maintained by the respective sport federation. In some cases

the federation may prohibit registering new players if the acquiring club has unsettled legal obligations towards third parties (eg, unpaid salary to players, unpaid membership fee to the federation or unpaid transfer fees to other clubs).

30 Can individuals buy their way out of their contractual obligations to professional sports clubs?

Based on clause 348.12 of the Russian Labour Code, athletes may leave the club unilaterally, subject to paying the club a special compensation set in the employment contract. If the contract is silent about the compensation amount it will be determined by the relevant sport jurisdiction body based on a claim from the club. In addition to the compensation, the player may have additional sport sanctions imposed on him or her (eg, disqualification from the sport).

There are no similar provisions in Russian law related to obligatory payout by coaches when they unilaterally resign from the club. Nevertheless, internal policies of the respective federations usually require the coach to pay the club the amount of compensation set by the contract if they resign early. If there is no compensation set in the contract, the relevant jurisdictional body will determine the amount of such compensation and order the coach to pay.

31 What are the key athlete welfare obligations for employers?

Based on chapter 54.1 of the Russian Labour Code, employers are obliged at their expense to provide athletes with additional insurance of their lives and health and additional medical insurance. As well as that, in case of a sport-related injury, the club is obliged to pay the athlete the full average salary for the whole period of disability.

If the employer finds an athlete not suitable for participating in a relevant competition or it transfers the player to the farm team, then the employer is not allowed to reduce the salary of the player caused by such transfer or non-participation of the athlete in competitions by the decision of the club.

32 Are there restrictions on the employment and transfer of young athletes?

Under article 63 of the Russian Labour Code, generally an employment agreement may be concluded with an individual who is aged at least 16. Employment agreements with athletes under 16 may be concluded subject to the consent of the athlete's parents and the state child protection body.

Additional specific rules for transfer of young athletes (eg, minimum registration age for a specific tournament) may be provided in the regulation of the national federation in each sport.

33 What are the key child protection rules and safeguarding considerations?

Employment agreements with athletes aged between 14 and 16 years may be concluded subject to written consent of one of the parents and the state body for child protection and safeguarding, which shall determine the maximum duration of work for the young athlete.



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In exceptional cases the employment agreement may be concluded with an athlete under 14, but such case is in addition to the parental consent and the consent of the state guardianship body, and the young athlete must undergo a special medical examination that shall determine specific terms of work to ensure the protection of the athlete's physical and mental health.

34 What employment relationship issues arise when athletes represent both club and country?

Based on article 348.6 of the Russian Labour Code, if the athlete is selected to the Russian national team, the club must allow him or her to participate in it. During the whole period of being in the national team the athlete remains employed by the current club and the club must keep paying the athlete his or her full salary.

35 How are selection and eligibility disputes dealt with by national bodies?

The rules and criteria for selection to a national team are defined by the sport federation of the sport in question. A list of candidates for the national team is issued by each sport federation on an annual basis. It is subject to approval by the Russian Ministry of Sport. An athlete who has met the necessary criteria for inclusion on the list, but was not included, has the right to appeal such decision to the dispute resolution body of his or her sport's national sport federation, or the relevant sport arbitration court for that sport federation.

Taxation

36 What are the key taxation issues for foreign athletes competing in your jurisdiction to be aware of?

Foreign athletes are subject to Russian income tax depending on their tax residence status.

Tax residents are taxed on their worldwide income. A standard flat rate of 13 per cent applies to most types of income. An individual is considered to be tax resident if he or she is physically present in Russia for at least 183 calendar days during a 12-month rolling period. According to clarifications from the Russian Ministry of Finance, however, the tax residence status of an individual should be defined by counting the days spent in Russia within the relevant calendar year.

Non-residents have tax imposed on their Russian-sourced income, irrespective of the nature of that income. A general rate of 30 per cent applies to all types of Russian-sourced income. It may be possible to apply the relevant provisions of a tax treaty to exempt certain types of income from non-resident taxation.

For foreign athletes, coaches and administrative staff who possess the highly qualified work permit, the 13 per cent resident income tax rate applies from day one – they do not have to have spent 183 calendar days in Russia.

Spain

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Regulatory

1 What is the regulatory governance structure in professional sport in your jurisdiction?

The organisation of sport in Spain (both amateur and professional) is based on a system of collaboration between the public and private sectors (perhaps with excessive public intervention, according to experts).

The most significant institutions are the High Council of Sport in the public sector and the sports federations (national and autonomous) and professional leagues in the private sector.

The High Council of Sport directly exercises the action of the Spanish state in the field of sport in compliance with the constitutional mandate that establishes that the public authorities shall promote physical education and sport and facilitate the appropriate use of leisure (article 43.3 of the Spanish Constitution).

The High Council of Sport is an autonomous administrative body attached to the Ministry of Education, Culture and Sport.

Sports federations are private entities with their own legal personality and their scope of action is national. In addition to their own activities of government, administration, management, organisation and regulation of their own particular sports, they exercise under the coordination and tutelage of the High Council of Sport public functions of an administrative nature, the most important of which is the sport discipline.

The professional leagues are mandatory in disciplines in which there is official competition of a professional nature and state-wide scope, and must exclusively and mandatorily comprise all the sports corporations and clubs that participate in such competition.

They shall have legal personality and enjoy autonomy for their internal organisation and operation with respect to the corresponding Spanish sports federation that they form part of.

Its competences are: (i) to organise its own competitions, in coordination with the respective federation and in accordance with the criteria that, as an exclusive guarantee of national or international commitments, may be established by the High Council of Sport; (ii) to perform, with respect to its members, the functions of guardianship, control and supervision established in the Sports Law; and (iii) to exercise disciplinary authority over the sport clubs that participate in official competitions of a professional nature and over their directors or administrators.

2 To what extent are participants protected from liability for their on-field actions under civil and criminal law?

Civil or criminal liability is not provided for in the regulations of federations or leagues, and ordinary criminal or civil law must be applied.

Therefore, to determine the liability of athletes, it is essential to first indicate whether the damage caused was merely the result of the outcome of play or practice of the sport and, therefore, whether it is part of the necessary risk accepted in the normal practice of the sport, or if the limits of this risk were exceeded, causing damage that should not necessarily result from the practice of the sport.

3 What is the regulatory framework for doping matters in your jurisdiction? Is there also potential secondary liability for doping offences under civil or criminal law?

The fight against doping in sport is regulated in Spain by Organic Law 3/2013 of 20 June on the protection of the health of athletes and the fight

against doping in sport. Under this law, doping in sport is considered to be the performance, by persons included in the scope of application of the law, of any of the conduct this law prohibits. The anti-doping law establishes two different levels: one aimed at federated sport and the other at sport in general, carried out outside the federative structures. Athletes who are officially qualified as international-level athletes or who participate in international competitions are subject to the rules and procedures of the relevant international federation and of the World Anti-Doping Agency, including those relating to the biological passport. This shall be without prejudice to the possibility of doping controls by the Spanish authorities.

At present, this offence is regulated in 362 quinquies of the Criminal Code, which defines it as prescribing, providing, dispensing, supplying, administering, offering or facilitating non-competitive federated athletes, non-federated athletes who practise sport for recreation, or athletes who participate in competitions organised in Spain by sports entities, prohibited substances or pharmacological groups, as well as non-regulatory methods aimed at increasing their physical capacities or modifying the results of competitions that, because of their content, repetition of ingestion or other concurrent circumstances, endanger the athlete's life or health. It shall be punishable by imprisonment of between six months and two years, a fine of six to 18 months that depends on the incomes of the person responsible, and its fixed by the judges, and disqualification from public employment or office, profession or trade for two to five years. Aggravating circumstances that are provided are:

- the victim is a minor;
- deception or intimidation has been used; or
- the person responsible has availed himself or herself of a superior position in an employment or professional relationship.

4 What financial controls exist for participant organisations within professional sport?

The most significant financial control in Spain is that carried out by the National Professional Football League (LFP) on the clubs and sports corporations that belong to it – that is, the clubs participating in the first and second divisions of Spanish football. The idea behind this financial control arises from the desire to extrapolate UEFA's famous Financial Fair Play to domestic competition.

It should be noted that this control is effected pursuant to a Regulation developed under Law 10/1990 of 15 October 1990 on Sport, which in its article 41.4.b grants the LFP exclusive competence over the performance of the functions of guardianship, control and economic supervision over its members, as explicitly provided for in its explanatory memorandum.

Dispute resolution

5 Who has jurisdiction over the resolution of professional sport disputes in your jurisdiction, and how is this determined?

It depends on the nature of the dispute. Broadly speaking, and without going into specific cases:

- If the matter arises from the exercise of disciplinary power (which, as we have already explained briefly, is considered an administrative power delegated to the federations), the sports federations that will exercise it (normally two federative bodies) are the

competition committee (or, where appropriate, the single competition judge) and the appeals committee that decides on appeals against the decisions adopted by the former, although there are federations (such as the Royal Spanish Motor Sport Federation) that have only one body. Disciplinary decisions taken at the federal level may be appealed to the Administrative Court of Sport (CAS). The CAS is a collegial institution at state level, a body of the High Council for Sport, which, acting independently of it, decides on administrative and ultimately disciplinary sports matters.

- For matters arising from an employment contract between, for example, a professional athlete and his or her club, the social order courts and tribunals will always be competent, since labour arbitration is not allowed in Spain.
- In the case of private matters (civil or commercial), such as the performance of a contract for the transfer of federative rights or a conflict between a sports intermediary and an athlete, the parties will be in agreement in the event that an out-of-court solution to the conflict has been chosen (for example, submission to arbitration before a national or international court), or submission to the ordinary civil courts.

6 How are decisions of domestic professional sports regulatory bodies enforced?

In the case of disciplinary matters, the federations themselves will be responsible for enforcing the final decision.

In the other conflicts referred to in question 5, the ordinary courts shall enforce them.

7 Can the decisions of professional sports regulatory bodies be challenged or enforced in the national courts?

Article 24 of the Spanish Constitution establishes access to justice as a fundamental right, including the remedies provided by law.

On this basis, decisions of a disciplinary nature may be appealed before the ordinary court (specifically in the Contentious-Administrative Jurisdictional Order), once the administrative procedure has been exhausted (ie, once a decision has been handed down by the Administrative Court for Sport).

The acts of the sports federations or professional leagues that are not of such a disciplinary nature may also be appealed before the competent courts (normally civil courts), and it will be the ordinary courts and tribunals of said jurisdictional order that will be in charge of enforcing the resolution.

Sponsorship and image rights

8 Is the concept of an individual's image right legally recognised in your jurisdiction?

In Spain, the right to one's own image is recognised in Organic Law 1/1982 of 5 May on civil protection of the right to honour, personal and family privacy, and one's own image.

The ownership of the right to the image as such of a natural person is a very personal, non-transferable right. However, the rights to use the image may be transferred or assigned.

In Spain, there is no register of persons holding rights to use an image as such.

9 What are the key legal considerations for the commercialisation and protection of individuals' image rights?

In a legal sense, the right to the image has a twofold dimension: positive and negative. Thus, the positive aspect would be the right to obtain, reproduce and publish one's own image, and to authorise third parties to do so. The negative aspect would be the right to prohibit the obtaining or reproduction and publication of one's own image by a third party without the consent of the owner.

It is, therefore, the subject's right to disseminate and publish his or her own image and to prevent the reproduction of his or her image in an erga omnes sense with regard to third parties.

Therefore, for the commercialisation and protection of the rights of use of the image it is fundamental to regulate the terms and conditions under which such rights will be assigned (territory, duration, price, limitations, etc). It is always advisable to seek legal advice for this purpose: both from the perspective of the assignor (owner of the

image) and the assignee (acquirer) of the rights to use or commercialise the image.

10 How are image rights used commercially by professional organisations within sport?

In those cases, such as professional athletes with a certain public impact, the most common way is to use their image rights by assigning them to third parties (eg, clubs, marketing and public relations companies, sports associations) with contracts signed for this purpose.

In this sense, the sports sector has not stood aloof of the immense commercial opportunities that can be generated around the commercialisation of image usage rights (sponsors, sponsorships, public appearances, marketing strategies, etc), which are incentivised by advertising not only on television, on the radio or in the press – as traditional channels – but also on the internet and social media. In this sense, the brands themselves, the organisations (whether profit-making or not) participating in the sector, the clubs and the athletes themselves, as intervening and interested agents, are stimulated by the expansion of the sports industry through the use of their image rights. In this way, it may be possible to finance sports events of great social impact, perhaps promoted by sports organisations in particular, and which in turn may provide a means of promoting and developing sport. All commercial sponsorship, marketing and media operations are based on intellectual property rights and are specifically regulated in the Spanish legal system.

11 How can morality clauses be drafted, and are they enforceable?

Since it is the autonomy of the parties' will expressed in the contract that will govern, with the legal limitations common to all contracts (respect for law, public order, etc), the terms and conditions under which the rights to use the athlete's image will be commercialised, clauses containing statements about the athlete's personal conduct will be fully enforceable and will have the force of law between the parties. For example, it is common to find termination clauses in the event that the athlete is guilty of doping, or, in general, when his or her prestige, professional recognition or general image deteriorates as a result of personal conduct.

12 Are there any restrictions on sponsorship or marketing in professional sport?

Yes. There are regulations common to all types of advertising activities, both at national level (General Law of Audiovisual Communication and the General Law of Advertising) and regional level.

In addition, the Sports Act, or the Act against violence, racism, xenophobia and intolerance in sport, includes restrictions not only on the advertising of certain activities, but also on the introduction and consumption of alcoholic or narcotic substances (including tobacco) in sports facilities, in certain cases.

In Spain, there is no specific regulation prohibiting the advertising of bookmakers or gambling in general, but such activities are restricted and limited in terms of their means, purposes and messages, in accordance with the provisions of the Law on Gambling, and other applicable common or regional regulations.

Of particular note in this respect is article 25 of the FIFA Code of Ethics, which establishes a general prohibition on persons subject to the Code of Ethics (officials and players, as well as match organisers and players' agents) from participating, directly or indirectly, or being associated in any way with betting, lotteries, games of chance and similar activities or businesses related to football matches. Nor may they have any relationship, whether active or passive, with companies, enterprises, organisations, etc, that promote, coordinate, organise or direct such activities or transactions.

Brand management

13 How can sports organisations protect their brand value?

A brand not only consists of an intangible asset, but also, in sports, it is a basic ingredient to create commercial value and differentiate one's products and services from those of one's competitors.

In Spain, protection of trademarks – which may, for example, consist of words, letters, numbers, shapes, colours, logos, labels or a combination of these elements – may be granted (eg, the name and coat of

arms of a club). This can be obtained through registration by filing an application with the Spanish Patent and Trademark Office (SPTO) or the European Union Intellectual Property Office (EUIPO). Trademark protection in Spain is granted for 10 years from the date of application and may be renewed indefinitely for successive periods of 10 years. The protection and registration of a trademark is currently regulated by Law 17/2001 of 7 December on Trademarks (LM).

14 How can individuals protect their brands?

Like legal persons, natural persons may register a national trademark by registering the distinctive sign with the SPTO or a European Union trademark with EUIPO. Notwithstanding the foregoing, the trademark of an athlete must not be confused with his or her own image – understood as the graphic representation of the human figure, or of any of the elements that make up the personality – which is also subject to protection, although this is regulated by other types of legislation since it is a fundamental right (Organic Law 1/1982, of 5 May, on civil protection of the right to honour, personal and family privacy, and to one's own image, and the Spanish Constitution).

