PANORAMIC

SPORTS LAW 2025

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LEXOLOGY

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Panoramic guide (formerly Getting the Deal Through) enabling side-by-side comparison of local insights into regulatory issues (such as governance structure, doping regulations and financial controls); dispute resolution; sponsorship and image rights; brand management; broadcasting regulation; event organisation; immigration; sports unions; employment (including selection and eligibility issues); taxation issues; and recent trends.

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Australia

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REGULATORY

Governance structure

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

Professional sport is regulated by both the Australian Commonwealth, state and territory governments and by private sporting-code-specific governing bodies and local associations and clubs, each with their own set of regulations.

The Australian Commonwealth government, in particular, has established a number of executive agencies, such as the Australian Sports Commission (including the Australian Institute of Sport), which is the Australian government agency responsible for determining the overall direction of sport in Australia. While some aspects of sport in Australia are regulated by legislation enforced by these government agencies (eg, under the Commonwealth anti-doping legislation), individual governing bodies in sport are, for the most part, otherwise free to determine the manner in which their sport is governed, which is largely dependent upon the sporting code's size and complexity.

Law stated - 19 June 2024

Protection from liability

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

Authorities in Australia generally respect the autonomy of the Australian sporting codes' governing bodies to manage the actions of their participants during competition. However, while the rules of a sport may define acceptable conduct, such rules cannot be considered as implied consent from a participant for others to act contrary to their legal obligations, or to displace their civil and criminal law rights.

Generally speaking, participants may not be liable if their conduct falls within the rules or the normal occurrences to be expected when participating in their specific sport (eg, physical contact in sports such as football and boxing). Voluntary participation in the sport and the voluntary assumption of risk is a consideration taken into account by Australian police and courts, which are generally reluctant to interfere in the competition, rules and usual processes of a sport. However, voluntary participation is not accepted as a participant has consented to dangerous or violent conduct that is outside of the sporting rules, and such conduct may give rise to criminal liability.

Players also owe a civil duty of care to one another, which means they must not act negligently or recklessly while participating in sport.

Law stated - 19 June 2024

Doping regulation

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?

Sport Integrity Australia, which incorporates the functions of the Australian Sports Anti-Doping Authority (ASADA), the National Integrity of Sport Unit and the national integrity programmes of the Australian Sports Commission, is the government agency responsible for the protection of the integrity of Australian sport and for the implementation of the World Anti-Doping Code (Code) in Australia.

Australia's anti-doping regime is set out in the Sport Integrity Australia Act 2020 (Cth) and the Sport Integrity Australia Regulations 2020 (Cth). ASADA conducts testing (both in and out of competition) and investigations are conducted in accordance with the Sports Integrity Australia Act and the Code.

Criminal offences relating to the use and dealing in prescribed drugs are contained in both Commonwealth and state legislation. Specific anti-doping frameworks do not preclude criminal offences from being brought against a participant under these laws.

Law stated - 19 June 2024

Financial controls

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

In Australia, there are no general financial controls that apply broadly to all organisations participating in professional sports. However, many organisations choose to incorporate under the Corporations Act 2001 (Cth), in which case they are subject to the Corporation Act's financial controls.

A number of participating organisations within professional sports are also subject to financial controls imposed by the relevant governing body of the individual sport.

Further, some professional and amateur sports are subject to salary caps imposed by the relevant governing body for that sport. These caps are aimed at reducing the overall costs to clubs and maintaining a competitive balance between the more and less lucrative clubs.

The ability to borrow money and associated financial controls, including debt and borrowing limits and limits on losses, will also be governed by the sporting body's incorporation status and the powers specified within its constituent documents.

Law stated - 19 June 2024

DISPUTE RESOLUTION

Jurisdiction

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

Larger professional sports in Australia have their own processes and tribunals that facilitate dispute resolution within the sport. These often involve a first-instance tribunal and an internal appeals process.

The National Sports Tribunal (NST), which is made up of a panel of independent Tribunal Members appointed by the Australian Government Minister for Youth and Sport, provides an independent forum for the hearing and resolution of national-level sporting disputes in Australia. The NST has three divisions: anti-doping, general and appeals. Alternative dispute resolution processes are available in the general division of the NST on an 'opt-in' basis, with a further avenue of appeal to the Court of Arbitration for Sport available.

The anti-doping division of the NST can deal with anti-doping disputes, provided that the anti-doping policy of the relevant sport allows it. Alternatively, the relevant athlete or support person, the sporting body and the Sports Integrity Australia CEO may provide their written consent to the NST adjudicating a dispute.

Notwithstanding the NST's dispute resolution functions, the NST is not intended to replace redress options that are more appropriately addressed through the Australian courts (eg, general commercial matters) or the Fair Work Commission (for employment-related matters).

Law stated - 19 June 2024

Enforcement

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

A sporting body's power to make a decision and to discipline a participant in the sport is derived from the contractual relationship between the sporting body and the participant. This contractual relationship usually includes an obligation on the participant to adhere to the rules of the sport, including the sporting body's decision-making, disciplinary and judicial processes, as well as the sporting body's powers to enforce its decisions through suspensions and other sanctioning.

Sanctions imposed by sporting bodies and tribunals are ordinarily enforced in accordance with the rules and judicial structures of the individual sport. Internal appeals processes are available; however, the NST does have the capacity to be involved in decision-making and enforcement if this is provided for in the relevant sporting rules, by contractual relationship or by separate agreement.

Law stated - 19 June 2024

Court enforcement

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

Australian courts are generally reluctant to interfere in the decisions of sporting tribunals.

However, Australian courts are prepared to intervene in the decisions of sporting tribunals in certain circumstances, including where the governing body has not complied with its rules (both express or implied), where a rule is unlawful or where the rules of natural justice have been breached.

Where the courts have reviewed decisions of sporting tribunals, it has been noted that the rules and regulations of sporting clubs and bodies are not drafted with the same legal precision as formal commercial contracts. As such, Australian courts have taken a common-sense approach, aimed at ensuring a workable set of rules and avoiding the construction of terms in a narrow or overly legalistic way.

Law stated - 19 June 2024

SPONSORSHIP AND IMAGE RIGHTS

Concept of image rights

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

In Australia, there are no true proprietary image rights or any requirement to register image rights.

Despite this, image rights can be commercialised, including in relation to an individual's physical image, but also in relation to other aspects of what would, in other jurisdictions, constitute image rights, such as an individual's likeness and voice.

In some circumstances, image rights may be able to be registered and protected as items of intellectual property. An example of this is a surname that has become sufficiently distinctive and otherwise satisfies the requirements of trademark registration.

Law stated - 19 June 2024

Commercialisation and protection

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

Individuals seeking to commercialise their image rights should ensure that those image rights are protected to the extent possible (noting that, in Australia, unless image rights are also intellectual property rights, options for registration to achieve protection are limited).

Any legal documentation regulating the commercial relationship between parties in respect of the use and commercial exploitation of an individual's image rights should clearly define what image rights are being commercialised and the circumstances in which those image rights may be used.

An individual should seek to retain control over the specific uses of their image rights. For example, this could be achieved by incorporating a requirement for any proposed use to

be prior approved by the individual prior to any such use, and outlining the circumstances in which the licence to use image rights may be immediately withdrawn.

Law stated - 19 June 2024

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

Image rights, although not legally recognised or registrable in Australia, are often used in Australia by professional organisations for commercial purposes such as merchandise production or other promotional purposes. Individual sporting professionals may also enter into affiliations with certain brands, allowing the individual's image rights to be used for the promotion and sale of certain goods and services.

Care should be taken when a professional organisation grants third parties the right to use an individual's likeness or image to ensure that those rights are not able to be exploited, and to avoid any breach of third-party intellectual property rights. Such breaches might include, for example, any copyright subsisting in the imagery, the tort of passing off (which includes passing off an affiliation, endorsement or sponsorship that does not exist) or a breach of the Australian Consumer Law such as any misleading representations made in using the image.

Any use or commercialisation of an individual's image rights should be supported by appropriate contractual documentation, such as a player agreement, sponsorship agreement or licence agreement.

Law stated - 19 June 2024

Morality clauses

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

To regulate athletes' behaviour in line with increasing conduct expectations held by sporting organisations, sponsors and the broader community, morality clauses are becoming increasingly common in agreements with athletes.

These clauses attempt to prevent reputational harm to an associated sporting club, sponsor or other entity (and, in some instances, to the participant), by giving the contracting party certain rights when the other party acts in an undesirable manner. These rights can include the option to commence dispute resolution, terminate the agreement or otherwise impose penalty provisions (subject to the general principle that a penalty that is disproportionate to the actual loss or damage suffered or likely to be suffered is unenforceable).

Morality clauses in favour of a club, sponsor or other entity should be drafted broadly, to ensure that any conduct of the athlete that violates any law or rule, as well as any conduct that may bring the athlete, club, sport or contracting party into disrepute, triggers rights for the contracting party. Conversely, athletes will usually seek a narrow drafting of the conduct that may trigger the operation of these types of clauses.

Law stated - 19 June 2024

Restrictions

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

There are certain restrictions on sponsorship and marketing in professional sports, which are imposed by the Australian Communications and Media Authority, as well as industry-specific voluntary advertising codes, including the Alcoholic Beverages Advertising Code.

While alcohol and gambling advertising is not prohibited outright, broadcasters are subject to certain restrictions when advertising these types of goods and services. For example, gambling and alcohol advertisements may only be broadcast at certain times of the day. Alcohol is also prohibited from being advertised during the screening of programmes classified for children.

Notably, tobacco advertising is prohibited in Australia due to the ethical and public health considerations surrounding tobacco products. Tobacco manufacturers and associated brands cannot enter into brand or product sponsorships or advertise their products including at any Australian sporting event.

Law stated - 19 June 2024

BRAND MANAGEMENT

Protecting brands

13 | How can sports organisations protect their brand value?

As the value of sports organisations and their associated brands continues to increase, so too does the need to take appropriate steps to protect those brands and preserve their associated value.

Subject to satisfaction of the requirements for protection in Australia, sporting organisations should seek to register their brands and logos as trademarks under the Australian Trade Marks Act 1995 (Cth). Trademark registration provides the exclusive right to use the registered mark in respect of certain goods and services, and makes it quicker, easier and more cost-effective to deal with infringement. Sporting organisations should also seek to register other items of intellectual property (where possible), including any designs and domain names, and regularly monitor for infringement.

Sporting organisations should seek to include protections in their contractual documentation (including sponsorship agreements) relating to the use of their brand. These protections can include restrictions on how that brand can be used, the requirements for prior approval for any particular uses, and the ability to immediately withdraw any rights to use the brand in circumstances where the licensee acts in a manner that may be detrimental to the sporting organisation or the brand more specifically.

Law stated - 19 June 2024

14 | How can individuals protect their brands?

As a participant's personal brand increases in value through their on- and off-field performance, the individual should seek to protect their personal brand and preserve its associated value.

While in some circumstances, this may be done through a trademark registration in respect of their given and family names, other avenues for protection are also available. Individuals should seek to protect their reputation by monitoring the use of their personal brand online (including any defamatory statements made or any intellectual property infringement), as well as ensuring that content posted online does not have the potential to do reputational harm to the individual or their sponsors.

Individuals should also seek to include protections in their contractual documentation relating to the use of their personal brand, including restrictions on how the individual's name, likeness and voice can be used, the requirement for prior approval for any particular uses, and the ability to immediately withdraw any rights to use the individual's brand in circumstances where the licensee acts in a manner that may be detrimental to the individual or their reputation.