As indicated above, unlike trademarks, the right to use an athlete's image may be assigned, but never transferred, so that the owner of the image will always be the individual himself or herself. Furthermore, the right to an image is inalienable and inalienable – ie, it is not lost over time, regardless of whether the image is used or not.

15 How can sports brands and individuals prevent cybersquatting?

To prevent cybersquatting from causing serious harm to trademark owners, since it may create confusion among consumers and users, the LM has extended the scope of the *ius prohibendi* to the use of the trademark as a domain name, so that the trademark owner can exercise his or her rights against third parties who register a domain in bad faith (article 34.3 e).

Consequently, the owner of a registered trademark may go to court to uphold his or her rights and interests based on this article of the LM. Likewise, once the case has been analysed, and in the event of an act of deception or confusion, or taking advantage of the reputation of others, Law 3/1991 of 10 January on unfair competition could be applied.

16 How can individuals and organisations protect against adverse media coverage?

Depending on the situation, the best protection may come from being silent, making a public statement or taking appropriate legal action. In any case, the balance between the rights of the injured party and freedom of speech and information must always be taken into account.

Broadcasting

17 Which broadcasting regulations are particularly relevant to professional sports?

In general terms, the General Law 7/2010 of 31 March on audiovisual communication regulates the rights to exclusive content. To this end, the intention of the legislation is to protect the right to information of all citizens, and limits are therefore set on exclusivity on the basis of general interest criteria, which ensure the free-access broadcasting of a series of events mainly related to sport with a high audience and value.

In addition, on 12 January 2018 the Spanish government approved Royal Decree 2/2018 laying down certain rules for the implementation of Royal Decree-Law 5/2015 of 30 April on urgent measures with regard to the marketing of rights to use audiovisual content in professional football competitions. Among the novelties introduced by this Royal Decree, mention should be made of the requirement that clubs comply with certain economic obligations, which will vary according to the income they receive.

18 What means are available to restrict illegal broadcasting of professional sports events?

Holders of audiovisual rights and services may seek, through the courts, the adoption of injunctive measures and significant financial penalties to block websites that illegally broadcast sporting events. They may also lodge a complaint, via an administrative avenue, with the Commission on Intellectual Property.

While it is true that audiovisual piracy has fallen sharply in Spain in recent years, judicial proceedings are still very slow.

To this end, different bodies, such as the National Professional Football League, together with the Spanish government, are developing a series of tools and computer programmes to speed up the process of identifying illegal content and protecting the broadcasting of matches more quickly and efficiently.

Event organisation

19 What are the key regulatory issues for venue hire and event organisation?

The organisation of a sporting event involves a multitude of complex actions that require taking into account various matters. In relation to the facilities where the event takes place, account must be taken as to whether the facilities are the property of the event organiser or whether the organiser of the event agrees to take possession of them for the holding of the event by virtue of a lease agreement or by virtue of an assignment agreement with the public authorities. In any case, among the relevant issues to be taken into consideration are the obtaining of municipal licences for establishment and activity, administrative authorisations for the occupation of public roads or open spaces, the adoption of safety and protection measures for the public attending the event required by the applicable regulations (action plans for emergencies and evacuation, maximum capacity, etc.), as well as annoyances to third parties and the taking out of necessary civil liability insurance policies.

Likewise, it is necessary to take into consideration Law 19/2007 of 11 July against violence, racism, xenophobia and intolerance in sport, whose scope of application includes official sports competitions at state level and those organised or authorised by Spanish sports federations, and which aims to promote fair play, coexistence and integration in a democratic society, the maintenance of public safety, and public order in sport tournaments and events through the establishment of certain punishable conduct.

20 What protections exist against ambush marketing for events?

In Spanish law there are certain mechanisms in place to protect against practices of ambush marketing at sporting events through which official sponsors of such events can seek to defend their legitimate interests. Thus, under Spanish law, ambush marketing practices could be legally qualified and prosecuted as (i) acts contrary to the rights of the owner of a registered trademark for its by third parties for their own benefit in the course of trade without the consent of the trademark owner, as provided for in the LM; (ii) misleading advertising practices and acts of unfair competition resulting from deception, confusion, exploitation of the reputation of others (parasitic competition), or, by application of the general clause of unfair competition, acts objectively contrary to good faith (Law 34/1988, of 11 November, General Advertising Law and Law 3/1991 of 10 January on unfair competition); and (iii) acts contrary to the usage rights of the authors of a work (specifically with regard to their right of public broadcasting), in accordance with the provisions of Royal Legislative Decree 1/1996 of 12 April approving the consolidated text of the Law on Intellectual Property.

However, the practical limitations of the legal protection against such ambush marketing practices, both in Spain and in other neighbouring countries, make it advisable to take protection measures of a contractual nature and based on self-regulation. The most common are: (i) The establishment of certain programmes for the protection of industrial and intellectual property rights owned by the official sponsors of the sporting event (eg, the International Olympic Committee); (ii) the improvement of official sponsorship contracts by reducing spaces to be used by competitors by offering television advertising packages or static advertising, or by including clauses by which the organisers of the sporting event undertake to prevent ambush marketing practices; (iii) the establishment of limitations on certain conduct through general contracting conditions; and (iv) use by organisers and official sponsors of the sporting event of mechanisms aimed at generating an atmosphere of hostility against ambush marketing in the market.

21 Can restrictions be imposed on ticket sale and resale?

Under Spanish legislation, the current law applicable to the resale of tickets is Royal Decree 2816/1982 of 27 August, which approved the

Regulations on the Policing of Public Entertainment and Recreational Activities. The historical context of this regulation has nothing to do with the current reality in which problems are seen with respect to tickets being resold online. Royal Decree 2816/1982 prohibits the 'street or itinerant sale and resale' of tickets, and was enacted in a context where online sales did not exist, and makes non-compliance an offence.

The Spanish Ministry of Education, Culture and Sport recently carried out a prior public consultation under the title 'Draft general provision concerning the activities of sale and telematic resale of tickets for cultural events' and requested a report from the Spanish National Commission for Markets and Competition (CNMC) on the possibility of regulating the online resale of tickets for cultural events. The report issued by the CNMC on 5 April 2018 includes some of the above-mentioned issues regarding the regulatory framework applicable to ticket resale and analyses the EU and Spanish regulatory framework in order to arrive at the following conclusions and recommendations, among others:

- the way tickets for events are marketed, either directly by the promoter or through third parties, should be a free decision of the promoter, based on the principle that there is no justified reason to impose limits on this freedom of commercialisation;
- the resale of tickets contributes to an efficient market outcome and the improvement of social and consumer welfare;
- public intervention has specific tools in competition law to correct abuses or harm to consumers;
- when the public authorities intervene in ticket markets to protect consumers, it must do so in the least restrictive way possible with respect to competition and freedom of enterprise; and
- for these reasons, the CNMC recommends reviewing the existing regulatory framework (national and regional) in accordance with the principle of regulatory assessment and adaptation of existing legislation to the principles of good regulation.

Immigration

22 What is the process for clubs to obtain work permits or visas for foreign professional athletes, and coaching and administrative staff?

There is a special procedure to authorise the residence and performance of professional sport activities by foreigners in Spain. Authorisation for temporary residence and employment is applied for by the sport club, sports association, sports corporation or other entity in order to hire professional athletes. The process to obtain the work permits or visas must be carried out by the person legally representing the sports club, who will personally submit the application for the initial authorisation for residence and employment to the registry of the competent body for its processing (Foreigners Office or, failing that, Area or Unit of Work and Social Affairs), corresponding to the province where the professional sport activity is to be carried out.

This application must be submitted on the official application form for residence and work authorisation, accompanied by the documentation required for this purpose. Once the fees have been paid and the company's social security obligations have been fulfilled, employment may begin. For this purpose, prior to the beginning of the work activity, the applicant entity must communicate the use of the sports licence as a residence and provisional work authorisation.

23 What is the position regarding work permits or visas for foreign professional athletes, and coaching and administrative staff, temporarily competing in your jurisdiction?

The granting of residence permits varies according to whether the foreign athlete in question is an EU or non-EU citizen. If the athlete is a national of a member state of the EU, EEA or Switzerland, he or she and his or her family members have the general right to enter, leave, travel within and reside freely in Spanish territory.

In the case of a non-EU foreign athlete, he or she will be subject to a special procedure to authorise the residence and performance of professional sport activities by foreigners, which is somewhat more flexible than the common procedure, by virtue of which they can enter, reside in and work in Spain on the basis of a temporary residence and work permit.

24 What residency requirements must foreign professional athletes, and coaching and administrative staff, satisfy to remain in your jurisdiction long term or permanently?

The two main ways of legally residing in Spain in the long term are to obtain either a long-term residence permit or Spanish nationality.

There are several procedures for obtaining a long-term residence permit, the most common of which is to have legally and continuously resided in Spain for five years. Once this authorisation has been obtained, the applicant may reside and work in Spain indefinitely under the same conditions as Spanish citizens.

On the other hand, there are also several procedures for obtaining Spanish nationality, among which the following are worth mentioning: 10 years' residence in Spanish territory, marriage to a person of Spanish nationality after having resided in Spain for one year, and by means of a naturalisation letter, which is of an *ex gratia* nature and not subject to the general rules of administrative procedures. It will be granted at the discretion of the government by means of Royal Decree, based on an assessment of the existence of exceptional circumstances.

25 Do the family members of foreign professional athletes, and coaching and administrative staff, legally resident in your jurisdiction have the same residency rights?

Family members of professional athletes are subject to a different residency regime from that of professional athletes. To accede to such residency, applicants must prove, among other things, that they have public or private health insurance, as well as sufficient financial means to cover their living and accommodation expenses, including, where appropriate, those of their family for the period for which they wish to reside in Spain, and without having to carry out any work or professional activity. Spanish law also provides for the right to family reunification, and residents of Spanish territory may reunite their family group.

Sports unions

26 How are professional sporting unions incorporated and regulated?

In the field of professional sport, and in general, the existence of trade unions is protected by the Spanish Constitution, and their creation must be carried out in accordance with the provisions of Organic Law 11/1985 of 2 August on freedom of trade union associations.

The incorporation of a trade union requires the filing of its articles of association and by-laws in the public office established for this purpose.

However, in professional sport, it is important to distinguish between trade unions as such, which must be formed in accordance with the aforementioned regulations, and professional associations, which are also established under the Spanish Constitution, but in accordance with regulations other than those applicable to trade unions. In any case, professional associations do not have the status of trade unions and therefore do not enjoy the same prerogatives as trade unions.

27 Can professional sports bodies and clubs restrict union membership?

No, since this would violate the right of professional athletes to join trade unions freely and also the very function of trade unions and the rights and prerogatives protected by the Spanish Constitution.

28 Are there any restrictions on professional sports unions taking strike action?

The Spanish Constitution recognises the right of workers, including professional athletes, to strike in defence of their interests.

The right to strike is limited by other constitutionally protected rights and goods, in particular the freedom to work of workers who do not wish to join the strike, and the functioning of essential community services.

At present, the right to strike is regulated by Royal Decree Law 17/1977 of 4 March on labour relations.

The right to strike is held individually (ie, by workers), although it is exercised collectively, for example, through trade unions.

The right to strike in professional sport is subject to the same legal rights and limits as in other areas of work.

Employment**29 What is the legal framework for individual transfers? What restrictions can be placed on individuals moving between clubs?**

The employment relationship of a professional athlete is considered a special labour relation and is governed by the provisions of Royal Decree 1006/85. Subsidiary to this, there are several collective agreements that supplement this regulation for collective sports that are professional in nature (among others, football and basketball).

The main rules applicable to the employment relationships of professional athletes, established by Royal Decree 1006/85, are as follows:

- contracts are temporary in nature;
- the athlete has the right to terminate the employment contract by payment of a termination clause; and
- any labour dispute between athletes and their employers should be submitted to the labour courts.

30 Can individuals buy their way out of their contractual obligations to professional sports clubs?

The Spanish system of transfers is, despite being founded in 1985, very novel because of the inclusion of a mechanism for the termination of contracts (termination clause), which, in practice, means the player is not dependent on the exclusive will of his or her employer for a transfer to another club. In addition, it establishes the athlete's right to a 15 per cent share of the financial compensation established in his or her transfer contract.

The biggest problem arising from the possibility of paying for one's freedom by paying the termination clause is that clubs tend to include in their contracts exorbitant amounts of money in the clause, although players can go to the labour courts to reduce such amounts.

31 What are the key athlete welfare obligations for employers?

The main such obligation is the insurance of the salaries established in the contract in the event of injury, even of long duration, throughout the entire term of the contract, as laid down in different collective agreements. The social security payable by the worker is limited to a low wage base (around €4,000), which means that there are no excessive social security charges for the player, with the club being responsible for social security contributions.

32 Are there restrictions on the employment and transfer of young athletes?

The main limitation is the absolute prohibition on contracting players under the age of 16. For athletes between 16 and 18, the signature of the parents or legal guardians will be required for the formalisation of an employment contract.

In addition, according to the case law of the Spanish Supreme Court, the player is free to cancel contracts signed before the age of 18 that are believed may infringe upon his or her rights and professional future.

33 What are the key child protection rules and safeguarding considerations?

See question 32. We should recall the Supreme Court ruling of 5 February 2013 (*Baena* case), which states that:

The power of representation of parents, which arises from the law and serves the best interests of the minor, cannot be extended to those areas that involve a manifestation or presupposition of the development of the child's free personality and that can be carried out by the child himself, such as a decision on his or her professional footballing future that can clearly materialise at the age of 16.

34 What employment relationship issues arise when athletes represent both club and country?

The main issue is that the Sport Law (1990) establishes the obligation of athletes to represent their country. This provision is of dubious constitutionality, as it may infringe the constitutionally recognised right to freedom of speech.

35 How are selection and eligibility disputes dealt with by national bodies?

Selection and eligibility criteria for Spanish athletes at the Olympics and World Cup are the sole responsibility of the different national coaches of each sport. For certain sports there are minimum requirements established by the national federations. Once these minimum requirements have been reached, the selection is made exclusively at the judgement of the federation and corresponding coach, with such a wide degree of discretion that makes it very difficult to challenge them. In any case, any dispute would be brought before the jurisdictional bodies of the federation and ultimately decided by the High Council of Sport.

Taxation**36 What are the key taxation issues for foreign athletes competing in your jurisdiction to be aware of?**

There is currently no specific tax regime applicable to foreign athletes competing in Spain.

However, it should be borne in mind that, depending on the exact date of arrival or departure, the remuneration obtained in Spain, and the years of entry or departure, an athlete could be taxed as a non-resident under non-resident income tax. This tax provides for a maximum rate of 24 per cent.

Tax rates for those resident in Spain can reach 52 per cent depending on the Autonomous Community in which the player resides. It is important to review the cost of the wealth tax in Spain, which can amount to up to 2.5 per cent per annum of the player's total assets.

Special attention should be paid to the tax treatment of any income on a player's image rights being received by a company based either in Spain or abroad, as such income is generating a large number of lawsuits with the Spanish tax agency. Likewise, the Spanish tax agency

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is questioning the nature of the payments made by clubs to athletes' intermediaries.