Law stated - 19 June 2024

Cybersquatting

15 | How can sports brands and individuals prevent cybersquatting?

A sporting brand or individual can attempt to prevent cybersquatting by registering their desired domain names with the relevant regulator.

If a sports brand or individual finds that a person has registered a domain that infringes on the sports brand or the individual's rights, certain dispute resolution services are available. For international domains, the World Intellectual Property Organization can assist in addressing complaints. If the domain name is an Australian site, then the .au Domain Administration will have carriage of the dispute and will assess the complaint. Having a registered trademark may also assist in achieving a successful outcome in a domain name dispute.

Law stated - 19 June 2024

Media coverage

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

Although it can be difficult to prevent adverse media coverage from being published in the first instance, it may be possible for smaller sporting organisations to commence defamation proceedings if their reputations are damaged as a result of false media reports. Uniform defamation laws operate in all states and territories of Australia. These laws provide individuals and certain organisations with an avenue of legal recourse for defamatory statements made about them, subject to the requisite requirements of defamatory statements being established.

Professional sporting organisations that operate for profit are unable to commence defamation proceedings. However, depending on the nature of the defamatory content, individual administrators of a professional sporting organisation may be able to bring an action.

Law stated - 19 June 2024

BROADCASTING

Regulations

17 | Which broadcasting regulations are particularly relevant to professional sports?

Broadcasting in Australia is governed by the Broadcasting Services Act 1992 (Cht). The administration of the Broadcasting Services Act is the responsibility of the Australian Communications and Media Authority, which oversees the rules and regulations applying to all television and radio broadcasters, including those broadcasting professional sports.

Content rules, advertising rules and the relevant standards and codes govern the broadcasting of professional sports in Australia. In particular, the standards govern those events that must be made available for free to the general public.

Law stated - 19 June 2024

Restriction of illegal broadcasting

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

Australia does not have a uniform prohibition against illegal broadcasting.

Individual states have enacted legislation to deal with illegal broadcasting at major events, including professional sporting events, such as the Victorian Major Events Act 2009 (Vic), which prohibits the recording and broadcasting of an event without authorisation from the event organiser.

Event organisers may seek to restrict illegal broadcasting by incorporating restrictions on recording and broadcasting into the terms and conditions of their ticket sales and venue entry. A breach of the ticket conditions or the conditions of venue entry may permit the event organiser to remove offenders from the venue, or to ban offenders from attending future events.

The issue of detection and enforcement of illegal broadcasting is challenging in Australia, particularly with the use of smartphones and other sophisticated recording devices.

Law stated - 19 June 2024

EVENT ORGANISATION

Regulation

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

Many regulations apply to venue hire and event organisation in Australia. Broadly speaking, obligations arise in respect of local council regulation, public liability, occupational, health and safety legislative requirements, security standards, food handling requirements and liquor licensing. However, these regulations are not uniform and Australian states legislate on these issues independently.

The key areas of focus for event organisation businesses include obtaining the permits and licences required to run a particular event, food and alcohol requirements (for example, selling alcohol under a liquor licence) and the safety of patrons.

Law stated - 19 June 2024

Ambush marketing

20 What protections exist against ambush marketing for events?

In Australia, there is no specific law dealing with ambush marketing. However, event organisers can rely on other legal avenues for dealing with ambush marketing, including those relating to infringement of intellectual property rights, the misleading and deceptive

conduct provisions of the Australian Consumer Law as set out in the Competition and Consumer Act 2010 (Cth) and the common law tort of passing off.

In addition, the Major Sporting Events (Indicia and Images) Act 2014 (Cth) prohibits any marketing or advertisements that would falsely suggest to a reasonable person that the company is a supporter or sponsor of certain major sporting events covered by the Act, such as the 2023 FIFA Women's World Cup and the 2022 ICC Men's T20 World Cup.

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Law stated - 19 June 2024

Ticket sale and resale

21 | Can restrictions be imposed on ticket sale and resale?

There is currently no single uniform Australian law regulating ticket sales and resales. In many circumstances, event organisers seek to impose their own restrictions on ticket resale in the terms and conditions upon which the tickets are initially sold, and to enforce those terms by imposing requirements for venue entry, including requiring the provision of photo identification by attendees.

Some states of Australia, such as New South Wales and Victoria, have enacted legislation that seeks to deter ticket 'scalping' by placing a cap on the price of resold tickets. For example, in Victoria, the Major Events Act 2009 (Vic) provides that where an event is the subject of a major event ticketing declaration, it is an offence to resell a ticket to that event for more than 10 per cent above the original face value of the ticket.

The Victorian Major Events Act also provides greater transparency for consumers when purchasing individual tickets and authorised ticket packages, prohibiting a person from selling tickets to a major event within a package unless they are authorised in writing to do so by a declared major event organiser.

Law stated - 19 June 2024

IMMIGRATION

Work permits and visas

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

There are a variety of work permits and visa options available for foreign professional athletes, coaches and administrative staff seeking to work in Australia. The relevant type of permit and visa will depend on the type of sporting activity to be undertaken.

To obtain a working visa, an individual will (among other things) require sponsorship from an Australian organisation or government agency. The individual applying for the visa must provide supporting documentation with their application, including identity documents

and a letter of endorsement from their supporting Australian organisation or government agency.

Law stated - 19 June 2024

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 foreign professional athletes, and coaching and administrative staff, are required to be in Australia temporarily for a particular competition, the Department of Immigration can issue a Temporary Activity – Sporting Activities visa (sub-class 408). To be eligible for this type of visa, the applicant must have a sponsor or supporter, have a contract and a letter of support from a peak sporting body, and not work outside their specified sporting activities. This visa allows the holder to stay in Australia for the duration of the event, up to a maximum duration of two years.

Law stated - 19 June 2024

Residency requirements

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

Australia's permanent residency visas hold stringent requirements for all applicants, including applicants who are elite athletes or members of an elite sporting club. An approved visa for foreign professional athletes, and coaching and administrative staff, does not allow the applicant to stay in Australia long term or permanently. To extend their stay, applicants will need to explore other visa types to see if they are eligible.

For example, the Skilled Independent Visa (subclass 189) allows certain athletes and support staff to obtain permanent residency. However, eligibility requirements are strict and include that, in some circumstances, applicants must have been invited to apply.

Law stated - 19 June 2024

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

An applicant for an Australian visa can apply for 'members of the family unit' to have the same residency rights as the applicant. For example, if the applicant was approved for the Temporary Activity visa (subclass 408), then this will allow their approved family members to have the same rights to reside in Australia for the duration of the visa, but it will not allow those family members any additional benefits, such as working rights or the right to study in Australia.

Law stated - 19 June 2024

SPORTS UNIONS

Incorporation and regulation

26 | How are professional sporting unions incorporated and regulated?

Participation in sporting unions is relatively high for Australian athletes. Professional sporting unions have been reluctant to become registered organisations within the statutory framework of the Fair Work Act 2009 (Cth) and are generally incorporated associations under state legislation.

Representative bodies often negotiate common law collective agreements with the governing body for the relevant sport. The collective agreements govern the core engagement, participation, terms and conditions of employment as well as a range of commercial matters and include matters such as the use of the athletes' image, integrity issues, the obligations of the athlete to the broadcast partners, athlete wellbeing, medical standards, memorabilia guidelines and athlete movement and transfer arrangements.

The representative bodies also accredit and regulate athlete agents and the manner in which they are involved in negotiations on behalf of athletes, as well as how they operate in the sport.

Law stated - 19 June 2024

Membership

27 | Can professional sports bodies and clubs restrict union membership?

The Fair Work Act 2009 (Cth) provides protections for employees who wish to undertake union activities. All Australian employers are covered by the Fair Work Act, including professional sports bodies and clubs, are prohibited from:

- pressuring employees about their choice to unionise; or
- taking any adverse action (or threatening to take adverse action) against an employee for being a union member or taking part in industrial action.

Adverse action includes dismissal, a change in role or demotion, or changing the terms of an employment contract. Under the Fair Work Act, professional sports bodies are prohibited from restricting union membership. Some state-based laws also prohibit discrimination on grounds of union membership.

Law stated - 19 June 2024

Strike action

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

The Fair Work Act 2009 (Cth) regulates some industrial actions. Exercising rights contained in the Fair Work Act, including dispute resolution and the right to take industrial action, is contingent upon the provisions of the individual employment relationship and contract.

If the Fair Work Act applies to professional athletes by virtue of their employment relationship and contract, they are entitled to take protected industrial action (including strike actions) provided:

- the strike does not occur before the expiry of an industrial agreement;
- the strike is done to genuinely try and reach an agreement; and
- the employer has had a reasonable amount of time to respond to the dispute.

Notwithstanding this, sports unions cannot organise industrial action to ensure that only members of a union should be employed in specific roles.

Law stated - 19 June 2024

EMPLOYMENT

Transfers

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

Individual transfers are governed primarily by contract law and a combination of the sport's governing body rules or collective agreements.

Similarly to employment contracts, sporting contracts may include restraint of trade provisions that limit or restrict an athlete from transferring to a different club during the term of their contract, or for a specific period after their contract has expired. As with all restraint of trade clauses, the enforceability of a restraint in an athlete's contract will depend on whether the restraint is reasonable in the circumstances.

It is not unusual for athletes, clubs and sporting bodies to work together to negotiate transfers or trades in circumstances where either the athlete or the club has requested a transfer. In most sporting codes in Australia, athletes often transfer between clubs when their contract has expired with a club or will be expiring at the end of that season.

Law stated - 19 June 2024

Ending contractual obligations

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

Australian professional sporting clubs usually enter fixed-term contracts with their athletes. As a general rule, athletes cannot unilaterally elect to 'buy their way out' of their contractual obligations, including any obligations that bind the athlete after the contract has expired or has been terminated.

If an athlete intends not to be bound by a contract during a fixed term, they may elect to terminate their contract in accordance with any express contractual provisions (which may result in termination costs or fees). Alternatively, and as is often the case in Australia, athletes may negotiate with their club for an agreed mutual termination of the contract, which may be subject to the payment of a certain fee.

Law stated - 19 June 2024

Welfare obligations

31 | What are the key athlete welfare obligations for employers?

Where an athlete is an employee of a sporting club or organisation, the club or organisation (as the case may be) is subject to employer duties of care that are contained in the national uniform or state-based occupational health and safety legislation, the Fair Work Act 2009 (Cth) and relevant common law. Importantly, these duties include the duty of employers of athletes to ensure that the athlete has a safe working environment free from risks to health and safety.

Law stated - 19 June 2024

Young athletes

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

Employment regulations for young employees and, therefore, young professional athletes, differ between states. In some states, there is no minimum age for employment. However, restrictions do exist on the type of employment a minor can be engaged in. In other states, the minimum age for employment ranges from 13 to 15 years old.

Further, employment contracts with people under 18 years old in Australia will only be enforceable if they are for the benefit of the minor and are not oppressive or unfair to the minor.

Law stated - 19 June 2024

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

Safeguards to be considered by sporting organisations include regimes to manage and protect the physical safety and psychological well-being of children and to protect them from mistreatment and abuse.

Australian statutory regimes must be followed by all participant organisations within professional sport. In particular, they must ensure that any person who works with child athletes has completed a specific screening process, known as a Working with Children Check.

Law stated - 19 June 2024

Club and country representation

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

The general Australian employment law principles apply to the employment of athletes.

Contractual restrictions may be imposed on an individual's professional and personal behaviour, provided that these restrictions are reasonably connected with the individual's employment. These restrictions may include the prohibition against promoting a brand that would otherwise compete with one of the club's official sponsors or partners. Conflicts may also arise where an athlete represents Australia at international events and the sponsors of those international events compete with the club's official partners and sponsors.

Other employment issues that may arise for athletes representing a particular club, as well as Australia, include the jurisdiction for hearing disputes and for any disciplinary proceedings.

Law stated - 19 June 2024

Selection and eligibility

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

The Court of Arbitration for Sport is an international body available to Australian athletes who seek review of selection and eligibility decisions.

The National Sports Tribunal (NST) also has the authority to hear and resolve national-level sporting disputes. Where the parties have agreed to the jurisdiction of the NST, the NST general and appeals divisions also have jurisdiction to hear selection and eligibility disputes. The agreement to the application of the NST can be automatically provided for in the governing body's regulations, rules, selection policy or by virtue of a contract between an athlete and the governing body.

The NST will apply mediation, conciliation, case appraisal or arbitration to assist the parties in resolving selection and eligibility disputes. Appeals to the appeals division of the NST can be made as a result of the decisions from the general division, or where applicable, the sport's internal tribunal.

Law stated - 19 June 2024

TAXATION

Key issues

36

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

Tax on the income of foreign athletes competing in Australia largely depends on whether the individual is an Australian resident or a temporary resident, for taxation purposes. Generally, a foreign athlete will only be an Australian resident for tax purposes if he or she has moved to Australia and intends to stay for the foreseeable future. However, a foreign athlete who holds a temporary visa under the Migration Act 1958 (Cth) who will only remain in Australia for a specified period or until the specified event concludes, will be considered a temporary resident.

While Australian residents are taxed on their worldwide income from all sources, the Australian government does not require temporary residents in Australia to pay tax on foreign income. This means that athletes and support staff who are in Australia for the purposes of a Temporary Activity Visa do not need to pay tax in Australia on their income earned outside of Australia. However, these visa holders will be liable to pay income tax on income earned in Australia, which may include prize money, appearance fees, product endorsement and sponsorship fees.

Law stated - 19 June 2024

UPDATE AND TRENDS

Key developments of the past year

37 | Are there any emerging trends or hot topics in your jurisdiction?

Female participation in sport

Over the past year, there has been a significant increase in the participation and viewership of women's sport. This increase was most noticeable after the 2023 FIFA Women's World Cup (World Cup), with the Australia v England semi-final match breaking records as the most-watched television programme since audience recording began in 2001. Cricket Australia has since reported that the increase it has seen in women's participation can be directly attributed to the World Cup taking place across Australia and New Zealand.

After the World Cup, the Victorian government committed to making substantial investments in the infrastructure and policies required to further support the growth of women's football within the state. This comes with a particular focus on providing the funding required for additional female facilities to cater for all skill levels and ensure that the focus on growing women's participation continues.

The Australian Federal government has also announced the 'Play Our Way' grants programme, which commits a further AU$200 million in funding over three years for the promotion of equal access, building of more suitable female facilities and support of grassroots initiatives aimed at increasing the participation of women in sport.

Concussion

Over the past 12 months, there has been a significant focus on concussion awareness within sports, and the long-term health effects as a result of repeated head injuries. Research suggests there is a causal link between multiple and repeated head traumas leading to long-term health deficits, including some athletes being diagnosed with chronic traumatic encephalopathy (CTE) upon autopsy after death.

The significant increase in awareness was triggered in 2023, with a class action involving more than 60 former Australian Football League (AFL) players to sue the AFL for up to AU$1 billion in compensation for the damage caused by concussions sustained during those players' careers. The plaintiffs will also be seeking compensation for pain, suffering, economic loss and medical expenses incurred as a result of concussions during their games, alleging that the AFL has failed to make and enforce rules, policies and procedures to reduce the occurrence of concussions.

In response to the elevated public awareness, and following significant consultation with regulatory bodies in both the United Kingdom and New Zealand, the Australian Sports Commission (ASC), released the Australian Concussion Guidelines for Youth and Community Sport (Guidelines). The Guidelines include the recommendation that there be a minimum of 10 symptom-free days and/or daily access to healthcare professionals for those professional athletes over 19 years old, before returning to participating in sport or high-performance activities.

Gambling advertising

The advertisement of gambling in sport has been a hot topic over the last 12 months, following the release of the 197-page 'You Win Some, You Lose More' report detailing 31 recommendations by the House of Representatives Standing Committee on Social Policy and Legal Affairs (the Report) in 2023. The Report outlined that each of the recommendations be implemented in four phases.

Notably, the second phase recommended a ban on all gambling advertisements and commentary on odds during a game and one hour on either side of a sports broadcast. This ban would also extend to sponsorship material on player uniforms and sporting stadiums and would be seen as a drastic change from the current regulations which only require that gambling advertisements not be aired within five minutes of a sporting event, with exceptions for long-form events such as cricket and tennis matches that commence after 8.30pm.

The final phase of the recommendations outlines a complete prohibition on all gambling advertising and sponsorship within three years of the Report. This excludes dedicated racing channels, however will nonetheless significantly impact the sporting industry in Australia, as several gambling companies invest significant amounts in sports, clubs, teams and events.

It is yet to be known whether the Australian government will implement any of the recommendations set out by the Report, but it will no doubt continue to remain a hot topic in Australian sport for the foreseeable future.

AI in sport

Technology in sport is not a new concept, with many sporting codes relying on AI as a form of decision review systems (DRS). However, as with many industries in the last 12 months, the use of AI in sport is expanding. Rather than just verifying the decisions of umpires and referees, AI is now appearing in fan experiences and content management. Most impressively, some sporting codes are beginning to incorporate AI into performance management and coaching decisions. For example, Deakin University researchers are working with the AFL to build a Coach Decision Assistant (CoDA). The CoDA will utilise AI to monitor and track players to assist coaches in making in-match decisions on game day. The CoDA will use data from previous match outcomes and compare it with the live in-game metrics and performance characteristics of the team to provide feedback to the coach on how the team can improve their game and suggest changes to the current play.

Participation of transgender athletes in sport

The inclusion of transgender athletes in sport has been a focus of the Australian Sports Commission. This was evident in the release of the Transgender & Gender-Diverse Inclusion Guidelines for HP (High-Performance) Sport (HP Guidelines) in 2023. The HP Guidelines were introduced to supplement the Australian Human Rights Commission Guidelines (released in 2019), which were designed to offer practical advice for the inclusion of transgender persons in sport. The HP Guidelines acknowledge that the inclusion of transgender and gender-diverse athletes in high-performance programmes requires different and additional considerations specific to elite athlete competitive sport, however, guide the sporting codes on the matters for consideration, including by providing a checklist of the factors to consider when developing a trans-athlete inclusion policy.

The inclusion of policies regarding transgender athletes has been seen in many sports globally, with World Netball notably banning transgender players from international competitions in April 2024. While Netball Australia does not have any transgender athletes in the Super Netball competition, it will impact any transgender netballers who reach that level in the future and will prohibit those players from representing their country.

Law stated - 19 June 2024

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REGULATORY

Governance structure

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

Law No. 181 of 1995 created the National Sports System. The National Sports System aims to generate and provide the community with opportunities to participate initiation, training, promotion, and practice of sports, recreation, and the use of free time (as a contribution to the integral development of the individual and the creation of a physical culture to improve the quality of life of Colombians). The National Sports System is constituted by the Ministry of Sports, the Sports Federation (national level), leagues (departmental level) and clubs (local level). According to Law No. 1967 of 11 July 2019, the Ministry of Sports is responsible for the public administration of the National Sports System. Its objective, functions and structure are detailed in Decree No. 1670 of September 2019.

Law stated - 14 June 2024

Protection from liability

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

In Colombia, a specific law for civil liability in sports does not exist, nor has clear jurisprudence been developed regarding this. Both are covered according to the articles of the contractual (articles 1602 and further of the Civil Code) and extracontractual liability (articles 2341 and further of the Civil Code). Further, Law No. 49 of 1993 establishes the disciplinary regime within sports. The liability is analysed depending on the circumstances at hand (namely, rules of the game, general sports law, acts of the parties involved, fault, causal link, damage, the relation between the affected parties, etc). Moreover, according to article 2357 of the Civil Code, the damage might be subject to a reduction in sports situations if such damage should be considered a possible consequence of the risk of the sport itself (which is assumed by the participant upon starting the game). The Penal Code (Law No. 599 of 2000), Chapter XV of Law No. 1356 of 2009 (to establish the security regulations in sports events), and articles 97 and 98 of Law No. 1453 of 2011 (dispositions regarding safety and coexistence in professional sports), stipulate the situations under which a sportsperson can be punished for his or her on-field actions. Some examples are the promotion of violence, carrying a weapon, incitement of physical or verbal aggression, or damage to the sports infrastructure.

Law stated - 14 June 2024

Doping regulation

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?

Over the years, several laws and decrees have been issued to govern doping matters. The first law was Law No. 18 of 1991. At the beginning of 2021, two laws were passed in the fight against doping. The first, Law No. 2083 of 2021, modified article 380 of the Penal Code, increasing sanctions for those who provide illegal doping substances prohibited by the World Anti-Doping Agency (WADA) to sportspersons (increasing imprisonment from 24 to 72 months, the penalty from 66 to 750 minimum salaries – the current minimum salary being 1.36 million Colombian pesos and equivalent to approximately US$330 – and an increase of a maximum of half the sanction under certain, specified aggravating circumstances). The second, Law No. 2084 of 2021, enacts the new norm in the fight against doping in Colombian sport, modifying the law according to the new WADA Code and the guidelines of the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention. Thus, Colombia follows the WADA Code and the guidelines of the UNESCO Convention.

Law stated - 14 June 2024

Financial controls

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

No official debt and borrowing limits exist in Colombian sports. A minimum salary cap is set (minimum salary), but a maximum cap does not exist. Sports entities must abide by the international accounting standards (NIIF) as included in Decree No. 2420 of 2015, and national federations can impose sanctions of a disciplinary or economic nature for breach of contractual economic obligations between clubs and their players or federations (see Chapter XII of the Regulations of the Player Statutes for an example in football). To facilitate compliance with the NIIF rulings, the Superintendence of Companies issued a guide to orientate football clubs, the sport with the highest financial importance in Colombia, for the management of financial information and intangible assets.

Further, both the Ministry of Sports as well as the Superintendence of Companies may intervene because of a financial imbalance or misbehaviour, if necessary, due to their surveillance and control functions.

Law stated - 14 June 2024

DISPUTE RESOLUTION

Jurisdiction

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

Generally, disputes are resolved before the national courts or alternative dispute resolution methods. However, due to the specificity of sports and the international and internal regulations of sports federations, disputes are resolved by the respective competent bodies. In football, for example, the jurisdiction is determined in the Regulations of the

Player Statutes. According to article 36, and without prejudice to the right of a player to bring a case before the ordinary labour courts, it is strongly recommended to bring labour or sports differences before the respective bodies of the national football federation.

Law stated - 14 June 2024

Enforcement

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

They are enforced by the national authorities (court, police, etc). On occasion, these faculties are delegated to the respective administrative bodies of the federations.

Law stated - 14 June 2024

Court enforcement

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

Yes, especially when constitutional, labour or civil rights are involved.