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Sweden

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Regulatory

1 What is the regulatory governance structure in professional sport in your jurisdiction?

The right to participate in clubs and societies is guaranteed by the Swedish Constitution. Sport in Sweden is historically organised as an independent voluntary movement (generally known as the Scandinavian or Nordic model). The sports movement has been entrusted with the task of organising sports in Sweden with considerable freedom, but with the help of substantial financial support from the government.

Local sport clubs are the foundation of the sports movement. There are more than 20,000 local sport clubs registered as non-profit associations with the purpose of organising sports activities, having elite sports and 'sport for all' under the same umbrella.

The Swedish Sports Confederation is the unifying organisation at the national level, consisting of 71 special sports federations and 21 district sports federations, which organises more than 250 different sports and 20,000 sports clubs. Membership is only admitted to non-profit associations. The Swedish Sports Confederation supports its members and, in an official capacity, represents the whole sports movement in contacts with the authorities. Throughout the country, clubs are organised according to two principles: one geographical and one linked to the 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 Swedish Sports Confederation has its own 'supreme court', the Supreme Sports Tribunal. The tribunal deals with appeals against legal decisions handed down by the sports federations.

The sport clubs hold participating licences to take part in and compete in sports activities arranged by their respective special sport federation. The sport clubs are allowed to transfer these rights to a wholly or partly owned limited liability company under certain conditions; for instance, that the sports club holds the majority of the votes at the shareholders' meeting of the limited liability company (the 51-per cent-rule) and that the limited liability company is prohibited from transferring the sporting rights to a third party. Many sports clubs with elite professional sport activities, such as the top-level clubs in football and ice hockey, have used this opportunity to have their elite teams in a separate legal entity, which may attract financial investors from private business. So far, only one of these limited liability companies has listed its shares on the public market.

The supreme authority of sports in all Olympic matters is the Swedish Olympic Committee. It comprises 35 national Olympic sports federations (about half of the special sports federations mentioned above) as well as 12 federations of sports recognised by the International Olympic Committee.

2 To what extent are participants protected from liability for their on-field actions under civil and criminal law?

According to the statutes of the Swedish Sport Confederation, sanctions can be imposed on member organisations and individuals (including participating athletes). Athletes bind themselves contractually to comply with the rules of their club, their special sport federation, the Swedish Sport Confederation and the relevant regulations from international sport governing bodies.

An athlete's civil liability (non-contractual liability) is governed by the Tort Liability Act (1972:207) and case law. Athletes may be held liable for damage or injury caused to other athletes, officials, spectators, etc, 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 sport governing body's sport-specific rules.

Athletes have normally accepted the risks inherent in the specific sport. In some sports, violence is a natural part of the exercise, such as boxing. However, violence between athletes may constitute a criminal case even in sports where more violence than normal remains allowed and some actions can by juridical argumentation be given criminal liability. If a clear distinction cannot be found, an assessment of each sport itself needs to be done. As long as the athlete adheres to the relevant sporting rules, his or her actions will most likely not incur any civil or criminal liability. However, violence that takes place in a different part of the playing field than the game will meet with a greater risk of prosecution and conviction. Offences against personal reputation may also occur in the form of slander.

Sports-related violence and defamation cases are subject to public prosecution. Authorities will generally have to investigate criminal matters ex officio.

3 What is the regulatory framework for doping matters in your jurisdiction? Is there also potential secondary liability for doping offences under civil or criminal law?

The Swedish anti-doping programme is monitored by the Swedish Sports Confederation and its Doping Commission. The Regulations for Anti-Doping generally apply to all athletes who engage in competitive sports. All positive doping results are investigated by the Doping Commission, which decides if the matter should be reported for disciplinary action. The primary instance of decision on disciplinary actions for all sports is the Doping Panel of the Swedish Sports Confederation. The decision may be appealed to the Supreme Sports Tribunal.

The Doping Act (1991:1969) covers certain specific doping substances that are criminalised: synthetic anabolic steroids, testosterone, growth hormones, and chemical substances, which enhance the production or release of testosterone and its derivatives or of growth hormones. These substances may not be imported, transferred, manufactured, offered for sale, etc. Anyone wilfully breaking the Act will be sentenced to a maximum of six years' imprisonment.

4 What financial controls exist for participant organisations within professional sport?

Several sports governing bodies have established club licensing systems to ensure that the clubs have an adequate level of financial stability, management and organisation, a suitable sporting infrastructure, and well-equipped and safe arenas. Club licensing systems mainly occur within the elite levels of team sports, such as ice hockey and football. The regulations provide for sanctions to be taken against clubs that exceed spending within a set budgetary framework. Swedish clubs competing at an international level must also comply with the criteria set out by international sport governing bodies, such as UEFA's Club Licensing and Financial Fair Play Regulations.

Salary caps (or wage caps) have not been implemented in Swedish professional sports so far. The club licensing systems render help to

control the costs of teams and will most certainly have an impact on the salary costs as well. Generally, salary and other employment benefits are subject to individual negotiations between the sports club and the athlete.

Dispute resolution

5 Who has jurisdiction over the resolution of professional sport disputes in your jurisdiction, and how is this determined?

The use of arbitration is the preferred method of dispute resolution in the Swedish sports sector. Athletes bind themselves contractually to comply with the rules of their club, their special sport federation, the Swedish Sport Confederation and the relevant rules from international governing bodies. The sports federations, clubs and athletes are obliged to follow the internal judiciary instances of the sport governing bodies and to finally resolve disputes by arbitration. Most special sports federations have their own arbitration board. Under certain circumstances, the Supreme Sports Tribunal deals with appeals against sport-related decisions and disciplinary sanctions handed down by the special sports federations. The Supreme Sports Tribunal also serves as the second instance of appeal for decisions made by the Doping Panel based on the Regulations for Anti-Doping.

In the absence of an agreement to arbitrate, the public courts have jurisdiction over all disputes outside the specific rules of the sport, such as disputes related to commercial agreements or marketing practices, as well as civil and criminal liability cases.

A public court may not, following an objection of a party, rule on an issue that, pursuant to an arbitration agreement, shall be decided by arbitrators. A party must invoke an arbitration agreement on the first occasion that it pleads its case on the merits in the court. In such a case, the court will dismiss the legal proceedings, unless the arbitration agreement is invalid.

6 How are decisions of domestic professional sports regulatory bodies enforced?

An arbitration award is enforceable as a court judgment (the Enforcement Code (1981:755)). An enforceable award must be in writing and signed by a majority of the arbitrators.

7 Can the decisions of professional sports regulatory bodies be challenged or enforced in the national courts?

There are no established principles in Sweden regarding when the public courts can examine and decide on lawsuits in relation to decisions of sport governing bodies; for instance, decisions on membership issues or disciplinary sanctions. Generally, the public courts are very restrictive with challenging decisions from sport governing bodies and there are very few court cases on this issue. However, a public court may set aside a decision from a sport governing body if the decision involves substantial financial consequences for the parties involved, or if the decision is based on obvious unreasonable circumstances, such as discrimination because of race or religion.

Sponsorship and image rights

8 Is the concept of an individual's image right legally recognised in your jurisdiction?

Swedish law recognises an independent right to protect an individual's name or picture against exploitation in commercial contexts by the Act (1978:800) on Names and Images in Advertising (the Names Act). The Names Act gives fundamental protection against commercial use of an individual's name or picture in marketing without the explicit permission of the individual. Anyone who intentionally or with gross negligence violates the Names Act may be liable to a fine. The person whose name or picture was used is entitled to reasonable compensation for the infringement. If the violation was intentional or negligent, the infringer shall also pay compensation for other damage suffered by the individual. A criminal action for violation of the Names Act may not be brought by the public prosecutor unless there is a complaint from the injured party or a prosecution is necessary in the public interest.

9 What are the key legal considerations for the commercialisation and protection of individuals' image rights?

Top athletes would be well advised to protect their image rights with enforceable intellectual property rights, such as trademark registrations. The Trademarks Act (2010:1877) is the primary legislation governing trademarks in Sweden. Sweden is also an EU member state and has implemented the EU Trademark Directives. Sweden is also a party to several international agreements regulating trademarks, such as the Madrid Protocol. EU trademarks are recognised in Sweden, as well as international trademark registrations administered by the World Intellectual Property Organisation designating Sweden.

A trademark can be registered in the Trademark Register kept by the Swedish Patent and Registration Office. Protection is valid for 10 years and can be renewed for an unlimited number of consecutive 10-year periods. Individuals or legal entities can register Swedish trademarks. The owner of the mark can bring an action against anyone making unauthorised use of the mark. A name or logotype that is subject to trademark protection grants exclusive rights to the proprietor and prevents all third parties from unauthorised use of the name, or any sign confusingly similar with that name, within the course of trade. A trademark may consist of words, signatures, symbols or patterns, provided that the signs are distinctive.

A trademark may be assigned or licensed. Licensing of a trademark in Sweden is mainly governed by the agreement between the rights holder and the licensee.

10 How are image rights used commercially by professional organisations within sport?

As far as team sports are concerned, clubs pay their players typically for training and playing on the field under an employment contract and against a salary. In addition, clubs can normally use a player's image right (eg, physical characteristics, name, personal likeness) to generate revenue from sponsoring and merchandising agreements. In most major team sports, the player is obliged to participate in the club's advertising and sponsor activities to a reasonable extent and without any extra compensation. The club is often entitled to use the player's name and picture in advertisements, etc. The playing contracts will normally restrict the player from carrying out personal advertising work in the club's kit or using the club's intellectual property, and also from entering into personal endorsement agreements that may conflict with the club's existing sponsors. The precise restrictions will depend on the terms of the playing contract (and in some cases the applicable collective bargaining agreement). The playing contracts normally include provisions that the player, before agreeing to any personal endorsement deal or promotional activity, must ensure that they notify or obtain the required approval of their club.

Individual athletes may have similar obligations, for instance athletes who compete for the national team in competitions such as the World Championships or the Olympic Games. The individual athletes should ensure that their personal endorsement agreements include clauses that ensure they are not deemed to be in breach of contract by virtue of observing the rules and regulations of the national team or any national or international competition in which they compete.

11 How can morality clauses be drafted, and are they enforceable?

In individual sponsorship agreements, sponsors of athletes might protect themselves against serious sporting offences, such as doping and match-fixing. In many cases the sponsors go further and seek protection with the use of a morality clause, with which the sponsor protects itself against moral issues such as infidelity, alcoholism, gambling and other behaviour on the part of the athlete that does not reflect the sponsor's brand values.

To be enforceable and effective, the morality clauses must be both precise and comprehensive, and must provide a sponsor with flexibility when it comes to how the sponsor wishes to deal with incidents. A right of termination will usually be required, but also a right of suspension and a right to withhold future payments, fines or an indemnity for costs incurred by the sponsor. The clause may also require the athlete to cooperate with the sponsor in managing any scandal and immediately inform the sponsor of any material incident that may constitute a breach of the clause. A sponsor may also seek to include a right for

the reimbursement of any bonuses that have been paid. In some cases, the sponsor agreements include a 'reverse' morality clause enabling the athlete to terminate the agreement if the sponsor or the brand suffers reputational damage.

12 Are there any restrictions on sponsorship or marketing in professional sport?

In addition to the general advertising rules established in the Marketing Act (2008:486), there is special legislation that applies to the advertising of specific products and services, such as alcoholic beverages, tobacco products and gambling and betting services.

The marketing of alcoholic beverages is highly restricted under the Alcohol Act (2010:1622). All permitted advertising of alcoholic beverages (greater than 2.25 per cent alcohol by volume) must meet a particular level of moderation – ie, it must not be intrusive, insistent or encourage the use of alcohol, and not be aimed at people under the age of 25. Advertising of alcohol on television and radio is banned (the Radio and Television Act (2010:696).

The Tobacco Act (1993:581) bans all forms of tobacco advertising in relation to sport events.

The marketing of gambling services is strictly prohibited in Sweden under the Lotteries Act (1994:1000), except for two selected companies, controlled or owned by the state. These companies have a statutory obligation to prevent abuse or crime, as well as harmful social and health effects of gambling and betting.

In addition to the above, the Swedish Sports Confederation, the special sports federations and the sports clubs may have internal rules on sponsorship and acceptable marketing.

Brand management

13 How can sports organisations protect their brand value?

Improving technologies and global appeal have created an array of new opportunities for the participants in sports (principally governing bodies, clubs and players) and brand protection is therefore important. The key element of this is the effective protection of intellectual property rights that inform, enhance and identify the brands that they represent. Trademarks need to be registered in the trademark registry to be sufficiently protected (see question 9). They can either be assigned, or their usage can be granted through licences. The sports organisation should proactively and reactively protect its brands in new and existing markets, and be aware of both the opportunities and the risks of online markets and social media.

14 How can individuals protect their brands?

See question 9.

15 How can sports brands and individuals prevent cybersquatting?

Swedish law does not specifically regulate the right to domain names. The Internet Foundation in Sweden is responsible for the Swedish top-level domain, .se. Disputes regarding cybersquatting are solved by alternative dispute resolution. For .se, alternative dispute resolution is administered by the World Intellectual Property Organization.

16 How can individuals and organisations protect against adverse media coverage?

The Swedish press, radio and television have considerable freedom within the framework of the Freedom of the Press Act and the constitutional right of freedom of speech. However, individuals and organisations are under certain circumstances protected from unwarranted suffering as a result of publicity.

The Press Ombudsman (PO) and the Press Council (PON) are independent self-disciplinary bodies, handling complaints on the editorial content of newspapers and magazines, and their websites. PO, the investigating authority in the process, handles complaints from individuals and organisations who feel unfairly treated by the press. The complainant must be personally affected and identified in the text (eg, by name, photo or other identifiable information) with offensive or otherwise damaging information about them. The complaint must be submitted within three months of the publicity. If the PO finds that a publication is subject to criticism, the case will be submitted to the PON for review and decision. If the PON decides that the publication

should be criticised for breaching press-ethics rules, the restitution for the complainant is that the newspaper shall publish a statement of the PON decision in the newspaper or website, depending on the form of the original publication. The newspaper is also obliged to pay a fee to the PO and the PON as necessary.

The Swedish Press and Broadcasting Authority handles complaints with regard to radio and television.

Broadcasting

17 Which broadcasting regulations are particularly relevant to professional sports?

Broadcasting agreements are regarded as the most valuable source of revenue to the rights holders, and the development of the internet and other media as additional broadcasting media will have an impact on the business of broadcasting in the coming years. There is no specific legal framework for the exploitation of broadcasting rights. Swedish law does not recognise independent proprietary rights to an event per se. However, the event organiser or rights holder can protect and commercially exploit the various commercial rights in the event through agreements regarding the entry to the event. These rights allow the rights holder to exclude unauthorised persons or media from the venue. Other important rights derive from the Swedish Copyright Act, which provides protection of related rights (or neighbouring rights) of the producer, allowing the reproduction and distribution of recordings, and allowing the broadcasting organisation to retransmit and distribute its broadcasts. Broadcasting rights in many high-profile sports are sold collectively by the special sports federation or the league, such as the Swedish Hockey League, on behalf of its member clubs.

18 What means are available to restrict illegal broadcasting of professional sports events?

See question 17.