Law stated - 14 June 2024

SPONSORSHIP AND IMAGE RIGHTS

Concept of image rights

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

Yes. Article 15 of the Colombian Constitution protects personal and family privacy as well as one's good name. Image rights can be protected by registering a copyright or data protection (Law No. 1581 of 2012). Further, article 15 of Law No. 256 of 1996 states that taking advantage of the reputation of others is unfair competition. On the other hand, according to article 136 of Decision No. 486, a third party cannot register a sign that affects the identity of legal or natural persons. This includes the forename, surname, signature, title, nickname, pseudonym, likeness, portrait or caricature of a person, except where the consent of that person or, if he or she is deceased, that of those declared his or her heirs, is proven.

Law stated - 14 June 2024

Commercialisation and protection

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

As a rule, the individual has exclusive rights over his or her image rights, and therefore third parties require his or her authorisation to exploit the image. However, there are three exceptions for which no express consent is required:

- the right to information and free speech (as stipulated in article 20 of the Colombian Constitution and articles 34 to 36 of Law No. 23 of 1982) with a consideration between the public and private interests;
- affiliation (a sportsperson must resign themselves to some 'private use' because of the interest of the team, club or national or international federation of their sport); and
- contractual limitations (eg, exclusive sponsorship agreements).

The less evident the link with the image of the sportsperson, or the less famous the sportsperson, the more recommendable it is to attempt to protect the commercial use of, for example, the wording or name by intellectual property registrations. The latter is to avoid any third party registering or using such images without authorisation from the entitled person.

Law stated - 14 June 2024

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

To promote the sport and upcoming events.

Law stated - 14 June 2024

Morality clauses

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

Morality clauses are accepted under Colombian law. However, to be enforceable they cannot be against public order and cannot limit the essential constitutional rights of a person. They must be specific (non-ambiguous) and reasonable with regard to the conduct that is not accepted under certain circumstances.

Law stated - 14 June 2024

Restrictions

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

Since the implementation of Law No. 1335 of 2009, the sponsorship of tobacco companies has been forbidden. The sponsorship of gambling and alcohol companies is allowed (in football, the betting company BetPlay is currently the main sponsor). The advertisement of

alcohol is limited by Law No. 124 of 1994 (protection of minors and alcohol). Therefore, besides certain written and spoken phrases such as 'alcohol is dangerous for health', advertising cannot include minors (or images of persons who look to be minors), be broadcast around programmes specifically meant for minors or contain a visual or verbal reference to ingesting alcohol, etc.

Law stated - 14 June 2024

BRAND MANAGEMENT

Protecting brands

13 | How can sports organisations protect their brand value?

Among others, sports organisations can protect their brand value through good sportsmanship and results in sporting competitions, through the creation of a brand guide to guarantee adequate use; trademark registration and protection against unauthorised use by third parties or registrations of similar signs; by fair and honest use, intelligent advertisements and good relations with sportspersons or certain products or services in the market, and consistent social media management.

Law stated - 14 June 2024

14 | How can individuals protect their brands?

Individuals can register the trademark in all its variants (namely colour, texture, sound, graphic). In Colombia, the mere use of a sign does not provide any rights. A registration is valid for a period of 10 years and can be renewed. The Colombian Trademark Office does not cancel a registration ex officio because of lack of use, but third parties might file such an action three years after the granting decision has become definitive.

Law stated - 14 June 2024

Cybersquatting

15 | How can sports brands and individuals prevent cybersquatting?

The prevention of cybersquatting initiates with the protection of the trademarks. Once the trademarks are duly registered it is possible to initiate actions against any sort of cybersquatting. The protection is executable judicially and using administrative actions such as Uniform Domain Name Dispute Resolution Policy proceedings.

Law stated - 14 June 2024

Media coverage

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

This is determined depending on the balance between article 15 (private and family life and image) and article 20 (right of information) of the Colombian Constitution. Public persons must accept that their activities and life are of public interest, but this is limited by their private and family life (eg, no reporters can enter their houses).

Law stated - 14 June 2024

BROADCASTING

Regulations

17 | Which broadcasting regulations are particularly relevant to professional sports?

The associated sports entities, part of the National Sports System, are holders of the commercial exploitation rights of transmission or advertising in the competitive sports events organised by them, as well as the commercialisation of the events.

Law stated - 14 June 2024

Restriction of illegal broadcasting

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

There are judicial and prejudicial actions. Prejudicially this is by means of a cease and desist letter or a mediation hearing. Judicially this is by means of an infringement preceded by precautionary measures.

Law stated - 14 June 2024

EVENT ORGANISATION

Regulation

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

Venue hire and event organisation are mainly under the jurisdiction of the local authorities. The municipalities or districts oversee the construction, administration, maintenance and adaptation of the respective sports venue. Hence, the venue is usually hired by the municipalities or districts. Even if the venue is private, public events must be authorised by the local authority. The municipal or district authority that grants permission for the public event must previously demand payment of the corresponding taxes.

Law stated - 14 June 2024

Ambush marketing

20 | What protections exist against ambush marketing for events?

Ambush marketing is very difficult to prevent, but any party can attempt to protect itself against ambush marketing via trademark registration, copyright registration, unfair competition actions (usually by means of a precautionary measure request), consumer protection and false advertising.

Law stated - 14 June 2024

Ticket sale and resale

21 | Can restrictions be imposed on ticket sale and resale?

Ticket sales of public events are regulated in Single Circular, Title II, No. 2.10. Accordingly, the organiser is, for example, obliged to provide information about the event as well as admission conditions (age, maximum number, etc), number of tickets available and information regarding the seat or location. In Colombia, the resale of tickets is legal. Notwithstanding, due to excessive prices in resale, falsification and other undesired behaviour, the industry is searching for mechanisms to control resale and to make resale of tickets more transparent.

Law stated - 14 June 2024

IMMIGRATION

Work permits and visas

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

In Colombia, no special visa exists for foreign professional athletes, coaching and administrative staff. All these persons require a regular work visa (as regulated according to articles 16 to 20 of Resolution No. 6045 of 2017). According to the requirements that can be read on the Colombian Foreign Ministry website found in articles 36 and 47 of Resolution No. 6045 of 2017, a foreign applicant must meet the general requirements and the specific requirements listed in the following.

General requirements:

- presentation of a passport or travel document valid for at least 180 days, in good condition, with at least two blank pages;
- attachment of a copy of the main page of the current passport where the holder's personal data is registered;
-

filling out the visa application electronically or in person at the issuing office. In the case of artistic, sports and cultural groups, the visa application may be completed by the representative, specifying the data of each of the members of the group; and

- a copy of the page of the passport where the last stamp of entry or exit from Colombia has been stamped.

Specific requirements:

- submission of the completed contract summary format (note, the visa authority may require the presentation of the original contract when the information recorded in the contract summary format is not sufficient, presents inconsistency, or requires clarification);
- a motivation letter from the employer; and
- employer bank statements six months before application. When the employer is a legal entity, he or she must demonstrate an average monthly income of 100 current legal monthly minimum wages.

After the visa authorisation, the owner will have 30 calendar days to pay the fee. Upon this payment, the authority emits and sends the e-visa within three days to the email of the applicant. If the visa contains typing mistakes, corrections can be requested within 30 days.

The visa process takes approximately eight working days and the visa is granted for a maximum period of three years. To extend their stay in Colombia, the applicant must apply for a new visa, since it is not possible to renew a visa.

Law stated - 14 June 2024

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

According to article 10.8 of Resolution No. 6045 of 2017, persons of foreign nationality who enter Colombia to temporarily compete in our jurisdiction can apply for a tourism visa (Visa Type V), which grants an authorisation of permanence in the national territory up to a maximum of 180 days. This visa only grants the authorisation to work exclusively in that sports event.

Law stated - 14 June 2024

Residency requirements

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

According to article 21 of Resolution No. 6045 of 2017, a residency permit (Visa Type R) could be obtained, if:

- one has Colombian nationality;

- one is the parent of a Colombian national by birth;
- one has been continuously and uninterruptedly in the national territory for two years as a partner (by marriage, partnership or permanent partner), been a parent of a Colombian child by adoption or been a national of any of the signatories of the Residence Agreement between Mercosur, Bolivia and Chile; or
- one has been continuously and uninterruptedly in the national territory for five years as a refugee, as an independent worker or worker or service provider of a Colombian domiciled party or a religious organisation, a shareholder (threshold conditions), a student, registered as a foreign investor or a recipient of a pension or a periodic rent.

To comply with the above, the foreigner cannot have been outside the country for more than 180 days (continuously and uninterruptedly) and cannot have been in the country on an irregular basis. This visa has indefinite validity and the holder can conduct whatever legal activity is desired. The visa sticker can be renewed and, if necessary, transferred to a new passport via a 'transfer process'.

Law stated - 14 June 2024

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

According to article 26 of Resolution No. 6045 of 2017, family members or economic dependants of owners of a Visa Type M (migration) or Type R (Residency) can obtain a beneficiary visa. Under the definition, family members are understood as partners (by marriage, partnership or permanent partner), parents of the visa owner (if they depend economically on him or her), and children who are under 25 years or above this age if they have a disability that impedes them having economic independence. The validity of this beneficiary visa is no longer that of the owner of the Visa Type M or R and it does not permit working.

Law stated - 14 June 2024

SPORTS UNIONS

Incorporation and regulation

26 How are professional sporting unions incorporated and regulated?

In the Labour Code, the right of union associations and requirements are included in articles 354 and further. In Colombia, unions are organisations of free entry and withdrawal of workers. At least 25 members are required for its constitution (all older than 14 years), and it is not possible to be a member of two unions of the same activity. For the incorporation, an incorporation act is necessary and requires the name and object of the union, as well as the name, identity number, residence and activity that connects the members. Subsequently, the executive staff is designated. The statutes must comply

with some minimum requirements mentioned in article 362. To obtain recognition as a legal person, a request must be filed before the Ministry of Labour, specifically before the National Department of Trade Union Supervision (see articles 364 to 368 of the Labour Code). Only with such recognition and during the term of its validity can the union exercise the functions that the law and its respective statutes indicate. The powers and functions of the unions are explained in articles 373 and 374 of the Labour Code.

Law stated - 14 June 2024

Membership

27 | Can professional sports bodies and clubs restrict union membership?

No, the right of association is protected under article 354 of the Labour Code. Any person who uses violence or threat attempts in any way to inhibit this right shall be punished with a pecuniary sanction.

Law stated - 14 June 2024

Strike action

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

According to article 12 of the Labour Code, the right to take strike action is protected and the unions are entitled to declare a strike based on article 374.4. The definition of a strike is found in article 429, which defines it as a temporary collective and peaceful suspension of labour carried out by the workers of an establishment or company for economic purposes and professionals, proposed to their employers. Before taking strike action, a delegation of three persons older than 18, with Colombian nationality and who are active members of the represented group, must give their request sheet (the list of demands) to their respective counterparts. After this, the counterpart has a term of five working days to start conversations. Omission will result in a pecuniary sanction per day of delay. The conversations have a term of 20 days and can be extended by another 10 days through mutual approval and should be ended within a minute. The remaining differences will be dealt with in a conciliation process, which has a non-extendable term of a maximum of 10 working days. This process is also ended within a minute. If the conflict is still not completely resolved, the strike or arbitration request will be decided within 10 business days following the termination of the above-mentioned direct settlement stage by secret, personal, and non-delegable vote by the general assembly of the union. The strike must be orderly and peaceful. Further, the strike is not an absolute right, but a relative one, since it can be restricted by general interest, the rights of others and when its exercise results in a disturbance of public order.