Event organisation

19 What are the key regulatory issues for venue hire and event organisation?

The sport event organiser can usually protect the sport event and the commercial rights to the event through a combination of real property law, contractual provisions, intellectual property law and tort law (see question 17). The event organiser often controls access to the venue in which the event is going to be held. The event organiser may restrict third-party access to the venue and ensure, through various agreements, that spectators and others admitted to the event are not entitled to benefit commercially from their attendance. The control over the venue is based on the laws of real property, contract and tort law. Tort law generally makes a trespasser of anyone who enters onto the land without permission, or enters with permission but then violates the terms and conditions of that permission. The event organiser can also protect and commercially exploit the various commercial rights in the event through agreements regarding the entry to the event (ticketing), sponsorship, broadcasting, merchandising, catering and hospitality, etc.

20 What protections exist against ambush marketing for events?

There is no general legislative ban on ambush marketing in Swedish law, but insofar as the ambush marketing infringes protected trademarks, it may violate the provisions of the Trademarks Act, the general ban on marketing that violates good marketing practices or the ban against misleading advertising under the Marketing Act.

21 Can restrictions be imposed on ticket sale and resale?

There is no specific legal framework prohibiting ticket touting, and it is a common phenomenon at online outlets. Ticket resale above face value is still legal in Sweden regardless of limitations imposed by the event organiser. Official ticket sellers have tried to prevent grey marketing by including a prohibition against reselling the tickets in its sale agreements or on the tickets themselves. Thus, reselling the ticket would be considered a contractual breach. Ticket quotas per customer and designating tickets for specified customers who can identify themselves have also been used to prevent grey market sales.

Immigration

22 What is the process for clubs to obtain work permits or visas for foreign professional athletes, and coaching and administrative staff?

EU citizens have the right to live and work in Sweden without a residence permit or a work permit. If they can support themselves, they automatically have right of residence in Sweden.

Athletes who are non-EU nationals need to apply for a work permit to compete for a sports club. The Swedish Migration Agency grants work permits and decides on permanent residence permits. The Swedish Sports Confederation is the referral body for athletes, coaches and administrative staff seeking work permits in Sweden. The individual must apply for the work permit and the permit must be granted before entering Sweden. The hiring club must be a member of the Swedish Sports Confederation and a signed contract with satisfying terms regarding salary must be present. The Swedish Sports Confederation must also certify that the employment is essential for the positive development of the sport in Sweden. The work permit, if granted, applies for the duration of the contract and only for work in the club mentioned in the contract, however, it can only be for a maximum of two years. It can thereafter be extended for another two years. If the athlete changes club or employer during the first two years, a new work permit must be applied for. A decision on a work permit can be appealed within three weeks.

23 What is the position regarding work permits or visas for foreign professional athletes, and coaching and administrative staff, temporarily competing in your jurisdiction?

Professional athletes, and coaching and administrative staff, can participate in international competitions in Sweden for a maximum period of 90 days within a period of 12 months without obtaining a work permit. However, non-EU citizens from certain countries may need a visa to travel to Sweden.

24 What residency requirements must foreign professional athletes, and coaching and administrative staff, satisfy to remain in your jurisdiction long term or permanently?

After four years with a work permit, a permanent residence permit may be granted. It is a requirement that the individual has been employed and worked during these four years.

25 Do the family members of foreign professional athletes, and coaching and administrative staff, legally resident in your jurisdiction have the same residency rights?

The applicant's family (spouse, common-law spouse or registered partner and unmarried children under 21) may receive permits for the same period as the applicant. If the applicant obtains a work permit for six months or longer, family members can also obtain a work permit for the same period as the main applicant. To obtain a personal identity number, the intended stay in Sweden must be at least 12 months. If a permit is granted for fewer than 12 months, the person cannot register with the Swedish Population Register at the Tax Authority and is therefore not eligible for any Swedish social benefits. It is, therefore, important that they have sufficient insurance coverage for illness and accidents, etc.

Sports unions

26 How are professional sporting unions incorporated and regulated?

The Swedish sports sector is fragmented between some unions and employer associations with a very specific domain and others with a very general domain, and there is no unifying actor that represents the whole sports sector. Sweden's largest trade union, Unionen, handles the collective bargaining agreements for contracted players in football, ice hockey and other team sports, on behalf of players' organisations such as the Swedish Ice Hockey Players' Association and the Swedish Footballers' Association (SFS). The Employers Alliance represents employers in the non-profit sector and handles the collective agreements on behalf of the clubs' organisations, such as Svensk Elitfotboll and the Swedish Hockey League.

Generally, the collective bargaining agreement lays down a number of terms and conditions of employment for the athletes, as well as

Update and trends

The Swedish Sports Confederation and the Swedish Football Association have recently required betting companies to cooperate with the sport governing bodies to investigate match-fixing. Furthermore, the sport federations of all the Nordic countries have set up a joint task force to review the possibility of having a ban in one country extended to include a ban on participation in the same sport in any of the other Nordic countries. The joint task force will also review the possibilities of developing unified reporting systems between the countries.

general rules concerning the work situation, such as paid leave during sickness, working hours, vacation and insurance.

27 Can professional sports bodies and clubs restrict union membership?

Sport governing bodies and clubs may not obstruct the athlete from being a member of a trade union or take part in athletes' club council or other interest groups of athletes.

28 Are there any restrictions on professional sports unions taking strike action?

If a trade union or group of employees calls for a strike, it should first of all be determined whether the strike is lawful. It is not lawful if: (i) the strike is not officially ordered by the employees' trade union; or (ii) the trade union is bound by a collective bargaining agreement with the employer. If the strike is not lawful, the employer may request that the strike is declared unlawful by a court. The employer may also claim damages from the participating employees or trade union. In addition, the employer may take action in the form of a lockout. If the strike is lawful, the employees' right to strike is protected by mandatory law. Thus, the employees cannot be terminated or subjected to other sanctions because of their participation in the strike.

Employment

29 What is the legal framework for individual transfers? What restrictions can be placed on individuals moving between clubs?

Swedish employment law is generally applicable to the relationship between clubs and athletes within all sports. It has been well established that athletes in the most commercialised team sports (eg, football and ice hockey) are regarded as employees. Many team sports prescribe that standard form contracts are to be used to govern employment relationships between clubs and players. The standard forms are set out by the governing bodies (such as the Swedish Ice Hockey Federation and the Swedish Football Association) following consultation with the body that represents the players in that sport. In some sports these standard employment contracts form an integral part of the collective bargaining agreement in place for that sport. Temporary (fixed-term) employments are generally allowed, up to a maximum of two years. Longer fixed-term employments have been agreed in the collective bargaining agreements (such as within football, which allows fixed-term agreements for up to five years). 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 Transfer Matching System.

30 Can individuals buy their way out of their contractual obligations to professional sports clubs?

Generally, fixed-term employment contracts may only be terminated upon expiry of the contract or by mutual agreement. Most athletes have a fixed-term contract without any provision regarding premature termination. This means that the parties cannot terminate the contract (or the athlete cannot switch club) before the fixed date, unless a material violation of the contract has occurred or if the parties mutually agree to terminate the contract. According to Swedish employment law, it is possible to terminate the employment relationship with immediate effect only if the employee or employer has grossly violated his or her liabilities according to the contract (such as criminal behaviour or doping allegations).

31 What are the key athlete welfare obligations for employers?

The Swedish Sports Confederation works proactively with its member clubs to make sports in Sweden more socially responsible and sustainable by implementing regulations, guidelines and education related to, for example, doping, sports integrity, diversity, inclusion, athletes' health, insurance matters, sexual harassment and violence in the work place. Most of these welfare obligations follow from Swedish law as well.

32 Are there restrictions on the employment and transfer of young athletes?

Young athletes (under the age of 18) can enter into binding agreements (for example, a player's contract with a club) only with the consent of their guardians. The athlete and the club must adhere to the transfer restrictions set out by the governing bodies (for example, the Swedish Football Association) and the corresponding rules from international governing bodies, such as FIFA's Regulations on the Status and Transfer of Players, which prescribes that international transfers are only permitted for players over the age of 18, unless the individual player who is under 18 meets one of three qualifying criteria: (i) if his or her parents move there for non-football reasons; (ii) if he or she is from another country within the EU or EEC and aged between 16 and 18; or if he or she lives within 100km of the club.

33 What are the key child protection rules and safeguarding considerations?

Minors in Sweden have limited legal capacity between the ages of 16 and 18. Minors can enter into binding agreements (such as a player's contract) only with the consent of their guardians. The minor may terminate the agreement with the club on his or her own and - if he or she is 16 - enter into a new player contract with another club without obtaining consent from his or her guardians. The minor or the guardian may terminate the player's contract with immediate effect, if this is necessary with regard to the minor's health, development or education. If the guardian has terminated the player's contract for this reason, the minor is not allowed to enter into any new agreement without the guardian's consent.

34 What employment relationship issues arise when athletes represent both club and country?

The right or obligation for an athlete to represent the national team differs from sport to sport. An elite ice hockey player has an obligation under the player's contract with the club to represent the national team if so required. In other team sports, the club has an obligation towards the athlete to make sure the athlete is available to represent the national team. Normally the club will pay the player wages and other fees even during the period when he or she is representing the national team.

35 How are selection and eligibility disputes dealt with by national bodies?

The principle task of selecting athletes to the relevant games and competitions lies with the club, the special sports federation or, in the run-up to major sporting events such as the Olympic Games, the Swedish Olympic Committee. The relevant eligibility and selection criteria differ from sport to sport and can include matters such as nationality, gender, age or results in certain specified competitions. In circumstances where disputes arise and athletes seek to appeal against the decision of the selectors, the rules governing the athlete's relationship with the club, the relevant special sports federation and the Swedish Sports Confederation's statutes set out the terms for the athlete's right of appeal. Decisions from the Swedish Olympic Committee may be appealed to the Court of Arbitration for Sport.

Taxation**36 What are the key taxation issues for foreign athletes competing in your jurisdiction to be aware of?**

Payment of remuneration to non-resident athletes may be made on particularly favourable tax terms for a limited period of time in accordance with the rules of the Act on Special Income Tax for Non-resident Artists and Others (SFS 1991:591, A-SINK). The applicable A-SINK tax rate is 15 per cent. If the athlete frequently stays in Sweden during a continuous period of six months, he or she will generally be considered to be resident in Sweden. In such a scenario, the A-SINK tax would not be applicable.

A non-resident athlete who derives taxable income from Sweden must, as a rule, also pay tax in his or her country of residence. To avoid double taxation of the same income, Sweden has entered into double taxation treaties with other countries. Double taxation is generally eliminated through the credit method. Without any double taxation treaty, there is an apparent risk of double taxation.

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Regulatory

1 What is the regulatory governance structure in professional sport in your jurisdiction?

The UK government has adopted a non-interventionist approach to sport and there is no general law of sport. Instead, the regulation of individual sports is largely left to their national governing bodies (NGBs), which are autonomous bodies whose authority derives from a voluntary agreement between the NGB and its members, with the government only intervening where it is deemed in the public interest to do so. One such example is the Football Spectators Act 1989, which, as a result of the findings of the Lord Justice Taylor's report into the Hillsborough disaster of April 1989, ensured that all clubs in the top two tiers of English professional football would be required to provide all-seated accommodation at stadiums in an effort to improve safety and assist with crowd control.

2 To what extent are participants protected from liability for their on-field actions under civil and criminal law?

Participants in sport do not enjoy blanket immunity from criminal or civil sanctions for their actions while participating in sport.

In a civil context, participants in professional sport owe a duty of care to one another, meaning they must not act negligently, recklessly or with the intention to cause harm, but must instead exercise reasonable care in all circumstances. The precise nature and scope of that duty of care will differ according to the rules and characteristics of the sport in question. Unless a sport has a specified dispute mechanism by which its participants are bound, then its participants will be entitled to pursue civil claims against one another for any damages suffered (ie, personal injury claims).

In a criminal context, there is a general concept of implied sporting consent, providing sporting participants who commit dangerous acts (that might otherwise give rise to criminal liability) an exemption to being charged, provided the act in question falls within the boundaries of what could reasonably be expected in their sport. Even acts that breach of the rules of the sport may nevertheless be consented to if they fall within the practices of the sport, a concept widely referred to as the 'playing culture' of a sport.

3 What is the regulatory framework for doping matters in your jurisdiction? Is there also potential secondary liability for doping offences under civil or criminal law?

The regulatory framework for doping matters in the UK is based on the World Anti-Doping Agency (WADA) Code, which is the global platform for anti-doping regulation alongside the Court of Arbitration for Sport (CAS) as the ultimate arbiter of the WADA Code's interpretation and application.

UK Anti-Doping (UKAD), a non-departmental public body accountable to parliament, is responsible for ensuring UK sports bodies' compliance with the WADA Code through the implementation and management of the UK's 'National Anti-Doping Policy'. UKAD has developed the 'UK Anti-Doping Rules', which are adopted and incorporated into the rulebook of NGBs for each sport in the UK. An NGB may amend or supplement these rules to reflect the specificities of its sport (provided there is no conflict with the WADA Code). NGBs are also subject to the anti-doping jurisdiction of their international federations.

Outside of the regulatory framework, there may be secondary liability under civil law (for example, a doping offence may constitute a breach of a sponsorship or endorsement contract). At present, the UK does not have any anti-doping specific criminal law; however, individuals can be liable for using illegal substances under the general norms of criminal law.

4 What financial controls exist for participant organisations within professional sport?

There are no statutory controls within the United Kingdom that apply specifically to sport, and most sports organisations are subject to the usual accounting rules and financial controls that apply more generally under company law.

Various NGBs in the United Kingdom have, however, introduced financial controls within their own rules. In football, both the Premier League and English Football League have introduced forms of financial fair play, targeted at reducing clubs' financial losses. Other sports have introduced salary caps to control costs, setting limits on the total outlay organisations can spend on players' salaries. This includes Premier League Rugby, English County Cricket and the Women's Super League in football.

Dispute resolution

5 Who has jurisdiction over the resolution of professional sport disputes in your jurisdiction, and how is this determined?

There is no single authority or body in the UK that automatically has jurisdiction over sporting disputes. The question of which authority or body is tasked with resolving the dispute will depend upon the precise nature of the dispute in question.

A regulatory or disciplinary offence by a participant will usually fall to be determined by a disciplinary committee (or similar body) pursuant to the relevant NGB's rules. Where a dispute falls outside this sphere and is akin to disputes of a civil nature (eg, breach of contract claims), the majority of NGBs require participants to resolve disputes by way of arbitration. NGBs ensure this is the case by including a valid arbitration clause in their rules that meets the definition of an 'arbitration agreement' under sections 5 and 6 of the Arbitration Act 1996 (the 1996 Act).

Should a sporting participant attempt to resolve a dispute falling within the scope of an arbitration agreement by way of court proceedings, then the respondent or defendant may seek a stay of the proceedings pursuant to section 9 of the 1996 Act.

There will, however, be certain sporting disputes that will fall outside of the scope of an arbitration agreement, thereby allowing them to be litigated in the civil courts, though this will depend on the precise facts of the case or the nature of the relief being sought by the claimant.

6 How are decisions of domestic professional sports regulatory bodies enforced?

Decisions against participants within a sport are often enforced through restrictions on the participant's involvement in the relevant sport under the sport's rules. Sports clubs and athletes can be ineligible to compete in competitions affiliated with the relevant NGB for a designated period or indefinitely, or made to pay financial penalties, or both. Failure to comply with a decision can result in further sanctions within

the sport. Similarly, non-competing participants within a sport could be prohibited from conducting business or commercial activities with participants within the relevant sport.