Law stated - 14 June 2024

EMPLOYMENT

Transfers

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

Labour contracts are sui generis and are regulated by the Labour Code and the respective provisions of the federations in question. Due to their special nature and given the fact that they must be inscribed before the federation, they must be in written form. The requirements for the transfers are organised within the regulations of each national federation, which in turn comply with international regulations. For football, this is the Regulations of the Players Statutes. Transfers can only take place within the respective transfer windows.

Law stated - 14 June 2024

Ending contractual obligations

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

Yes, but in Colombia, the freedom of work is a constitutional right and therefore the respective clauses, if unreasonable, abusive, or too restrictive to be able to leave, are not accepted.

Law stated - 14 June 2024

Welfare obligations

31 What are the key athlete welfare obligations for employers?

The employer is obliged to ensure the safety and health of its workers using an occupational health and safety management system, the SG-SST. Its main obligations are, among others:

- to make the appropriate work tools available to employees;
- defining, disseminating, directing and enforcing the occupational health and safety policy within the company;
- carrying out the prevention and promotion of occupational risks;
- Integrating health and safety aspects in the workplace through a set of management systems, processes, procedures and decisions of the company;
- to carry out the annual work plan; and
- to assign responsibilities within the company, among others.

Law stated - 14 June 2024

Young athletes

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

According to Law No. 1098 of 2006, the Code of Childhood and Adolescence, the minimum age for admission to work is 15 years. Adolescents between the ages of 15 and 17 require authorisation (with the requirements as mentioned in article 113 of Law No. 1098 of 2006) from a labour inspector. However, minors up to the age of 15 may receive authorisation to carry out paid activities of an artistic, cultural or recreational nature or in a sports capacity. Such authorisation will establish the number of maximum hours and the conditions in which such activity must be carried out. In no case can such a permit exceed 14 hours per week. Sports academies must retain administration of all the minors in their club. The transfer of young athletes to other jurisdictions is regulated according to the respective national and international federation laws.

Law stated - 14 June 2024

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

As a rule, you must be 18 to be allowed to work. However, Law No. 1098 of 2006, the Code of Childhood and Adolescence, stipulates some exceptions. Accordingly, under certain conditions, a minor can work from 15 years of age (or younger in occasions of activities of an artistic, cultural, recreational or sports nature). The conditions are related to the type of work, the maximum hours a week and working hours. Further, they cannot work night shifts and cannot do work that is qualified as dangerous (affecting thereby their physical or mental health or their education). All people younger than 18 years require an authorisation (among others, with the data of the person, the employer and the conditions of the work therein).

Law stated - 14 June 2024

Club and country representation

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

Fitness and employability for the parties and responsibility for injuries.

Law stated - 14 June 2024

Selection and eligibility

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

By Colombian law, article 96 of the Constitution and Law No. 43 of 1993, it is possible to have more than one nationality. One obtains Colombian nationality by birth or by naturalisation. No Colombian by birth can be deprived of his or her nationality. The quality of Colombian nationality is not lost by the fact of acquiring another nationality, nor are persons who adopt Colombian nationality required to renounce their nationality of origin or adoption. Those who have renounced Colombian nationality may recover it in accordance with the law.

In Colombia, it is possible to request naturalisation if:

- the foreigner has lived continuously in Colombia for the five years immediately before the date of presentation of the application;
- the persons are by birth Latin American or Caribbean, who have lived continuously for one year immediately before the filing date of the application in Colombia (considering the principle of reciprocity through current international treaties); or
- the foreigner is married to a Colombian who has lived continuously in Colombia for the two years immediately before the date of applying.

Absence from Colombia for three months a year does not interrupt the periods of the required continuous residence. Selection and eligibility disputes are dealt with according to the regulations of the national and international sports federations.

Law stated - 14 June 2024

TAXATION

Key issues

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

The Colombian Tax Code (specifically articles 304 and further) indicates that natural persons with residence or Colombian nationality should pay 20 per cent tax and foreign natural persons or non-resident persons should pay 10 per cent tax over occasional income (including money and in-kind awards in tournaments) if the commercial value of the award is superior to approximately US$574; the equivalent of 48 tax value units (for 2024, this is approximately US$11.94 per unit). If the award is money, the organiser of the event must apply the tax deduction before handing over the award. If it is in-kind the winner must pay the respective tax within six months after receipt.

Law stated - 14 June 2024

UPDATE AND TRENDS

Key developments of the past year

37 Are there any emerging trends or hot topics in your jurisdiction?

This year, Colombia hosts the FIFA U-20 Women's World Cup from 31 August until 21 September 2024.

Law stated - 14 June 2024

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REGULATORY

Governance structure

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 generally incorporated association.

Law stated - 4 July 2024

Protection from liability

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:

- whether the manner and method of the misconduct were considerable in light of the rules of the sport;
- whether or not it remains within the range of injuries that can normally occur in the sport; and
- the degree of negligence of the party at fault.

One may be held criminally responsible, especially if the act is considered malicious.

Law stated - 4 July 2024

Doping regulation

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. 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 or the Court of Arbitration for Sports. 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. Before 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.

Law stated - 4 July 2024

Financial controls

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. Further, 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 and signing fee for any new Japanese players. For the first year's salary, the limitation is set at ¥16 million, and for the signing fee, the limitation is set at ¥100 million plus any incentive up to 50 per cent of the base signing fee. 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.

Law stated - 4 July 2024

DISPUTE RESOLUTION

Jurisdiction

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

In the Japan Professional Football League (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.

Under the Nippon Professional Baseball Organisation (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.

Law stated - 4 July 2024

Enforcement

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 the 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.

Law stated - 4 July 2024

Court enforcement

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 the chairman could be appealed to the JFA's Appeal Committee and, if a party is dissatisfied with the decision of the Appeal Committee, it can appeal to the Court of Arbitration for Sports (CAS).

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 body.

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 for the court to resolve.

Moreover, athletes may file a petition for arbitration to the Japan Sports Arbitration Agency or the CAS on dispositions rendered by the sports organisation to the athletes based on an arbitration agreement made by the parties.

Law stated - 4 July 2024

SPONSORSHIP AND IMAGE RIGHTS

Concept of 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 athletes' clubs, leagues and management companies generally manage and control the athletes' image rights and publicity rights.

Law stated - 4 July 2024

Commercialisation and protection

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 to exploit such images 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.

Law stated - 4 July 2024

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 cooperate with the club whenever the club requests to commercially use the player's image and give them a licence to do so. 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 advertisements.

In the Japan Professional Football League (the J.League), it is also provided that not only the club but also the J.League can ask the players to cooperate regarding the commercial

use of players' images without any fees or charges if several players' images are used together.

Law stated - 4 July 2024

Morality clauses

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 or her club, the club may sanction the player or terminate his or her contract.

The Nippon Professional Baseball Organisation rule provides that the 'Club, Commissioner or both can impose fines, or suspend the player for a certain period 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 from time to time, and players have been sanctioned according to these clauses.

Law stated - 4 July 2024

Restrictions

12 | Are there any restrictions on sponsorship, advertising 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.

Law stated - 4 July 2024

BRAND MANAGEMENT

Protecting brands

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 and 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.

Law stated - 4 July 2024

14 | How can individuals protect their brands?

Individuals can also protect their brands by the same means as organisations.

In addition, a means of protection specific to individuals is the protection of publicity rights.

Law stated - 4 July 2024

Cybersquatting

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.

Law stated - 4 July 2024

Media coverage

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

Individuals can 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 strict. It is, therefore, rare for an injunction to be granted.

Law stated - 4 July 2024

BROADCASTING

Regulations

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.

Law stated - 4 July 2024

Restriction of illegal broadcasting

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 from the medium.

As sports events and games themselves are not copyrightable, in cases where people illegally record sports events, an organisation cannot claim 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.

Law stated - 4 July 2024

EVENT ORGANISATION

Regulation

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. Further, when outdoor advertisements are posted outside the venue, restrictions based on the Outdoor Advertisement Act and the Outdoor Advertisement Ordinance enacted by the local government under the Act may also be imposed.

When an event organiser wishes to use a public facility for a long period (eg, when a football club uses a public stadium as its home stadium), the event organiser may be entrusted with management following the Local Autonomy Act.

Law stated - 4 July 2024

Ambush marketing

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, the Rugby World Cup 2019 and the Tokyo 2020 Olympic and Paralympic Games, there were no special laws in place, but ambushers were dealt with using existing legislation.

Law stated - 4 July 2024

Ticket sale and resale

21 | Can restrictions be imposed on ticket sale and resale?

Ticket resale of sporting events has become a social issue in Japan.

On 14 June 2019, the Act on Ensuring the Proper Distribution of Entertainment Event Tickets by Prohibiting the Unauthorised Resale of Specified Entertainment Event Tickets (the Anti-scalping Law) took effect. The Anti-scalping Law prohibits:

- unauthorised resale of entertainment (including sports) event tickets; and
- acquisition of such tickets for unauthorised resale (limited to tickets that specify a certain date and time, place and seat (or visitor)), at a price exceeding the sales price set by the promoter.

Even if the new law cannot be applied, event organisers typically prohibit resales by ticket agreements and any resale of such tickets may be considered to violate the contract.

Purchasing tickets to resell or resell 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 owing to actions involving resale intent when purchasing tickets.

Law stated - 4 July 2024

IMMIGRATION

Work permits and visas

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

Japanese clubs should 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 must apply for a visa in person at the Consulate-General of Japan closest to his or her residence and receive a seal of verification on his or her passport.

The athlete must bring the COE and his or her valid passport with the visa to Japan and undergo standard immigration and passport inspections at the port of entry. When he or she is permitted to enter Japan, the immigration inspector affixes a seal of verification for entrance in his or her passport that specifies his or her status of residence and period of stay. If his or her period of stay is longer than three months, he or she will receive a residence card. The athlete must carry either his or her passport or residence card on his or her person 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.

Law stated - 4 July 2024

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' – the same as actors, performers, singers and dancers. His or her 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.

Law stated - 4 July 2024

Residency requirements

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 Ministry may grant permission only when it finds that:

- the athlete's behaviour and conduct are good;
- the athlete has sufficient assets or skills to make an independent living; and

- 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.

Law stated - 4 July 2024

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 'entertainer' residence status will be granted the status of residence as a 'dependant' for the same term as the athlete.

Law stated - 4 July 2024

SPORTS UNIONS

Incorporation and regulation

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.

Law stated - 4 July 2024

Membership

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 labour union'.

Law stated - 4 July 2024

Strike action

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

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: subject, object, procedure and means. For example, strikes are denied legitimacy if they:

- are carried out by individuals who cannot become parties to collective bargaining;
- are not for collective bargaining, such as for working conditions;
- are not conducted through the process of collective bargaining; and
- use violence.

Law stated - 4 July 2024

EMPLOYMENT

Transfers

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

In the Japan Professional Football League (the J.League), under the Japan Football Association's (JFA) 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 Nippon Professional Baseball Organisation (NPB), the 'reserve system' prohibits the transfer of players. 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 Major League Baseball 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.

On 17 June 2019, the Japan Fair Trade Commission published a public report titled 'Transfer Restricting Rules in the Sports Industry from the Perspective of the Antitrust Act'. This report states that 'there are many transfer restricting rules in the sports industry and whether or not specific rules violate the Antitrust Act shall be determined on a case-by-case basis', while it also asserts that 'at the very least, rules that restrict transfers or occupational changes indefinitely (eg, rules that forbid transfers entirely, forbid transfers without the current team's consent indefinitely, forbid participation in any league or competition held by the governing body even if transfers themselves are allowed)' may be considered to be violations of the Antitrust Act.

Law stated - 4 July 2024

Ending contractual obligations

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, to exercise the FA right and transfer to another team, the other team is required to pay certain FA compensation to the original team.

There is no such reserve system in the J.League, and players can freely negotiate transfers with other teams from six months before the expiration of the contract with the original club. However, players cannot transfer in the middle of the contract term, unless an agreement on a penalty is made between the original club and the new club.

Law stated - 4 July 2024

Welfare obligations

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 when players suffer injuries or illness. In addition, in such a 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' to relieve promising athletes who become unable to play because of injury or illness from economically dire conditions.

Law stated - 4 July 2024

Young athletes

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. Further, 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 (namely, 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.

Law stated - 4 July 2024

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. 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.

Law stated - 4 July 2024

Club and country representation

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

Concerning 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 until the players returned.

Law stated - 4 July 2024

Selection and eligibility

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

In the J.League, the decision made by the chairperson is final, and all parties and individuals belonging to the party, as well as the J.League, are bound by it. Even if a party is dissatisfied with the decision of the 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 body.

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 for the court to resolve.

Moreover, athletes may file a petition for arbitration to the Japan Sports Arbitration Agency or the Court of Arbitration for Sports on dispositions rendered by the sports organisation to the athletes based on an arbitration agreement made by the parties.

Law stated - 4 July 2024

TAXATION

Key issues

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 tournament, 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 the organiser should withhold taxes 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.

Law stated - 4 July 2024

UPDATE AND TRENDS

Key developments of the past year

37 | Are there any emerging trends or hot topics in your jurisdiction?

In Japan, after the Tokyo Olympic and Paralympic Games in 2021 (2020 Games), and the World Swimming Championships held in Fukuoka in 2023, the Asian Games are scheduled to be held in Aichi and Nagoya in 2026. Sapporo is currently bidding to host the Winter Olympic Games, and other large-scale international sporting events are scheduled to be held after the 2020 Games in Japan. On the other hand, because of the bribery and bid-rigging scandal that arose in connection with the 2020 Games, ensuring sound management of future international sports events has become a major issue. The Sports Agency launched a project team to examine the ideal governance system for large-scale international and domestic competitions and released the Guidelines for the Governance System of Large-Scale International and Domestic Competitions on 30 March 2023. The Guidelines are based on the principles of the Sports Agency's Governance Code, and set forth the following principles to be followed by the organising committee of a large-scale event, consisting of:

- formulation and publication of a basic plan;
- development of an appropriate executive structure;
- development of regulations;
- establishment of a compliance committee;
- implementation of compliance education;
- development of legal and accounting systems;
- appropriate information disclosure;

- appropriate management of conflicts of interest;
- establishment of a whistle-blowing system;
- establishment of a disciplinary committee; and
- establishment of a crisis management and misconduct response system.

It also provides a detailed self-check test for the organising committee. It is expected to be useful in the management of various competitions in the future.

Law stated - 4 July 2024

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UPDATE AND TRENDS

Key developments of the past year

REGULATORY

Governance structure

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

In Switzerland, the responsibility for governance lies mainly with the sports organisation itself.

The legal framework and thus the regulatory governance regarding sports organisations depends mainly on the organisational form chosen by the respective sports organisation. Sports organisations are therefore in essence responsible for their own governance.

Sports organisations often choose to take the legal form of an association pursuant to article 60 et seq of the Swiss Civil Code and thus enjoy substantial organisational freedom. When established under Swiss law, associations have considerable flexibility in structuring and managing their entities. This includes the ability to determine internal governance structures, define the rights and obligations of members and establish internal remedies for dispute resolution. Therefore, the specific governance structure can vary depending on the sport and its specific requirements. In addition to the specific internal governance structure, the relevant statutory law will be applicable (eg, criminal law). The International Olympic Committee, the International Federation of Association Football, the Union of European Football Associations, the International Ice Hockey Federation and the International Cycling Union are all prominent examples where the legal form of the Swiss association is used.

Certain sports organisations opt for alternative legal entities, such as foundations or companies limited by shares, which both offer a more rigid legal structure compared to the association. Foundations allow for the allocation of assets for specific purposes. Examples of foundations include the World Anti-Doping Agency and the International Testing Agency, both based in Lausanne. On the other hand, professional sports teams, especially in football and ice hockey (eg, Lakers Sport AG in Rapperswil-Jona), are typically established as companies limited by shares. Based on the statutes of the Swiss Football League, this is actually mandatory for football clubs participating in the highest league. Companies limited by shares have a defined capital divided into shares, which are owned by the company's shareholders.

Law stated - 18 July 2024

Protection from liability

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

In essence, athletes are protected by the specific rules of play applicable to their sport. In addition, in Switzerland, participants in sport competitions are generally held responsible for their on-field actions in accordance with Swiss civil and criminal law.

Especially in team sports, athletes may be liable in torts (article 41 of the Swiss Code of Obligations). However, there is generally an understanding that the athletes willingly assume certain risks associated with the activity (volenti non fit iniuria). This doctrine of assumption of risk may limit the liability of participants, particularly in contact sports, where some level of physical contact and risk of injury is inherent to the specific sport. Naturally, this assumption of risk has its limits, and participants can still be held liable if their actions go beyond the reasonable expectations of the sport (eg, rules of play have not been complied with) or if they engage in intentional misconduct or gross negligence.

Athletes may also expose themselves to criminal sanctions. Commonly this would include criminal sanctions due to assault through negligence or acts of aggression. An interesting aspect is the relationship between the applicable rules of play and criminal law: in a previous decision of the Swiss Federal Supreme Court, it was stated that criminal liability can be assumed in principle if a foul is punishable based on the rules of play. In a later decision, the Swiss Federal Supreme Court provided for a more sophisticated perspective and concluded that the defendant's tackle was not specifically targeted at the opposing player and did therefore not constitute a violation of the rules of play. Instead, the tackle was considered to fall within the realm of sport-specific risks and therefore the doctrine of the assumption of risk was applied.

Additionally, sports organisations often have their own disciplinary system and regulations in place to address on-field misconduct, which may result in sanctions for participants involved in dangerous behaviour.

Law stated - 18 July 2024

Doping regulation

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 Switzerland, the legal framework for anti-doping is provided by the rules of sport under private law and federal law.

On one hand, based on private law, athletes are subject to the anti-doping regulations of sports governing bodies that have opted to adhere to the World Anti-Doping Program. Athletes may be sanctioned for doping offences pursuant to the World Anti-Doping Code. This World Anti-Doping Code is implemented by the Swiss Olympic Doping Statute with binding effect on all its member associations. The Swiss Olympic Doping Statute provides a standard basis for anti-doping provisions in Swiss sport.

In Switzerland, based on statutory law, using or applying prohibited substances as such is not a criminal offence for the athletes using or applying the substance. However, certain actions in connection with doping are subject to criminal sanctions under the Swiss Federal Act on the Promotion of Sports and Exercise (Sports Promotion Act). The Sports Promotion Act, along with its corresponding Ordinance, provides statutory regulations for the fight against doping in Switzerland and makes punishable the manufacture, acquisition, import, export, sale and market launch of doping substances. Criminal prosecution authorities investigate these cases, and judgments are made by state courts. Sentences range from

a fine to imprisonment. For instance, a custodial sentence of up to five years may be imposed on anyone who, for doping purposes, manufactures, acquires, imports or exports doping substances. The sanctions apply to professional as well as amateur sports, such as bodybuilding and fitness. Most recent cases in which criminal sanctions have been applied under the Sports Promotion Act concern the illegal production and distribution of doping substances in bodybuilding.

In addition to the Sports Promotion Act, the Act on Therapeutic Products and the Act on Narcotics may apply to doping, and offenders may be liable thereunder.

On an international level, Switzerland also ratified the Council of Europe Anti-Doping Convention, and the UNESCO International Convention Against Doping in Sport.

Law stated - 18 July 2024

Financial controls

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

In Switzerland, financial controls for organisations participating in professional sports vary depending on the specific sport and its governing bodies. Each sports organisation may have its own set of rules and financial guidelines to maintain financial stability, fairness and sustainability within its respective sport. The Financial Fair Play regulations of UEFA, for example, aim to promote financial stability and sustainability among sports clubs. These regulations typically require teams to operate within certain financial parameters to avoid excessive debt and overspending. Additionally, Swiss statutory corporate law further provides mandatory provisions relating to insolvency and over-indebtedness for companies limited by shares.

Law stated - 18 July 2024

DISPUTE RESOLUTION

Jurisdiction

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

In accordance with the Swiss Federal Constitution, any person has the right to have their case heard by a legally constituted, competent, independent and impartial court. Generally, domestic and international disputes are subject to the jurisdiction of regular state courts. This also applies to disputes relating to professional sport matters. However, for many sport organisations, cases are subject to the jurisdiction of arbitration courts.

Further, many sports organisations set up internal instances and procedures to review and decide on certain issues relating to sport matters. Such internal instances do not meet the constitutional right of an independent and impartial court and their decisions thus remain subject to the jurisdiction of state or arbitration courts for an appeal.

Switzerland plays a pivotal role in sports arbitration due to the presence of the Court of Arbitration for Sport (CAS) located in Lausanne, Switzerland. The CAS serves as both an ordinary arbitration tribunal and an appeal body. Jurisdiction of the CAS is established through arbitration agreements or the application of relevant sport rules and the CAS typically holds jurisdiction to arbitrate any sport-related commercial dispute (eg, sponsorship contract) or disciplinary dispute (eg, fines). Certain sport federations have also delegated to the CAS Anti-Doping Division (CAS ADD) the authority to issue decisions against athletes in doping-related matters. It is, therefore, important to differentiate between the specific function of the CAS in the case at hand. In a recent decision of the Swiss Federal Supreme Court, it had to decide whether the CAS ADD was acting as an external court of appeal or as an internal instance of the respective sports organisation. The Swiss Federal Supreme Court ruled that in the case at hand the CAS ADD was acting as an internal instance and not as an arbitration court, since the CAS ADD obtained its power from the respective sports organisation. The power of the CAS ADD can therefore not be more extensive.

CAS awards are in essence final and binding and are subject to appeal to the Swiss Federal Supreme Court only on the grounds of public policy and procedural defects.

Most of the famous sports federations provide for the CAS as their appeal body, such as the International Olympic Committee, the International Federation of Association Football and the International Cycling Union.

Law stated - 18 July 2024

Enforcement

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

The respective sports organisations themselves usually enforce internal decisions of sports organisations through sporting sanctions, such as, for example, match suspensions and fines.

Judgments of state courts and arbitral awards of arbitration courts can be enforced in accordance with domestic law. The procedure of such enforcement will depend on whether the case at hand is international and whether the decision relates to the payment of money.

Further, the recognition of decisions of Swiss state courts and arbitral awards of arbitration courts based in Switzerland is subject to the relevant international treaties. The most important international treaties in allowing an efficient enforcement are the Lugano Convention and the New York Convention.

Law stated - 18 July 2024

Court enforcement

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

Decisions of professional sports regulatory bodies do not qualify as judgments or awards and are therefore not enforceable based on domestic law or international treaties. Their respective judgment or award can be appealed only if such decisions are appealed before a state court or an arbitration court. It is important to note that internal legal remedies must be exhausted before one can appeal before the CAS. Thus, if an internal appeal body exists, the case cannot be appealed directly to the CAS until the appeal body has made a decision that is final within the sports organisation.