Where the decision by a regulatory body has been made by a tribunal constituted pursuant to a valid arbitration agreement, then the award made by that tribunal is final and binding on the parties to it and can be enforced in the same manner as a judgment or order of the court to the same effect (pursuant to section 66 of the 1996 Act). This can include applying for charging, third-party debt or attachment of earnings orders.

7 Can the decisions of professional sports regulatory bodies be challenged or enforced in the national courts?

The rules of sports NGBs will (or should) contain detailed disciplinary regulations confirming how any regulatory or disciplinary sanctions are imposed upon participants within the sport, along with a clearly defined appeals process allowing participants to challenge any first instance decision. In the event that the appeal body subsequently upholds (in whole or part) a first instance decision, the basis upon which the disciplinary sanction can be challenged depends upon the content of the NGB's rules and the precise nature of the disciplinary commission that imposed the disciplinary sanction. Where the committee is not an independent arbitral tribunal, the civil courts will be able to review the commission's decision to ensure that an NGB has operated within its lawful limits. A court will do so by reference to the same grounds for review the Administrative Court would apply to the decisions of a public body (eg, the manner in which the decision was made and how it was reached, while considering wider public policy considerations, rather than reinvestigating the factual and evidential basis upon which the decision was made). A court will have the power to grant declarations and injunctions where the decisions of a disciplinary body affect a person's right to work.

Where a respective NGB's appeal procedures constitute a valid arbitration, a court is unable to further consider the lawfulness of a decision. In such an instance the participant's ability to challenge a decision is limited to those grounds set out in the 1996 Act: (i) the tribunal lacked substantive jurisdiction; (ii) the award was affected by a serious irregularity; or (iii) the award was appealed on a point of law. See question 6 for details on enforcement of such decisions.

Sponsorship and image rights

8 Is the concept of an individual's image right legally recognised in your jurisdiction?

While commercial arrangements relating to the use of individuals' image, fame and reputation are commonplace (for example, for promotional activities or the creation of branded products), English law does not recognise a distinct concept of an 'image right' that is capable of ownership or registration.

Instead, a piecemeal approach is adopted, combining tangible and intangible assets, whereby contractual arrangements and a range of statutory and common law causes of action are relevant for individuals who are seeking to exploit and protect their image rights and, in particular, prevent unauthorised use of their image (eg, in promotional materials, on or in products or services). For these purposes, it is generally considered that 'image' or 'image rights' comprise rights connected to an individual for commercial or promotional purposes including his or her name, nickname, photograph, signature, likeness and logo.

9 What are the key legal considerations for the commercialisation and protection of individuals' image rights?

One of the first considerations is whether or not the individual will establish an image rights structure, whereby the individual's image rights are owned or controlled through one or more corporate entities as opposed to by the individual personally. Tax considerations will form a crucial part of any such structuring.

Preventing unauthorised use of individuals' image rights is also of crucial importance, including enforcement of any legal rights that may apply to provide protection to the relevant individual and their rights. This is most likely to occur through actions for breach of contract, passing off and trademark infringement. Depending on the individual and the nature, strength and strategy around their brand and image, this

could be done reactively when issues arise, or there could be a more proactive monitoring and enforcement of the individual's rights.

Care should be taken to ensure that where third parties are authorised to use an individual's image, the terms of authorisation are carefully defined and documented to provide appropriate control and protection for the individual. In particular, thought should be given to the relevant products, services and brands to which such rights are granted, any exclusivity, rights of approval for the individual over the use of their image, morality or reputation-based conditions and relevant termination rights, along with the applicable financial arrangements (which may include royalties or revenue shares in the event of licensed products or services being relevant).

A key issue at all times is to ensure the 'fit' and consistency of different arrangements and the commercial programme as a whole, taking into account existing arrangements at any particular time as well as protecting potential future opportunities.

10 How are image rights used commercially by professional organisations within sport?

Professional organisations normally utilise image rights for marketing and promotional purposes, including the promotion of the organisation itself and its activities (eg, ticket sales) and use on or in any products and services offered (eg, branded merchandise).

Organisations may also seek to commercialise these rights with third-party partners and sponsors, with the use of images and the making of appearances by individuals often a key feature of sponsorship or partnership arrangements. These may then be used by the third party to promote its association with the organisation, its own business, or for creating branded products or services.

The terms of the relevant acquisition of the rights will determine the extent and scope of the organisation's exploitation of such rights – it is crucial that these arrangements are consistent so that the organisation only exploits the rights that it has acquired. Various considerations apply in this regard, including whether the rights are acquired in a personal or organisation-specific context, whether exploitation must be in conjunction with other individuals, and other commercial provisions that may be agreed between the parties.

11 How can morality clauses be drafted, and are they enforceable?

Morality clauses seek to define the type of behaviour that is prohibited by a contractual party, the impact of such behaviour and the related consequences. Provisions in favour of an organisation associated with an athlete are increasingly common and topical (though it should be noted that many athletes may also seek reciprocal protections from entities or brands with whom they have a commercial relationship). The parties will generally approach the position from opposing positions, with brands seeking wide protection against potential reputational damage from association with an athlete, whereas the athlete will seek to restrict, limit and tighten such provisions as far as possible, to avoid a wide and potentially subjective provision that risks the athlete being in breach of an agreement and liable for damages or at risk of the arrangement being terminated. The specific drafting of such clauses tends to be bespoke, depending on the particular brand, athlete and circumstances.

Morality clauses are subject to the ordinary principles of law in respect of their enforceability. On the face of it, a commercially agreed morality clause resulting from an arm's-length negotiation between two appropriately advised parties will be enforceable.

12 Are there any restrictions on sponsorship or marketing in professional sport?

There are a range of restrictions on sponsorship and marketing in connection with professional sport and this is a fluid area that is subject to ongoing change and evolution. While certain sport-specific restrictions may be imposed, generally by NGBs, the most widely applicable restrictions are government-backed rules and regulations managed by regulatory bodies such as the Advertising Standards Agency or the Office of Communications (Ofcom), all of whom have individual codes of practice affecting marketing across various forums, whether through social media, sports broadcasts, print advertising or other promotional activities. Codes can include a wide array of requirements, such as general prohibitions on misleading consumers or restrictions on advertising to children.

The laws and regulations around marketing are particularly stringent around age-based products, such as tobacco, alcohol and gambling, particularly in restricting marketing to minors. By way of example, in the case of gambling, domestic regulations prohibit adverts targeting children, while separately the FA has implemented football-specific rules, including a prohibition on junior and academy club teams featuring gambling sponsors on their kit.

Brand management

13 How can sports organisations protect their brand value?

Branding is key to sports organisations establishing a strong identity, creating a fan base and generating income. Trademarks are particularly important for protecting brand identity. Sports organisations may register trademarks to protect their name, crests and logos. Various remedies are available for unauthorised use of registered trademarks, including damages, injunctive relief and orders for delivering up infringing material. The law of 'passing off' in the United Kingdom also provides some protection against unauthorised use of unregistered marks.

Copyright is another valuable intellectual property right. In sport, copyright subsists in a range of original material such as books, articles, blogs, film and other visual footage, all of which can increase brand value.

Registering a domain name or names is another form of brand protection, putting a sports organisation at the fore on related internet searches, while social media and technology offer sports organisations further digital opportunities to build their brand. By engaging with platforms such as Twitter and Facebook, or creating an app, organisations can have a global reach. However, organisations will need to ensure regular monitoring of their digital and media presence and more generally in the public domain, taking appropriate legal action taken where necessary to protect their brands.

Sponsorship provides another key way to enhance brand value. Sports organisations should carry out due diligence on prospective partners to ensure they are not brought into disrepute by association with any such companies. Carefully drafted sponsorship contracts are important to ensure an organisation's brand is well protected, particularly around each partner's use of the sponsorship rights granted.

14 How can individuals protect their brands?

Individuals can generate significant public acclaim through their sporting performance, leading many to become brands in their own right. In many respects, the protections of such brands mirror those of companies, such as registration of trademarks (eg, individual logos); passing off claims to protect against unauthorised use of their name, likeness or other personal attributes; registration of domain names; and other brand-building through social media and online. Individuals who engage directly on social media will need to be aware of the risk of reputational damage through such activities, in particular ensuring that any comments or posts they make on social media are appropriate and not controversial. Sportspersons and their representatives should also monitor media content for any defamatory material. Cease-and-desist or take-down notices, or other forms of legal action, such as pursuing a defamation claim, are some of the legal options available to protect an individual's brand.

Many sportspersons derive substantial income from endorsement and sponsorship deals and therefore choosing the right companies or products to be associated with is key along with ensuring that any endorsement or brand ambassador arrangements are not overly restrictive on the individual's ability to pursue other commercial opportunities. An individual's image rights structure and commercialisation can form a significant part of this (see questions 8 to 10).

15 How can sports brands and individuals prevent cybersquatting?

Where a domain name is registered using a registered trademark, the trademark owner may have a case of trademark infringement; otherwise, there is no automatic right in the United Kingdom for an individual or a company to a domain name containing his or her name.

For new companies, one way of preventing cybersquatting is to determine the most relevant domain names for the business and then purchase these key domains prior to registering the company.

However, as it would not be cost-effective to purchase every single domain name that may be associated with a company, there is always likely to be some degree of risk of cybersquatting occurring. For existing businesses, they may wish to purchase key domain names containing a brand name prior to launching any new product or service. Once a company name and its brands, products and services are in the public domain, the likelihood of cybersquatting will increase.

When dealing with cybersquatting, it is important to identify the owner of the disputed domain, which can usually be obtained by searching the WHOIS database of registered domains operated by the Internet Corporation for Assigned Names and Numbers (ICANN). Businesses and individuals may wish to negotiate directly or through their legal advisers with the owner for the transfer of the disputed domain. Cybersquatters are likely to demand a fee. Alternatively, several organisations, such as Nominet (which administers .uk domains) and ICANN, operate a dispute resolution procedure that can be used to challenge domain name registrations.

16 How can individuals and organisations protect against adverse media coverage?

While any individual or organisation in the public eye can experience adverse media coverage, the world of sport attracts particularly significant media scrutiny. This can vary from fair scrutiny to coverage that is ill-informed or inaccurate. Claims may be brought where such content is deemed to be defamatory.

Individuals' and organisations' compliance with applicable laws and regulations in respect of their day-to-day activities provides the most obvious protection against adverse media coverage. Organisations should also ensure their employees are aware that their actions and behaviour (both 'on and off the pitch') may inadvertently reflect on the organisation's reputation and brand. Morality clauses can provide some protection in this regard (see question 11).

Other tools include putting in place appropriate confidentiality agreements when undertaking or negotiating potential future arrangements with third parties; ensuring any commercial contracts include robust confidentiality provisions; dealing with threats to publish allegations or commercially sensitive information expeditiously; regular online and offline reputation monitoring; and legally challenging untrue or defamatory content in the media to secure its removal and prevent wider publication.

Broadcasting

17 Which broadcasting regulations are particularly relevant to professional sports?

The EU's Audiovisual Media Services Directive provides the overarching framework for much of the broadcasting regulation within the EU and is further supplemented and complimented by various domestic regulations. The directive covers a broad array of issues, including sponsorship and advertising, the use of visual extracts by news organisations in event reports and the protection of public access to certain sporting events. Compliance within the United Kingdom is currently monitored by Ofcom, which has the power to implement various rules and codes of practice. This includes the Ofcom Code on Sports and Other Listed and Designated Events, known as the 'listed events'. This defines which events must be made available on free-to-air channels and those that may be shown exclusively on pay-television, provided that sufficient secondary coverage is provided on free-to-air television.

Further obligations apply under Ofcom's wider Broadcasting Code (the Code), covering, among other items, the use, format and delivery of any sponsor credits in connection with a broadcast, use of virtual advertising, and the length of advert breaks. Perimeter and background advertising at venues that appears on a broadcast will also be subject to the Code as well as the UK Code of Broadcast Advertising. Ofcom has the power to impose a financial penalty on any licensees for non-compliance.

Beyond broadcasting specific regulations, the wider impact of competition law is unavoidable, affecting almost all elements of broadcasting, whether it be the collective sale of broadcasting rights, tender processes, exclusivity arrangements, blackout rules, territorial rights and overseas distribution. The cessation of Sky's monopoly on the Premier League rights provides a distinct example of its impact.

18 What means are available to restrict illegal broadcasting of professional sports events?

While under UK law there is no fundamental proprietary right in sporting events per se that broadcasters and event hosts can enforce against illegal broadcasters, event organisers will be able to restrict illegal broadcasting through their control of event access and the terms of entry. This allows organisers to limit access to approved broadcasters and prevent illegal broadcasting through either the threat of breach of contract claims against attendees who seek to illegally film and broadcast the event, or by simply ejecting such individuals from an event. Policing this for all attendees can be problematic given the advent of smartphones and therefore many organisers and broadcasters will seek to target the major sources of transmission of illegal broadcasts.

In particular, broadcasters can seek to enforce rights under copyright over the contents of their broadcasts (including the graphics and overlay that form part of the broadcasts), seeking injunctions under the Copyright, Designs and Patents Act 1998, as recently used by both UEFA and the Premier League to require internet providers to block illegal streaming sites.

Industry bodies such as the Federation Against Copyright Theft have also been working with authorities to target illegal broadcasting occurring through the use and sale of illicit streaming devices (colloquially known as Kodi boxes). Prosecutions have been brought against sellers of the boxes as well as venues who have used the devices to show live sports illegally.

Event organisation

19 What are the key regulatory issues for venue hire and event organisation?

Event organisation and hosting in modern sporting events often involve major operations, and organisers therefore need to ensure they are aware of potential liabilities and consider how they can mitigate related risks where possible.

Event organisers can be civilly liable to both event attendees and event participants. The Occupier's Liability Act 1957 sets out the duty occupiers or controllers of any premises have to ensure entrants are reasonably safe while inside their premises.

There is a further plethora of health and safety requirements under statute and local licensing laws with which an event organiser must comply, including the Safety of Sports Grounds Act 1975, which subjects the owners of large sports grounds (over 10,000 capacity) to a comprehensive scheme of licensing and control, while further laws cover disabled access, the sale of alcohol and compliance of any promotional activities with advertising laws.

Organisers must also consider any potential NGB requirements, such as the venue set up, which can cover seating specifications, in-venue branding and advertising, as well as access and facilities for media and competition officials.

20 What protections exist against ambush marketing for events?

As noted in question 13, trademark, copyright laws and potential passing off claims can provide events with some protection around the use of their branding.

Ambush marketers may also fall foul of advertising codes of practice and consumer laws, though these often require formal complaints to be made to relevant regulators, rather than enabling a direct action against the ambusher.

Event organisers can also protect against ambush marketing through various contractual means. Ensuring that venues are provided 'clean' (ie, without pre-existing advertising) and that broadcasters only advertise official sponsors. Other protections can include buying up advertising space around the event to prevent ambush marketing in close proximity and, in what is in many ways the greatest protection, through the creation of unique or distinct elements of the event brand such that there is a distinct difference between official sponsor promotions and marketing by unassociated entities.

The government has on occasion introduced bespoke legislation specifically designed to limit ambush marketing. This was the case for both the London 2012 Olympics and the Glasgow 2014 Commonwealth Games (albeit these were federation hosting requirements).