Additionally, most sports organisations have opted for the jurisdiction of the CAS. In such cases, state courts typically do not have jurisdiction, except for the limited cases exclusively reserved for state courts and where the Swiss Federal Supreme Court acts as the appeal body.

Law stated - 18 July 2024

SPONSORSHIP AND IMAGE RIGHTS

Concept of image rights

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

Yes. Based on the personal rights stipulated in the Swiss Civil Code (article 28) as well as the Federal Act on Data Protection the right to one's own image is legally recognised. There is no register for such image rights.

Law stated - 18 July 2024

Commercialisation and protection

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

The consent of the individual is required for any commercial exploitation of the individual's personality rights, including image rights.

Any commercialisation without the individual's consent entitles them to seek redress (including injunctive relief, damages and information disclosure) against the infringer.

Law stated - 18 July 2024

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

Athletes typically grant their clubs a licence for the commercial exploitation of their image rights, including the right to sub-license these rights to other organisations (including partners and sponsors). It is common for clubs and other organisations to use athletes' image rights for marketing, promoting and merchandising, including selling tickets and branded products.

Therefore, the agreements between the athlete and his or her club and between the athlete's club and any other organisation will determine the extent to which an athlete's image rights are exploited.

Law stated - 18 July 2024

Morality clauses

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

Generally, parties are free to structure their relationship based on the general principle of contractual freedom enshrined in Swiss law. Contracts may also include clauses relating to morality. However, no one may renounce his or her freedom or restrict the exercise of it to an extent that is contrary to the law or public morality. Thus, any clause that leads to the loss or restriction of the freedom of one of the parties will be deemed void and unenforceable (in whole or in part, depending on the circumstances).

Law stated - 18 July 2024

Restrictions

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

A number of laws have special provisions on advertising to deal with the dangers of advertising certain products, such as alcohol, tobacco, medicines and certain foods, or advertising in the media channels, which have traditionally been regarded as the most pervasive, namely, television and radio. Advertising for alcoholic beverages and tobacco products is generally prohibited on television and radio. In relation to sports, advertising of alcoholic beverages is generally prohibited at sports grounds and at sports events, and advertising for tobacco products is prohibited at events targeting minors. With respect to gambling, the Swiss State Lottery Organisations hold the monopoly for sports betting in Switzerland and foreign online betting providers are not permitted to offer their services on the Swiss market.

Law stated - 18 July 2024

BRAND MANAGEMENT

Protecting brands

13 | How can sports organisations protect their brand value?

By registering, maintaining, monitoring and enforcing their brand as a trademark. In the case of unauthorised use of trademarks, trademark law provides for civil remedies and criminal sanctions. In addition, remedies against third parties who take advantage of

the reputation and trademarks of sports organisations may be available under unfair competition law.

Law stated - 18 July 2024

14 | How can individuals protect their brands?

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Law stated - 18 July 2024

Cybersquatting

15 | How can sports brands and individuals prevent cybersquatting?

Remedies for unauthorised use of trademarks and names (eg, domain name registrations or (online) impersonation to deceive the public) are based on trademark law, unfair competition law and rights of privacy and publicity. Civil actions and criminal sanctions are possible remedies.

Dispute resolution procedures for requesting cancellation or transfer of infringing domain name registrations are provided in the terms and conditions of domain name registries (eg, ICANN, Switch).

For Swiss-based providers of hosting services for unauthorised content, a self-regulatory code of conduct provides for an efficient ‘notice and takedown’ mechanism. A second self-regulatory code applies to Swiss-based domain name registrars when their clients register illegal domain names. These measures are, for example, the blocking of a domain name or the administrative access of the owner, the refusal of transfers and the refusal to renew domain names. Both self-regulatory codes, particularly in the case of an unidentifiable infringer or an unfavourable jurisdiction, are of particular benefit to rights holders.

Law stated - 18 July 2024

Media coverage

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

Reporting falsehoods, defamatory statements or excessive disclosure of an individual’s personal details may be challenged under privacy rights, particularly where personal interests outweigh public interest in reporting case details. Remedies for defamation include civil actions (including publishing a decision) and criminal sanctions. The person whose personal rights are directly affected by the publication of (alleged) untruths in

regularly published media has the right to a rebuttal. In the case of a defamatory statement in the media, criminal liability shall be assigned in the following order:

- to the author;
- if the author cannot be identified, to the editor or person responsible for the publication; and
- if the author cannot be identified and in the absence of a responsible editor, to the person responsible for the publication.

Law stated - 18 July 2024

BROADCASTING

Regulations

17 | Which broadcasting regulations are particularly relevant to professional sports?

Under the Swiss Federal Law on Radio and Television and the European Convention on Transfrontier Television, Swiss (linear) television broadcasters are subject to regulatory requirements.

Swiss law contains specific provisions on television and radio advertising, which restrict or prohibit advertising for certain sectors (eg, alcohol, tobacco, medicines and political parties). It also lays down specific requirements for separating advertising from editorial content, sponsoring and product placement.

A substantial proportion of the public must have free access to coverage of events of major importance to society. The summer and winter Olympic Games, the semi-finals and finals of all teams and all matches involving the Swiss national team in the FIFA World Cup, the UEFA European Championship and the Alpine World Ski Championships are included in the Swiss list of relevant events. Swiss broadcasters are also required to comply with the lists drawn up by the member states of the European Convention on Transfrontier Television as regards free access in the country concerned.

Law stated - 18 July 2024

Restriction of illegal broadcasting

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

Swiss copyright law provides for a statutory licence, subject to collective rights management, for the simultaneous retransmission of unaltered programmes for free television in Switzerland. Public screening generally requires a licence subject to collective rights management.

Civil actions and criminal sanctions are available under copyright law to combat illegal broadcasting. Access to an illegal stream can be effectively restricted by sending cease-and-desist letters and contacting the platforms hosting the content.

Law stated - 18 July 2024

EVENT ORGANISATION

Regulation

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

When organising an event, various contracts are typically entered into between different parties, including the venue owner. In particular, the Swiss Code of Obligations provides rules for venue hire. In addition, permits and licences may be required from the relevant authorities, particularly for the use of public spaces, but also with regard to the sale of alcohol and health and safety regulations. Intellectual property rights, including trademarks, copyrights and image rights, as well as data protection under Swiss law, must also be considered. A collective management licence is generally required for public screenings or other public uses of musical works. Federal, cantonal and communal regulations regarding waste management, energy consumption and general compliance with environmental standards must also be taken into account. Liability and insurance arrangements are also important for sports event organisers. Ensuring liability and insurance coverage is essential to protect organisers and participants from potential risks and liabilities that may arise during an event.

Law stated - 18 July 2024

Ambush marketing

20 | What protections exist against ambush marketing for events?

Trademark law, copyright law, trade name law and unfair competition law can provide legal remedies against unauthorised marketing using the media attention of a major event where the advertiser has no legal connection with the event and its organiser.

Trademark claims usually depend on the risk of confusion when others use identical or similar signs (such as logos, event titles and mascots) to promote similar goods and services. Well-known marks may even be protected in relation to other goods and services.

Mascots, film footage, official theme songs and logos may be protected by copyright. Public screenings generally require a licence under collective rights management.

It is considered an unfair competition practice or an infringement of personality rights, or both, if the advertiser gives the false impression of an existing business relationship (eg, as a sponsor or service provider) with the organiser of a sports event or the winner of a tournament.

In addition, contractual arrangements with the sponsor and other partners, as well as general terms and conditions for the purchase of tickets and the use of stadiums, may be used by the organiser of a sports event to support the branding strategy. These agreements only have a direct legal effect on the contractual partners (eg, sponsors, visitors and suppliers).

Third parties may be prevented from buying advertising space in the geographical and temporal vicinity of the event by public licences for the special use of public land.

Law stated - 18 July 2024

Ticket sale and resale

21 | Can restrictions be imposed on ticket sale and resale?

The relationship between the organiser of a sports event and the spectator is primarily contractual. The contract is formed when a spectator purchases a ticket for the event. The contract may impose certain conditions on the sale and resale of tickets. In particular, these conditions may include restrictions on the transfer of tickets, resale at inflated prices, or restrictions on the platforms and methods of resale, and they may differ depending on the party to the contract, namely, whether the contracts are concluded with professional resellers or individual ticket purchasers. In the case of consumer contracts, the Federal Act on Unfair Competition contains rules prohibiting terms and conditions that are unfair to consumers and which, in breach of good faith, create a substantial and unjustifiable imbalance between the rights and obligations arising under the contract.

Law stated - 18 July 2024

IMMIGRATION

Work permits and visas

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

The process for clubs in Switzerland to obtain work permits or visas for foreign professional athletes, coaching staff, and administrative staff varies depending on whether the individuals are citizens of Switzerland, EU member states or third-country citizens.

Swiss and EU citizens

Swiss and EU citizens are generally entitled to work in Switzerland without a permit. They need to register with the local residents' registration office within 14 days of their arrival.

Third-country citizens

The club extends a job offer to the foreign professional athlete or staff member, specifying the terms of employment. The club acts as the sponsor and applies to the relevant Swiss authorities, to obtain a work permit or visa for the foreign individual. The application includes supporting documents, such as the employment contract, proof of qualifications and evidence of the club's financial capacity. The Swiss authorities review the application and assess whether the employment of the foreign individual complies with Swiss immigration regulations. They consider factors such as the individual's qualifications, the availability of local talent and the economic and social impact of their employment. For example, a football player must possess a high level of qualification, such as a minimum of three years' professional experience in one of the top leagues for athletes. Work permits for professional athletes are typically granted to professional clubs, particularly in football and ice hockey, at the top two levels.

Law stated - 18 July 2024

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

Engaging in temporary sports competitions and participating in training activities for a period of up to two months per year does not fall under the category of gainful activity in Switzerland. As a result, there is no need to apply for a work permit or fulfil registration requirements. However, if applicable, an entry visa must still be obtained according to the relevant visa regulations. It is important to note that specific circumstances, nationalities, and the nature of the activities can impact the requirements. Some nationalities may have visa waiver agreements with Switzerland, while others may require a visitor visa. Additionally, certain activities, such as participating in official matches or events organised by national sports federations, may have specific regulations or clearance requirements.

Law stated - 18 July 2024

Residency requirements

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

Generally, individuals such as athletes, coaches, and staff members must possess a valid employment agreement to establish residence in Switzerland. The issuance of a work permit is contingent upon the specific purpose of their stay, which may be tied to their affiliation with a particular club or organisation. Consequently, once the employment agreement with the respective club concludes, the work permit granted for Switzerland will expire, resulting in the loss of authorisation to reside in the country.

However, athletes, coaches and staff members may seek a permanent residence permit following a period of residence in Switzerland lasting 10 years, although in exceptional cases, this can be reduced to five years. A permanent residence permit is not contingent upon a specific purpose or contractual obligation. It enables individuals to establish

long-term residency in Switzerland, offering greater flexibility in terms of career options and the ability to settle in the country for an extended duration.

Law stated - 18 July 2024

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

Swiss immigration laws generally allow for family reunification, enabling the family members of foreign professionals to join them in Switzerland. Family members may include spouses or civil partners, same-sex spouses or partners (registered) and children below the age of 18. Once family members join the foreign professional in Switzerland, they are granted similar residency rights. This means they have the right to reside in Switzerland and may work in Switzerland. Family members of foreign professional athletes, coaching staff, and administrative staff generally have access to services and benefits in Switzerland, such as healthcare, education and social welfare, similar to Swiss residents.

Law stated - 18 July 2024

SPORTS UNIONS

Incorporation and regulation

26 | How are professional sporting unions incorporated and regulated?