21 Can restrictions be imposed on ticket sale and resale?

English law does not generally impose any restriction on ticket resale and for the most part people are free to buy and sell their own property. However, growing public anger at the effects of ticket touting and regular press coverage of the issue have led the government to introduce additional consumer protections. These have included specific information that must be provided on any ticket sale or resale and introducing a criminal offence for resellers who use automated technology to purchase large swathes of tickets.

Event organisers can exert some level of control over resale through ticketing terms and conditions of access. By including strict conditions such as non-transferability, requiring photo identification on entry to a venue and the right to cancel tickets if they appear on a reseller website, organisers can restrict the ability of secondary sellers to sell the ticket, with breaches of the conditions potentially rendering the tickets void and worthless.

Immigration

22 What is the process for clubs to obtain work permits or visas for foreign professional athletes, and coaching and administrative staff?

At the time of writing, athletes, coaches and administrative staff who are EU/EEA nationals have the right to work in the United Kingdom under EU law. This will change following the exit of the United Kingdom from membership of the EU in March 2019, but it is envisaged there will be no change to current rights under EU law until 31 December 2020.

Non-EU/EEA national athletes and coaches will in most cases need to be sponsored to work in the United Kingdom (although other routes, such as UK ancestry, are available). This requires a club or team to first obtain a Governing Body Endorsement (GBE) from the sport's NGB as endorsed by the Home Office. A GBE confirms that the NGB considers the athlete or coach to be of the highest calibre in that sport and will make a contribution to that sport in the United Kingdom. Each NGB is responsible for setting the criteria for their sport for an athlete or coach to qualify for a GBE.

Once a GBE has been obtained, the club or team can then sponsor that individual by assigning a 'certificate of sponsorship'. Thereafter, the individual must apply for a UK visa under either the Tier 2 or Tier 5 category (the former if the individual is from a majority English-speaking country or has passed an English language test and the latter in all other cases). The duration of leave granted will depend on the type of visa the athlete obtains and the length of the individual's employment contract.

The position differs for administrative staff. They will also likely need to be sponsored to take up employment in the United Kingdom, but whether they can be sponsored will depend on the nature of their role and whether it is deemed by the Home Office to be a 'skilled job'.

23 What is the position regarding work permits or visas for foreign professional athletes, and coaching and administrative staff, temporarily competing in your jurisdiction?

'Non-visa nationals' do not generally need prior permission or a visa to come to the United Kingdom temporarily to compete in a match, competition or tournament. 'Visa nationals' do, however, require a visa for this purpose, which should be obtained before they travel.

The Immigration Rules dictate the length of stay permitted, what payments may be received for participation in such events and the types of activities that can be undertaken in the United Kingdom.

24 What residency requirements must foreign professional athletes, and coaching and administrative staff, satisfy to remain in your jurisdiction long term or permanently?

How and when someone is eligible for permanent residence will depend on what visa category they are currently in the United Kingdom under. Generally, an individual is eligible to apply for permanent residence status if they have lived in the United Kingdom validly for a continuous period of five years.

However, if an athlete, coach or administrative staff member is absent from the United Kingdom for a significant stretch of time during this five-year period, this may affect their eligibility for permanent residence.

25 Do the family members of foreign professional athletes, and coaching and administrative staff, legally resident in your jurisdiction have the same residency rights?

Most partners and children who come to the United Kingdom as dependants of the athlete, coach or administrative staff member will share the same residency rights. In addition, some 'extended' family members may also be eligible for the same residency rights as their athlete, coach or administrative staff family member under EU law.

There may, however, be certain conditions attached to their leave. For example, dependants of someone who is in the United Kingdom under the points-based system are generally not permitted to take up employment as professional sportspersons (including coaches).

Dependent family members' rights will generally be conditional upon the athlete, coach or administrative staff family member continuing to be employed in the United Kingdom.

Sports unions

26 How are professional sporting unions incorporated and regulated?

Sports unions sit within the same regulatory framework as any other trade union within the United Kingdom and are regulated under various primary laws and supplementary regulations. Unlike registered companies or partnerships, trade unions are not defined through their legal form, but can be constituted and run in various manners. Rather, they are defined by reference to their organisational purpose. The definition of a trade union within Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) is that the organisation's principal purpose is the regulation of relations between workers and employers or between workers and employers' associations. The internal governance and conduct of trade unions is generally governed by their own internal rules, which are set collectively by their members.

Under section 3 of TULRCA, the Certification Officer maintains a public list of all trade unions. Entry on to this list acts as evidence that the relevant organisation is a trade union. Once formed, unions can engage in various levels of activism; however, to engage in collective bargaining, unions will require formal recognition. Recognition can be voluntary, where an employer agrees that the union can represent its employees, following which the union and employer will normally draw up an agreement setting out how the arrangement and associated bargaining processes will operate. Where an employer declines to recognise a union, the union can then apply to the Central Arbitration Committee (the UK government body adjudicating on applications for statutory recognition of trade unions for collective bargaining). The latter is a more onerous process and requires the union to also apply for a certification of independence and, as one might expect, can also lead to a more confrontational approach between the union and employer.

27 Can professional sports bodies and clubs restrict union membership?

UK law makes clear that workers have the right to choose whether or not to be members of a trade union. It is unlawful for an employer to seek to prevent a worker from freely exercising this right. Employers cannot offer workers any inducement not to join a union or take part in union activities. Further, under the Employment Relations Act 1999 (Blacklists) Regulations 2010 (SI 2010/493), it is illegal for employers to compile, supply, sell or use a blacklist of union members for the purpose of discriminating against certain individuals in the recruitment or treatment of workers. Professional sports bodies and organisations cannot, therefore, seek to restrict union membership, for example, by failing to select an individual because of his or her membership.

The only complication in a sporting context is whether an athlete can be considered a worker for the purposes of the relevant legislation. While in many sports an athlete's status is clear by way of their direct employment by a club, in the case of individuals in sports such as athletics, where funding is often provided by grants from national bodies rather than through a formal employment relationship, it may be less certain as to whether they will be considered a worker under UK law.

28 Are there any restrictions on professional sports unions taking strike action?

The laws on industrial action do not enshrine a formal 'right to strike' for workers and unions. The 'right' is constituted by a mix of contract,

Update and trends

While uncertainties remain around Brexit, the long-term effect on sport is yet to be seen and will likely become more apparent over the coming years as the terms of the United Kingdom's exit become clear. One significant trend has been the increasing concern around athlete welfare. Particular unease has arisen over the internal and coaching culture within many sports, with a notable focus on youth sport. The adequacy of protections for minors within sport has been questioned, an issue further brought into the spotlight by the various allegations of historical abuse of minors within football.

Aside from athlete welfare, there has been an increasing focus on gambling in sport, most notably over the growing presence of gambling companies as sponsors within sport and the impact of this on the culture around sport. Particular concerns have been raised as to the incidental exposure of gambling companies to children that this brings, even where promotional activities are not directly targeted at this group.

Finally, one of the most conspicuous changes has been the change in the way audiences are now consuming and engaging with sport. Amazon's recent purchase of the Premier League package for 2019 is indicative of the gradual move away from the prominence of the traditional television broadcasting model to greater online and social media engagement, a trend widely expected to increase in the coming years.

tort and statutory law. From a basic standpoint any strike action will be breach of contract by an employee, and a union would be liable under tort for inducing a breach of contract where it has encouraged or supported the strike. However, where strike action is undertaken in accordance with certain statutory procedures, an employer (broadly) has no right to prevent union members from taking industrial action and a union will not be liable under tort for supporting such action. The key statutory provisions are set out within TULRCA and the Trade Union Act 2016, which impose various requirements on unions seeking to organise industrial action, including in particular the proper running of a ballot. Employers will have two potential remedies for any non-compliance with such requirements, either damages, which are capped under statute relative to a union's membership level (these are considerably lower than the potential losses an organisation may face as a result of any strike action), or an injunction to prevent the strike action, which will serve as the most valuable remedy for any employer.

In addition to the statutory requirements for taking strike action, contractual restrictions on strike action can apply where a union has entered into a collective agreement with an employer containing a 'no strike' provision. Such a provision is, however, very unusual and we are not aware of any sports unions in the United Kingdom that have committed to such an agreement as yet.

Employment

29 What is the legal framework for individual transfers? What restrictions can be placed on individuals moving between clubs?

UK law is underpinned by the principle that individuals are free to ply their trade as they choose. In sport, transfer systems broadly arise through the rules of NGBs. Many sports operate a 'registration' system where players are required to be registered with their clubs and are only eligible to play for another club following a transfer of their registration, leading to organisations acquiring the right to transfer the registration from another club in order to then enter into a contract of employment with the individual.

Any transfer system imposed by an NGB must still comply with UK employment laws and EU laws on freedom of movement. In the case of the latter, any restriction on an individual's basic free movement rights is only permissible where justified by a proportionate and legitimate aim. The justification is often made that the regulations help ensure competitive balance, preventing players from leaving a team at any time, which could destabilise an organisation and the relevant league. While various cases have considered free movement in the past, occasionally leading to rule changes within individual sports, uncertainty remains as to whether such restrictions are in fact compatible with UK and EU law.

30 Can individuals buy their way out of their contractual obligations to professional sports clubs?

There is no statutory mechanism for professional athletes to formally buy their way out of their employment contracts and we are not aware of any attempt (or desire) by any of the major sports NGBs in the United Kingdom to provide such a right within the regulatory framework of their sport. However, individuals and organisations remain free to include bespoke termination rights within a contract whereby an agreement may be terminated on payment of a contractually agreed sum.

31 What are the key athlete welfare obligations for employers?

Sports organisations have a legal duty to take reasonable care of their employees' health and safety (including an employee's mental health) and to take reasonable steps to provide a safe workplace. The duty arises through tort, statute and as an implied term of an employment contract. Organisations, therefore, need to carefully consider how they can take reasonable steps to protect their employees both on and off the field.

Employers are further required to protect their employees from bullying, abuse, discrimination and harassment. Organisations can be liable for the acts of those in supervisory positions (eg, coaches or managers) and for any failure to address negative actions by an employee's colleagues. Sports organisations should be aware that these duties are uniform across industries and the fact that certain behaviours may be common within sport (eg, aggressive management styles) will not lower the expected duty of care.

Recent concerns over athlete well-being led to the Department of Culture, Media and Sport commissioning a Duty of Care in Sport Review, published in 2017. The report recommended additional changes to protect athletes, particularly those not formally employed by organisations that are unable to rely on the implied rights thereunder. Recommendations included the appointment of a Sports Ombudsman to hold sporting organisations to account, though many of these changes are yet to be implemented.

32 Are there restrictions on the employment and transfer of young athletes?

Children in the United Kingdom can only work full time upon reaching the age of 16 and having completed their final school year, and part time from the age of 13. Children under 13 may only be employed in performance roles requiring a performance licence (including paid sporting activities). Restrictions also apply to the hours children can work relative to their age.

Throughout sport, organisations have recognised the value of securing future talent at a young age and are devoting ever-increasing resources to managing academies and talent scouting to help secure the potential stars of the future. NGBs have recognised the pitfalls of money being thrown at young athletes, many of whom will never make it to the upper levels of professional sport. Many NGBs have therefore sought to implement transfer restrictions to protect minors and ensure that organisations cater for their wider needs, such as their education.

In football, for example, the FA, Premier League and English Football League have implemented various rules to police the movement of minors, including preventing players from signing professional contracts until 17, restricting when youth players can move between clubs domestically and preventing intermediaries from receiving monies in connection with youth player registrations and transactions.

33 What are the key child protection rules and safeguarding considerations?

The government has largely taken a non-interventionist approach to child protection within a sporting context. Nonetheless, organisations cannot ignore child safety concerns. Organisations managing the training and development of young athletes will owe a duty of care to such individuals, which is generally recognised to be a higher duty than for adults. Further, organisations need to consider their employees carefully, for whose actions they can be liable. The Safeguarding of Vulnerable Groups Act 2006 also requires that any individuals who are involved in a regulated activity (capturing both professional and voluntary sports coaching) and are subsequently removed because they may have caused, or may cause, harm to a child, are referred to the Disclosure and Barring Service (DBS). It is an offence to employ anyone who has been barred by the DBS. Many sports also operate their own child protection rules, placing stringent criteria on sports clubs and actively monitoring the implementation of child protection policies, requirements for parental permission and even a right to ban participants who are considered to be a potential risk to child safety. Many organisations also work alongside the NSPCC's Child Protection Sport Unit (CPSU), which operates in partnership with Sport England, Sport Northern Ireland and Sport Wales. The CPSU provides guidance to sports clubs on child protection and has developed its own safeguarding standards, with the aim of providing a national benchmark for good practice in sport.

34 What employment relationship issues arise when athletes represent both club and country?

Subject to complying with general UK employment law principles, NGBs are generally free to regulate the employment frameworks within their sport, which will usually include the relationship between club and country and the inevitable conflicts that arise within this.

Off-field activities, such as promotional work, can be a particular issue. Athletes can often be required to promote brands for their national teams who are competitors of their domestic club's or even personal partners or sponsors. Further, disciplinary matters can bring club and country into conflict, in particular, as to where jurisdiction lies for dealing with any infractions.

Beyond a sport's basic rulebook, many NGBs will enter into a separate contractual relationship with their national players, covering their appearance fees, promotional activity and disciplinary processes. This relationship can provide the international team with additional control over the player and direct rights of action against them for any rule infractions. Certain sports may also operate a 'central contract' framework whereby the NGB has the primary employment relationship with



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the athlete. The terms and operation of such structures are often heavily negotiated between player unions and NGBs through collective bargaining arrangements. These can also be supplemented by agreements between NGBs and the domestic leagues (and their member clubs), managing issues such as conflicts in player availability for competing fixtures and applicable compensation or extra funding in consideration of a league's agreement to such arrangement.

35 How are selection and eligibility disputes dealt with by national bodies?

Selection and eligibility for national teams will be determined by the rules of the national NGB for each sport (albeit that international federation rules may also supplement these). These will provide for how any disputes are to be settled and the relevant appeals body for review of any selection decisions. Most organisations will designate an independent arbitrator as a final appeals body, such as Sports Resolutions or the CAS. See question 7 for details of where appeals may alternatively be made to the national courts.

Taxation

36 What are the key taxation issues for foreign athletes competing in your jurisdiction to be aware of?

Foreign athletes living and working in the United Kingdom under a UK employment contract will likely become UK tax residents and be subject to UK tax on their worldwide income. UK employment income received will usually be taxed through PAYE deductions made by their employer.

Although the starting point for UK tax residents is that UK tax is due on worldwide income, certain foreign athletes may be deemed 'UK non-domiciled', enabling them to potentially make a claim for what is known as the Remittance Basis in order to avoid their non-UK income being subject to UK tax, provided that they do not remit or enjoy this foreign income in the United Kingdom and do not intend to reside in the United Kingdom long term.

For those temporarily visiting the United Kingdom the position can be more complex. While foreign athletes entering the United Kingdom sporadically as part of their overseas employment will generally not be subject to UK taxation, athletes who compete or train in the United Kingdom for a large periods of the year are at risk of becoming UK tax resident for the purposes UK taxation, resulting in potential UK taxation of their worldwide income. Athletes not permanently residing in the United Kingdom will need to consider their travel schedules to and from the United Kingdom carefully and whether this could trigger UK tax residency and potential UK tax liabilities on their non-UK sourced income.

Even where foreign athletes have not triggered UK tax residency, income can be subject to UK tax where it is considered to derive from a 'relevant activity' in the United Kingdom. This includes participation in sporting events as well as endorsement, sponsorship and other promotional activities carried out as part of any sporting performance. Foreign athletes can therefore find themselves subject to UK taxation on part of their general sponsorship income in addition to any match fees or prize winnings from a tournament in the United Kingdom. Athletes have previously complained that competing in the United Kingdom can cost more in tax than the competition fees earned.

When a foreign athlete is subject to tax in two jurisdictions on the same income, he or she may be able to reduce any taxes payable in one of the jurisdictions by taking a Foreign Tax Credit for overseas taxes paid under the terms of a double tax treaty. At present, the UK government claims to have the largest network of treaties, covering around 120 countries.

United States

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Regulatory

1 What is the regulatory governance structure in professional sport in your jurisdiction?

Sports leagues in the United States are typically governed according to rules and internal regulatory procedures set forth in league organising documents such as league constitutions and by-laws. In many cases, these documents establish a board of governors comprising team owners or their representatives, who are responsible for establishing and managing league governance and regulatory policies. The board of governors is also typically responsible for appointing a league commissioner who serves as a chief executive officer and is responsible for managing the day-to-day operation of the league. Although the organisational structure of each league differs, league foundational documents typically endow the commissioner with broad authority to manage all aspects of the league's operations and, in the majority of cases, to enforce league rules.

State and federal governments typically do not regulate the day-to-day operations of professional sports leagues in the United States. Rather, they give leagues wide latitude to regulate their activities internally and to set their own rules. Professional sports leagues must of course abide by state and federal laws that touch on their business activities. For instance, sports leagues must abide by antitrust, labour and sports gambling laws, among others. In addition, Congress has on occasion held hearings on sports-related issues. Recent congressional hearings have focused on steroid use in professional baseball, concussions in football, sexual abuse by Olympic officials and corruption within FIFA.

2 To what extent are participants protected from liability for their on-field actions under civil and criminal law?

While civil and criminal laws vary in each state, sports participants are normally protected from liability for their on-field actions. In the civil context, courts have generally held that sports participants assume the ordinary, foreseeable risks of the activity. Thus, injuries that occur as a result of on-field actions that are incidental to participation in the sport do not generally give rise to civil liability (see *McKichan v St Louis Hockey Club LP*, 967 SW2d 209 (Mo Ct App 1998) holding that a 'severe body check is a part of professional hockey and is not outside the realm of reasonable anticipation'). Participants may be subject to civil liability; however, when their actions are outside the ordinary scope of the sport, unforeseeable or particularly reckless in nature. For instance, one court described conduct that would give rise to liability in the sports realm as conduct undertaken with a 'deliberate, willful or [] a reckless disregard for the safety of the other player so as to cause injury to that player' (*Nabozny v Barnhill*, 334 NE2d 258 (Ill App Ct 1975)).

Although sports participants are not immune from criminal liability for their on-field actions, criminal charges are increasingly rare. A minority of states have even codified sports exceptions into their criminal statutes. Courts and prosecutors appear to prefer to allow leagues and on-field officials to punish offenders, but have intervened in certain instances – generally, where on-field conduct exceeded the bounds of what is considered normal game-play.

3 What is the regulatory framework for doping matters in your jurisdiction? Is there also potential secondary liability for doping offences under civil or criminal law?

Doping matters are generally handled internally by the leagues themselves. Each league, through collective bargaining with players' associations, creates 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. If an athlete is found to have taken a banned substance, punishments can range from small fines to suspensions and, in extreme cases, to lifetime bans from the sport. Athletes who wish to challenge a league's findings or punishment may file an appeal or grievance, which typically would be adjudicated in the first instance through arbitration proceedings at the league level. League drug testing procedures are also subject to judicial review, however, and must be administered in accordance with the general duties that the league owes players.

Athletes who violate league-administered doping guidelines can face civil or criminal liability for taking a banned or illegal substance. In practice, however, there have been very few instances of an athlete facing civil or criminal liability as a result of a positive test result. On the other hand, several athletes have faced perjury charges or civil suits as a result of making false statements to government officials in connection with doping allegations. Most notably, famed cyclist Lance Armstrong settled a lawsuit brought by the United States Justice Department (DOJ), in which the DOJ alleged that Armstrong had defrauded the US Postal Service (USPS) by making false statements regarding his use of the drug erythropoietin, a banned substance, and violated the terms of his sponsorship agreement with USPS.

4 What financial controls exist for participant organisations within professional sport?

Although financial controls vary by league, most major US leagues have agreed with their players through collective bargaining to set boundaries for team spending on player salaries. These controls consist of salary caps, luxury tax systems, predetermined entry-level contract structures, and minimum and maximum player contracts, among other limitations. Although, in essence, these limitations are aimed at achieving the same result – to ensure the financial viability of teams and promote competitive balance – each limitation operates differently. For example, the National Football League (NFL) imposes a salary cap and a salary floor (the maximum and minimum amount a team can spend on player salaries) on member teams, while Major League Baseball (MLB) constrains teams through a luxury tax that imposes penalties on teams if their spending goes over a certain threshold. Many leagues also enter into revenue-sharing agreements with the corresponding players' association, whereby the league and the players' association agree to allocate the leagues' revenue between team owners and the players according to a predetermined percentage.

Because each league has its own set of financial controls, a detailed reading of each league's by-laws, constitution or collective bargaining agreement (CBA) is necessary to obtain a complete understanding of the financial controls that each league has instituted, particularly with respect to operating standards such as team capitalisation requirements, borrowing limits and ownership standards.

Dispute resolution
5 Who has jurisdiction over the resolution of professional sport disputes in your jurisdiction, and how is this determined?

Jurisdiction over sports-related disputes depends on the nature of the dispute. 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. Procedures governing player-team disputes are often agreed upon during collective bargaining negotiations and formalised in the applicable CBA. While they differ among the leagues, procedures generally exist for appealing the internal decision of a league both within the league and to federal or state courts.

In some cases, disputes involving leagues or teams may be heard in state or federal court. Typically, this occurs when a litigant is not party to the league constitution or by-laws, its CBA or other governing documents, and thus is not bound by an arbitration provision contained in those agreements. These disputes are typically brought under state or federal law. In those cases, jurisdiction ultimately depends on the underlying laws regarding personal and subject-matter jurisdiction.

6 How are decisions of domestic professional sports regulatory bodies enforced?

After a league issues a decision there is typically an internal appeals process that is set forth in league organising documents or in the CBA with the players' association. This internal appeals process is often the final adjudicatory step available to litigants at the league level. As noted above, 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).

Although it is unusual for players to challenge the outcome of a disciplinary hearing, it does happen from time to time. For example, Tom Brady challenged his four-game suspension after he was accused of using deflated footballs during a conference championship game. After a lengthy appeals process at the league level and in federal court, the suspension was upheld and Brady served the suspension.

7 Can the decisions of professional sports regulatory bodies be challenged or enforced in the national courts?

As noted above, a party seeking to challenge a decision by a professional sports body can typically appeal that decision in federal court in narrowly defined circumstances. The particular process that applies depends on the nature of the relationship between the parties. If the appeal sought is from an arbitration award in the labour context, then the appeal processes set forth in the LMRA apply. If the arbitration award is entered outside of the labour context, then the FAA's appeal procedures likely apply, with some limited exceptions.

The LMRA's standards for vacating an arbitration decision are notoriously high: a court reviewing an arbitration award must 'simply ensure that the arbitrator was "even arguably construing or applying the contract and acting within the scope of his authority" and did not "ignore the plain language of the contract."' (*National Football League Management Council et al v Tom Brady*, 820 F3d 527 (2d Cir 2016).) Similarly, parties seeking to appeal an arbitration award outside of the labour context may do so pursuant to the FAA under equally narrow grounds. Under the FAA, a party may seek to vacate an arbitration award where: (i) the award was procured through corruption or undue means; (ii) there was evident partiality or corruption in the arbitrators; (iii) the arbitrators were guilty of misconduct and a party was prejudiced; or (iv) 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.

A party seeking to enforce an arbitration award must file a petition in federal court to confirm (a motion to confirm) such award within one year of the date the award was made.

Sponsorship and image rights
8 Is the concept of an individual's image right legally recognised in your jurisdiction?

There is no federally recognised image right, known in the United States as the 'right of publicity'. At least 30 states, however, have recognised a right of publicity, either through common law or a statutory provision. Typically, the right of publicity gives an individual the exclusive right to exploit his or her name, likeness or identity for commercial purpose. Infringement requires a showing that the defendant exploited the plaintiff's likeness for a commercial purpose without permission. While defences to infringement can vary by state, a First Amendment defence is available in all jurisdictions.

9 What are the key legal considerations for the commercialisation and protection of individuals' image rights?

Athletes commercialise their publicity rights through licensing agreements. The scope of these licences is determined by contract language, so it is vital that athletes and their representatives clearly define what uses licensees can make of their image, and whether any rights or categories are exclusive to the licensee or prohibited from use.

For example, in player agreements with teams, athletes retain the right to license their names and likenesses to third parties. But athletes also face contractual restrictions, most notably through a league's player endorsement policy and the morality clauses found in players' agreements and endorsement contracts.

Sponsorship conflicts may also create roadblocks to licensing publicity rights. For example, former NFL quarterback Colin Kaepernick was repeatedly fined US\$10,000 by the NFL for wearing Beats by Dre headphones after a game because Bose is the official headphones sponsor of the NFL. Thus athletes, leagues and advertisers must structure their agreements with these conflicts in mind.

10 How are image rights used commercially by professional organisations within sport?

Athletes enter into licensing agreements with several entities – their league, team, players' union and third parties – to allow these parties to commercially exploit their images for certain purposes.

In the player's contract with the team, the player typically grants both the league and the team the right to use his or her name and likeness for promotional purposes, so long as such use is limited to promotion of the league or team itself. For example, in the NFL's player contract, the player authorises the NFL to 'use his name and picture for publicity and the promotion of NFL Football, the League or any of its member clubs in newspapers, magazines, motion pictures, game programs and roster manuals, broadcasts and telecasts, and all other publicity and advertising media'.

Further, players may enter into endorsement contracts with third parties, either individually or through the players' union's group licensing programme. Under group licensing programmes, individual players assign their publicity rights to the players' union, which in turn can license to third parties the names and likenesses of groups of athletes. This provides an efficient way for sponsors to acquire publicity rights from a large number of players. Typical product categories for endorsements may include collectibles, video games and digital products, and apparel such as jerseys, hats and T-shirts. While possible endorsements are wide-ranging, they may be limited by each league's policies (eg, no hard-liquor sponsorships).

One notable and emerging trend is that businesses are increasingly making unlicensed uses of athletes' names and likenesses on the internet, in fantasy leagues and other areas. Courts have found that the First Amendment may pre-empt athletes' image rights in these contexts.

11 How can morality clauses be drafted, and are they enforceable?

Courts have long held that morality clauses are enforceable, and courts interpreting these clauses in sports endorsement contracts have accepted the basic premise that they are.

A well-drafted morality clause should identify the conduct that will trigger the other party's rights and the rights the other party has once the clause is triggered (eg, termination or suspension). Typical triggers involve conduct or accusations that cause the athlete to fall

into disrepute in the eyes of the general public, and may include getting arrested for drunk driving, conviction of a felony, or behaviour that stands at odds with values of the league, team or sponsor. Sponsors typically seek broad triggers, and athletes typically seek triggers that are narrow and as specific as possible. Players may also bargain for similar rights if their sponsor engages in or is accused of disreputable conduct (eg, unfair or unsafe labour practices). However, morality clauses found in player agreements between athletes and sports leagues are not negotiable on a player-by-player basis, as they are subject to the league's CBA.

12 Are there any restrictions on sponsorship or marketing in professional sport?

Each major sports organisation in the United States has rules or restrictions on player endorsements. These policies place restrictions on the entities with which athletes can enter into endorsement deals as well as the manner in which they may do so. For example, the PGA TOUR prohibits players from entering into sponsorships with 'casinos or gambling concerns of any sort', but allows players to be sponsored by beer, wine and liquor producers, subject to certain restrictions.

Besides gambling and alcohol, other common restrictions include prohibitions on sponsorships from tobacco companies, limits on logo usage, and restrictions on the manner in which an athlete endorses a product or service that competes with league or team sponsors.

Brand management

13 How can sports organisations protect their brand value?

The principal way for sports organisations to protect their brand value – aside from continuing to offer a popular and desirable entertainment product in association with the brand – is for the sports organisation to enforce intellectual property (IP) rights associated with the brand to protect against free-riding and enhance the value of exclusive sponsorship agreements. This is often easier said than done, and requires a broad approach to IP policing. Most major US sports organisations employ in-house paralegals and IP attorneys, as well as outside counsel, to monitor third-party trademark filings. Many also employ monitoring services to police content on social media and e-commerce sites. In addition, they work closely with law enforcement during major events to combat counterfeiting. Finally, they and their broadcast partners monitor third-party ads for potential ambush marketing (see question 20). When unauthorised conduct is detected, a swift cease-and-desist letter, take-down notice or similar action is often warranted to prevent free-riding on the sports organisation's brand.

14 How can individuals protect their brands?

Individuals involved in sports can protect their brands in much the same way as a sports organisation. Most importantly, an athlete's brand is tied heavily to their in-game performance and how they conduct themselves in public fora such as in interviews and social media. Like sports organisations, athletes must vigorously police against the unauthorised use of their names, images or likenesses for commercial purposes, taking enforcement steps where appropriate.

15 How can sports brands and individuals prevent cybersquatting?

The principal way to prevent cybersquatting involves a combination of robust enforcement and preventive registration. In advance of major sporting events, or the launch of a new team (or a team name or logo rebrand), sports organisations should promptly file trademark intent-to-use applications where possible, and register the most obvious domain names associated with those names. Because so many possible internet domain name permutations exist, however, a sports organisation must also have a domain name-monitoring and take-down process in place. Once a cybersquatter is identified, possible recourse includes a cease-and-desist letter, take-down notice to the webhost, or a WIPO or judicial proceeding. It must be kept in mind that fansites and gripe sites that use or incorporate a league or team trademark may be protected in the United States under the First Amendment.

16 How can individuals and organisations protect against adverse media coverage?

Given the strong protections accorded to the media in the United States, there is little an athlete or organisation can do legally to protect against adverse media coverage. Media outlets and other publishers have broad discretion to express their opinions on matters of public interest and on public figures such as professional athletes. Although every state provides some protection against false statements (typically under defamation law), they are particularly hard claims to sustain where public figures and matters of public interest are involved.

Broadcasting

17 Which broadcasting regulations are particularly relevant to professional sports?

The relevant broadcasting regulations are the Copyright Act of 1976, the FCC regulations and the Sports Broadcasting Act of 1961. The Copyright Act grants the right to broadcast a sporting event to the entity whose event is being broadcast and extends this protection to live sports broadcasts. As ownership in live-event broadcasting is increasingly determined contractually, most disputes today surround the retransmission of broadcasts. The FCC regulates retransmissions by allowing teams to prevent cable companies within 35 miles of a game telecast from broadcasting if the same game is not being broadcast locally ('blackouts'), and also prohibits multiple stations from carrying the same telecast.

Further, the Sports Broadcasting Act of 1961 immunises the NFL, MLB, NBA and NHL from antitrust liability for the pooled sale of 'over-the-air' broadcasting rights. As a result, broadcasting rights for most major sports leagues are negotiated by both the leagues and their individual clubs.

18 What means are available to restrict illegal broadcasting of professional sports events?

The Copyright Act protects the owners of copyright in game broadcasts by explicitly granting them exclusive rights over the transmission and retransmission of sporting events. Courts have expansively interpreted the Act to include transmissions in 'all conceivable forms and combinations of wired or wireless communications media' (*Nat'l Football League v PrimeTime 24 Joint Venture*, 211 F3d 10, 12 (2d Cir 2000)). They have also held that merely directing internet users to an infringing website or video is illegal.

Given courts' expansive interpretations of the Act, it generally affords broadcast owners robust protection. Emerging technologies like peer-to-peer file-sharing and live video-streaming networks, however, have presented potentially novel questions of the scope of protection under the Act. Moreover, because these networks typically operate outside the United States, it is often difficult to establish a jurisdictional basis in the United States for legal claims against such networks.

Event organisation

19 What are the key regulatory issues for venue hire and event organisation?

Venue and organisation operations are typically subject to state and local laws, as well as the federal Americans with Disabilities Act, which imposes certain accessibility obligations for those with special needs. A full summary is beyond the scope of this chapter, and event organisers should consult with appropriate local counsel on these issues.

20 What protections exist against ambush marketing for events?

Aside from clean zone restrictions that are occasionally imposed during major sporting events, there are no express ambush marketing laws in the United States. The main protections exist under other laws, such as trademark law, false advertising law and the law of unfair competition. A plaintiff in such a case typically must show that consumers encountering the ambush are likely to be confused or misled into believing the event organiser sponsored, approved or is affiliated with the ambusher. The strength of such claims often turn on consumer survey evidence and whether some protectable indicia of the plaintiff are used.

21 Can restrictions be imposed on ticket sale and resale?

The short answer is most likely yes, at least in most jurisdictions, and subject to limits imposed by antitrust laws. As a general matter, a ticket

is treated in most jurisdictions as a licence to enter a premises, which may be restricted or freely revoked for any reason or no reason at all, so long as it is not in violation of the ticket holder's civil rights. Relatedly, venue operators are permitted to impose restrictions on the conditions of entry. Those rights have been extended to permit operators to impose limits on ticket sales (including limits on the number of seats that one person or entity may purchase), or restrictions on resale. Two important caveats exist, however. First, agreements among competitors to restrain trade may be subject to scrutiny under antitrust laws. Second, some states, most notably New York, have adopted laws that prohibit operators from certain types of resale restrictions on season and subscription tickets. In recent years, ticket holders have challenged certain restrictions on ticket resale imposed by teams and venue owners. For example, restrictions requiring fans to purchase tickets from a specific ticket reseller and restrictions requiring season ticket holders to resell tickets through a designated website have been challenged under state consumer fraud statutes and the antitrust laws. Accordingly, although challenges to these types of resale restrictions have been unsuccessful to date, a careful consideration of applicable state and federal laws must be undertaken before implementing any resale restrictions.

As for season tickets, there is some disagreement among US courts regarding long-term season ticket arrangements, and whether such arrangements confer more than the traditional revocable licence upon the ticket holder. While a minority of courts have found that season ticket holders may have a right of first refusal or some similar property interest, US courts have largely found that a season ticket is still a revocable licence.

Immigration

22 What is the process for clubs to obtain work permits or visas for foreign professional athletes, and coaching and administrative staff?

For a foreign national to join a US team, either the club or the individual athlete, coach or staff member (depending on the Temporary Worker classification the person applies under) will generally file a Form I-129, Petition for Non-Immigrant Worker with USCIS. Typically, the individual or team, depending on qualifications and duration of stay, will qualify under the O-1A, P-1A or H-1B classification. Once the petition is approved, the individual athlete, coach or staff member may apply for his or her visa from a US embassy or consulate abroad and, once received, enter the United States.

If a foreign national intends to come to the United States to compete (but not be employed or paid by a US entity) as an individual athlete, or if a foreign-based team comes to compete in a single event, the B-1 classification may be used. Depending on the individual's citizenship, he or she may need to apply for the B-1 visa abroad.

23 What is the position regarding work permits or visas for foreign professional athletes, and coaching and administrative staff, temporarily competing in your jurisdiction?

Foreign nationals who are professional athletes, coaches and administrative staff may obtain a non-immigrant visa to work in the United States, typically under the following categories:

- The O-1, for 'Individuals with Extraordinary Ability or Achievement'. To qualify, one must demonstrate extraordinary ability (ie, level of expertise indicating that the person is one of the small percentage who has risen to the very top of his or her field) by sustained national or international acclaim; and be coming temporarily to the United States to continue work in the area of extraordinary ability. This applies to athletes, coaches and staff alike.
- The P-1A, for 'Internationally Recognised Athletes'. To qualify, one must be coming to the United States to participate in individual event, competition or performance in which he or she is internationally recognised with a high level of achievement, evidenced by a degree of skill and recognition substantially above that ordinarily encountered so that the achievement is renowned, leading or well known in more than one country. This category also extends to essential support personnel, which includes coaches, scouts, trainers and other team officials, and referees who are an integral part of a P-1A athlete's performance.
- The H-1B, for 'Specialty Occupations'. To qualify, one must hold a bachelor's or higher degree required by the specific specialty

occupation (or an acceptable equivalent). This classification may be applicable to certain coaches and administrative staff.

- Less often, H-2B, for 'Non-Agricultural Workers', may be applicable as well for individuals who do not meet the qualifications for O-1 or P-1A, such as minor league players.

24 What residency requirements must foreign professional athletes, and coaching and administrative staff, satisfy to remain in your jurisdiction long term or permanently?

To remain in the United States long term or permanently, either the club or the individual may apply for permanent residence in the United States, typically through the following categories:

- Employment-Based Immigration: First Preference EB-1 – This category applies with respect to individuals who demonstrate qualifying extraordinary ability.
- Employment-Based Immigration: Second Preference EB-2 – This category applies with respect to individuals who qualify as members of a profession that requires an advanced degree.
- Employment-Based Immigration: Third Preference EB-3 – This category applies with respect to individuals who qualify as skilled workers, with a minimum of two years of training or work experience, and professionals, whose position requires at least a US baccalaureate degree.

Once permanent resident status is granted, any of the following actions may result in abandonment of status: moving to another country with intent to live there permanently; remaining outside of the United States for an extended period of time, unless the individual demonstrates intent for a temporary absence; failing to file income tax returns while living outside of the United States for any period; or declaring oneself to be a 'non-immigrant' on US tax returns.

25 Do the family members of foreign professional athletes, and coaching and administrative staff, legally resident in your jurisdiction have the same residency rights?

Family members (spouses or dependent children under 21 years of age) of temporary non-immigrant workers typically qualify for the dependent non-immigrant classification of a temporary worker. Dependents in these categories are generally entitled to remain and attend school in the United States for the same duration of time as the temporary worker but may not legally work in the United States.

Family members (spouses or dependent children under 21 years of age) of an athlete, coach or administrative staff member who obtains permanent resident status, typically qualify their own permanent resident status. As permanent residents, such family members may attend school and legally work in the United States.

Sports unions

26 How are professional sporting unions incorporated and regulated?

In the United States, professional sporting unions (eg, the National Football League Players Association, the National Basketball Players Association, the Major League Baseball Players Association and the National Hockey League Players' Association) are subject to the same laws and processes as traditional labour unions. Pursuant to the National Labor Relations Act of 1935 (NLRA), the National Labour Relations Board (NLRB) oversees the formation of labour unions and the election of union leadership. The union formation process begins with a petition to the NLRB demonstrating support for the new union from at least 30 per cent of eligible employees. After a successful petition to the NLRB resulting in union certification, the union (including its members and representatives) is governed by the various legal regimes in the United States that apply to organised labour.

It should be noted that labour unions are not corporations, and thus do not file articles of incorporation with the state or federal government. Unions are formed and controlled by their members, who maintain the power to decertify the union by majority vote.

The NLRA is the primary body of law governing labour unions, including professional sporting unions. This legislation governs the rights of private-sector employees to form labour unions, engage in collective bargaining over terms of employment and working conditions,

file unfair labour practice grievances, and when necessary, to engage in collective strikes.

Like other unions, professional sporting unions are also subject to the LMRA. The LMRA's passage curtailed a number of union practices, including certain types of strikes and secondary boycotts. As applied to professional sporting unions, professional sports leagues and their member clubs have on occasion invoked section 301 of the LMRA to federally pre-empt legal claims filed by union members against the league or its member clubs that, according to the leagues, would be more appropriately adjudicated in accordance with the collectively bargained dispute resolution process.

In addition to federal and state labour laws, professional sporting unions are also required to adhere to the terms of the CBA with their respective leagues. A typical CBA between a professional sporting union and a professional sports league governs, among other matters, the terms and conditions of players' employment, player mobility, revenue sharing between players and teams, and adjudication processes for labour grievances and player discipline.

27 Can professional sports bodies and clubs restrict union membership?

Unionised private-sector employees, including members of sporting unions, have virtually unrestricted freedom to form and join labour unions. Specifically, section 7 of the NLRA provides that '[e]mployees shall have the right to self-organisation, to form, join, or assist labour organisations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection'. Further, section 8(a)(1) of the NLRA prohibits employers from 'interfer[ing] with, restrain[ing], or coer[cing] employees in the exercise of the rights guaranteed' under Section 7 of the NLRA. Thus, the statutory prohibitions against employer interference with the formation of and membership in such unions make it effectively impossible for professional sports bodies and clubs to restrict players from becoming union members.

28 Are there any restrictions on professional sports unions taking strike action?

All four major American professional sports bodies have encountered significant strikes and work-stoppages at various points in their histories. Typically, these strikes have resulted from the presence of perceived unfair terms and conditions of employment, or an effort by the players to achieve economic concessions (ie, higher wages or an increased share of the profit pool) from their respective league's owners. These strikes, whether they are aimed at rectifying perceived unfairness in the workplace or to gain greater economic benefits, are generally legal under the NLRA, but there are limits to the manner in which members of a labour union (including a professional sporting union) can strike. For example, strikes may be unlawful owing to their object or purpose, or as a result of misconduct by the striking employees. Perhaps the most important limit on the ability of professional sports unions to strike is the inclusion of a 'no-strike' clause in a CBA. Such clauses contractually restrict professional sporting unions from taking strike action for the duration of the CBA.

Employment

29 What is the legal framework for individual transfers? What restrictions can be placed on individuals moving between clubs?

Each of the major sports leagues in the United States functions under a separate CBA. Each CBA has specific free agency rules that restrict when a player may transfer between teams. The CBAs and specific player contracts are renegotiated periodically, and govern individual transfers. Additionally, in some leagues, teams themselves are limited as to accepting a player who may be a free agent if the team already has a specified number of active players on the team (ie, 'hit the cap').

30 Can individuals buy their way out of their contractual obligations to professional sports clubs?

Yes. The logistics of getting out of a contract vary depending on the league and the CBA details along with details in the player's contract. For example, in the NBA, a player may accept a portion of their

remaining contract, and the team would save a portion of what they would have paid had the contractual arrangement continued, and the player will then seek out a different contract with another team. In the MLB, player contracts often include an option after a specified number of years for the team to either keep the player or discuss a buy-out arrangement. The specifics on how the player is released from the contract vary, but it is possible.

31 What are the key athlete welfare obligations for employers?

As a general rule, participants in professional sports assume the risk of unintentional injuries, but will not assume the risk of injuries intentionally inflicted, or that result from a disregard for safety. Participation in contact sports constitutes implied consent to normal risks that attend with that sport. Negligence is insufficient to establish a cause of action, but wilful or wanton behaviour or reckless disregard for the safety of others will be grounds for a negligence suit.

32 Are there restrictions on the employment and transfer of young athletes?

Minors under 16 may not be employed during school hours pursuant to the Fair Labour Standards Act. Minors under 18 may not be employed in occupations the Department of Labour deems detrimental to their health or well-being. Additionally, states place further restrictions on child labour that may be more restrictive than the national standards.

The NHL and MLB allow a player to be drafted once he is 18 years old. The NBA requires players be one year removed from high school. The NFL requires players be three years removed from high school.

33 What are the key child protection rules and safeguarding considerations?

The main considerations in employing young people are their safety and education. Specifically in athletics, there is a concern with protecting young athletes by shielding them from physical injury and requiring them to mature emotionally and receive an education before entering the world of professional sports.

34 What employment relationship issues arise when athletes represent both club and country?

As mentioned, each of the major sports leagues in the United States are unionised and function under separate CBAs. The players of the major sports leagues are employees of their respective clubs and their employment relationships are governed by the respective CBAs. Additionally, the CBAs or leagues may restrict or limit a player's ability to represent his or her country in an international event. For example, the NHL did not suspend its normal season restricting its players from participating in the 2018 Winter Olympics.

35 How are selection and eligibility disputes dealt with by national bodies?

The International Olympic Committee grants the United States Olympic Committee (USOC) the right to represent the United States in all matters relating to its participation in the Olympic Games. The USOC, in turn, authorises a National Governing Body (NGB) as the governing body for each Olympic sport within the United States. The USOC and each NGB have their own dispute resolution processes, though the majority of disputes can be handled by the relevant NGB.

In the first instance, an athlete seeking to challenge an NGB's decision regarding an athlete's right to participate in competition may seek resolution of their dispute by filing a formal complaint with their sport's NGB. Subsequent to or concurrently with filing a complaint with the relevant NGB, an athlete may also file a complaint with the USOC under section 9 of the USOC Bylaws (a Section 9 complaint), which states that 'no member of the USOC may deny or threaten to deny an athlete the opportunity to participate in the Olympic Games, Pan American Games, Paralympic Games, a World Championship competition, or other such protected competition, as defined within the USOC Bylaws'. A Section 9 complaint must be filed within six months of the alleged denial of the right to participate. Filing a Section 9 complaint is purely a notice mechanism that alerts the USOC that an issue exists, and allows the USOC to intervene to attempt to mediate a dispute between the athlete and the NGB. After filing a Section 9 complaint, however, an athlete may seek a final resolution of their claim by

filing for arbitration with the American Arbitration Association (AAA). Arbitrations are typically held before a single arbitrator selected from a closed pool maintained by the AAA and the Court of Arbitration for Sport. Decisions rendered in these arbitrations are final and binding in accordance with the Commercial Rules of the AAA.

Taxation

36 What are the key taxation issues for foreign athletes competing in your jurisdiction to be aware of?

Foreign athletes pay US federal income tax at the same rates as domestic athletes on income from competing or other personal services performed in the United States. The applicable withholding regimes

vary based on whether a foreign athlete is employed by a team or self-employed. States generally follow a similar approach and subject athletes to state tax based on competition or other services performed in the state. Foreign athletes with endorsement deals must allocate the income from the deal between personal services and royalties for the use of the athlete's name and likeness. The different types of income may have different withholding and treaty eligibility consequences.

A foreign athlete who is in the United States for a substantial period of time may become a 'permanent resident' for tax purposes and subject to US federal income tax on his or her worldwide income. In such cases, one or more states may also assert that the foreign athlete is a resident of that state under similar rules.



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