In Switzerland, the role of professional sporting unions is rather limited. For example, the Swiss Association of Football Players (SAFP) has existed since 2001. It represents Swiss professionals and has more than 570 football players as members. The SAFP has received official recognition from both the Swiss Football Association (SFV) and the Swiss Football League (SFL). Collaboratively, the SFL and SFV work with the SAFP to negotiate the terms encompassed within a standard player contract. SAFP represents the interests of professional football players at national and international levels.

Law stated - 18 July 2024

Membership

27 | Can professional sports bodies and clubs restrict union membership?

No. The right to form (sports) unions and be a member of such an association is a constitutional right in Switzerland; any restriction in this regard is therefore unconstitutional.

Law stated - 18 July 2024

Strike action

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

Yes, there are certain restrictions on professional sports unions taking strike action, for instance, in Swiss football. In Switzerland, the Swiss Trade Union Federation is the umbrella organisation for unions. In the realm of professional sports, the SFV represents the interests of football players and clubs. The SFV has its own statutes and regulations governing the relationship between players and clubs.

While there are no specific legal provisions in Switzerland that prohibit strike action by sports unions, they must adhere to certain requirements. Unions must act within the framework of the law and abide by existing collective bargaining agreements or employment contracts. They must also attempt to reach a resolution through negotiations first and resort to strike action as a last resort when all other options have been exhausted.

In summary, while there are no explicit prohibitions on strike action by sports unions in Switzerland, they must comply with existing regulations and contracts and, whenever possible, utilise alternative dispute resolution mechanisms before resorting to strike action.

Law stated - 18 July 2024

EMPLOYMENT

Transfers

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

In Switzerland, the legal framework for individual transfers in football is primarily governed by the Swiss Football Association (SFV) and its regulations. In the realm of professional sports, the relationship between athletes and their clubs is typically established through an employment contract, often in the form of fixed-term agreements. Consequently, when an athlete is transferred from one club to another, their existing employment contract with the former club must be terminated, unless the agreed-upon term has already expired. Subsequently, a new employment contract is established with the new club to formalise the athlete's association with their new team.

Transfers are subject to specific periods (transfer windows). These are designated periods during which clubs can buy, sell or loan players. Outside these windows, transfers are generally not permitted, except in certain exceptional circumstances.

Under Swiss employment law, it is generally permissible to include restrictive covenants, such as non-competition clauses, within employment contracts. However, within the sports industry, these restrictive covenants are viewed as unjustifiably hindering athletes' economic prospects. As a result, they are considered excessive and unenforceable. The rationale behind this perspective is that restrictive covenants impose unreasonable limitations on athletes' ability to pursue their careers and seek better opportunities within the sporting world.

Further, additional restrictions can come into play in the sports industry. For instance, there may be limitations on the transfer of underage athletes or transfer bans imposed on clubs,

which can arise from specific regulations within a particular sport. For example, football is subject to the Union of European Football Associations' Financial Fair Play Regulations, which may introduce further constraints on player transfers and club operations.

Law stated - 18 July 2024

Ending contractual obligations

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

In Switzerland, the possibility for individuals to buy themselves out of their contractual obligations to professional sports clubs can vary depending on several factors, including the terms specified in their employment contract and the regulations established by governing bodies. Generally speaking, individuals cannot unilaterally buy themselves out of their contractual obligations. To do so, they would require the consent of the relevant professional sports club or a specific provision within the employment agreement, such as a buy-out clause.

Law stated - 18 July 2024

Welfare obligations

31 | What are the key athlete welfare obligations for employers?

Employers in Switzerland that are typically professional sports clubs have key athlete welfare obligations to ensure the well-being and safety of their athletes, particularly in contact sports. These obligations include:

- Duty of care: employers have a duty of care towards their athletes, meaning they are responsible for taking reasonable steps to protect their physical and mental well-being. This includes providing a safe training and playing environment, implementing appropriate safety measures, and ensuring access to medical support and treatment.
- Injury prevention and rehabilitation: employers are expected to take measures to prevent injuries and promote rehabilitation. This involves implementing proper training programmes, employing qualified medical and coaching staff, and providing necessary medical treatment and rehabilitation services when injuries occur.
- Health and safety: employers must comply with health and safety regulations to create a safe working environment for athletes. This includes adhering to guidelines related to equipment safety, playing surfaces and facilities, as well as addressing any potential hazards that may pose risks to athletes' health and well-being.
- Sports medicine and medical support: employers are responsible for providing access to sports medicine expertise and medical support. This includes having qualified medical staff, such as team doctors and physiotherapists, available to

address athletes' medical needs, perform assessments and provide appropriate treatment and rehabilitation.

- Mental health support: recognising the importance of mental well-being, employers should also provide resources and support for athletes' mental health. This may involve offering counselling services, access to mental health professionals and creating an environment that promotes mental well-being and addresses any psychological challenges athletes may face.

Law stated - 18 July 2024

Young athletes

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

Swiss employment law restricts the employment of minors (children under 15 years old) to exceptional cases that must meet specific requirements. Additionally, particular sports federations, such as the International Federation of Association Football, have their own provisions, such as article 19 of the FIFA Regulations on the Status and Transfer of Players, which generally prohibits the international transfer of minors. In Swiss football, there are specific restrictions on the employment and transfer of young athletes to ensure their protection and welfare. These restrictions aim to prevent exploitation and ensure that young athletes have appropriate opportunities for development and education.

Law stated - 18 July 2024

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

Several key child protection rules and safeguarding considerations are in place to ensure the well-being and safety of young athletes. These include for example age restrictions, safeguarding measures, parental consent and involvement as well as transfer regulations.

Law stated - 18 July 2024

Club and country representation

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

When athletes represent both their club and country, for instance in Swiss football, employment relationship issues that may arise include scheduling conflicts, player fatigue and injury risk, compensation and insurance considerations, contractual obligations, the release of players from club duties, and managing loyalty and allegiance between the club and national team. The national football clubs are subordinated to FIFA and the Union of European Football Associations. The situation can be described as all parties being interlinked by the corresponding international as well as national regulations. FIFA, for

example, stipulates in its regulations that clubs have to release football players if they are called up for an international match to represent their country.

Law stated - 18 July 2024

Selection and eligibility

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

When it comes to selection and eligibility disputes, national bodies have established procedures to address such issues. These bodies, for example in football, the SFV and relevant sports governing bodies, typically have specific mechanisms in place to handle these disputes. Selection and eligibility disputes in Swiss football are typically addressed by national bodies through internal review, mediation and resolution attempts, arbitration or disciplinary proceedings, and potential avenues for appeals within the sports governance structure. The goal is to ensure fairness, uphold the sport's integrity, and provide transparent and impartial mechanisms for resolving such disputes.

Law stated - 18 July 2024

TAXATION

Key issues

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

Athletes who are competing in Switzerland but are not domiciled in Switzerland might become liable to pay taxes in Switzerland. If the athlete's country of residence and Switzerland have entered into a double tax agreement, the right to tax is generally granted to the state where the sport is played. This generally also includes payments that are not made directly to the athlete but to third parties (eg, the athlete's employer) as well.

However, not all of the athlete's income can actually be taxed in Switzerland; this only applies to income that is directly related to the athlete's physical performance or appearance in Switzerland (eg, prize money, entry bonus, etc). On the other hand, for example, regular salary and sponsorship payments or premiums for standing in the world rankings, which are paid independently of sporting events in Switzerland, are generally not taxable in Switzerland.

If the income is taxable in Switzerland, the sporting event organiser is responsible for declaring and deducting the withholding tax directly and paying it to the Swiss tax authorities.

Athletes with tax residency abroad may also become liable to pay value-added tax in Switzerland if they realise income in Switzerland and at the same time achieve a worldwide turnover of at least 100,000 Swiss francs per year (a simplified procedure in which the value-added tax is settled by the event organiser might be applicable).

Swiss resident athletes are subject to tax on their worldwide income. However, income that is directly related to a sporting performance abroad might be exempt (depending on the double tax agreement, if any).

Law stated - 18 July 2024

UPDATE AND TRENDS

Key developments of the past year

37 | Are there any emerging trends or hot topics in your jurisdiction?

The participation of transgender people in sports remains challenging, in particular the categorisation of the respective sports based on biological sex or gender identity. World Athletics, for example, prohibits certain transgender women from participating in women's world rankings competitions. On the other hand, in all levels of Swiss ice hockey transgender women are allowed to participate to the extent that their testosterone level remains below a certain threshold. This is based on the IOC Consensus Meeting of November 2015.

However, currently, there is no consolidated international framework in place for the participation of transgender people in sports. Various individual sporting bodies have issued their own regulations for this matter, such as World Athletics and Swiss Ice Hockey Federation .

Law stated - 18 July 2024

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UPDATE AND TRENDS

Key developments of the past year

REGULATORY

Governance structure

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

In Türkiye, professional sports is regulated by the Turkish Constitution. As per article 59 of the Turkish Constitution, the state shall take measures to develop the physical and mental health of Turkish citizens of all ages and encourage the spread of sports among the general public. Accordingly, the Ministry of Youth and Sports oversees sports-related policies and regulations at the national level.

Sports Clubs and Sports Federations Law 7405 (the Sports Law) entered into force in 2022. The Sports Law sets forth the procedures and principles regarding the establishment of sports clubs, sports joint stock companies, sports federations and their organs, the formation of organisations, revenues and expenditures, budget and expenditure principles, duties, powers and responsibilities, audits, and the forms and conditions of all aid to be provided.

Each sports federation in Türkiye oversees their respective sport. These federations are responsible for organising competitions, enforcing rules and promoting the development of their sports at both professional and grassroots levels. Although the Ministry of Youth and Sports oversees sports federations in Türkiye, there is a legal and administrative framework for federations to manage and organise their own sports branches freely.

Law stated - 25 July 2024

Protection from liability

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

In Türkiye, participants in sports activities are subject to liability under civil and criminal law, the same as the general public. The civil liability of an athlete is a tort liability subject to the provisions of the Turkish Code of Obligations 49 et seq and criminal liability will be determined according to the corresponding crime.

However, participants in sports events are often considered to have assumed a certain level of risk, especially in sports where physical contact is essential. This means that athletes may not be held liable for injuries that occur as a result of expected actions (according to the rules of the game).

The rules and regulations of the sport are the key elements in determining liability. If a participant's actions violate the rules of the game or are deemed unsportsmanlike, then they may face disciplinary action (but not necessarily criminal or civil liability).

As a result, while participants in sports events in Türkiye are not completely shielded from liability for their on-field actions, some legal principles and considerations may limit the

extent of their liability, particularly when their actions are within the boundaries of the sport's rules and norms.

Law stated - 25 July 2024

Doping regulation

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 Türkiye, the regulatory framework for doping matters primarily falls under the jurisdiction of the Turkish Anti-Doping Commission and its parent organisation, the Turkish National Olympic Committee, as well as the World Anti-Doping Agency (WADA) regulations.

Since Türkiye is a signatory to the World Anti-Doping Code issued by WADA, this means Turkish anti-doping regulations must comply with the standards set by WADA. Athletes and sports organisations are subject to WADA's regulations, including the prohibited list of substances and methods, testing protocols and sanctions for doping violations.

There is no clear sanction regarding doping regulated in the Turkish Civil Code or Turkish Criminal Code. However, athletes or other individuals involved in doping offences could face lawsuits for damages, breach of contract (such as sponsorship or employment agreements) or other civil claims brought by affected parties.

Law stated - 25 July 2024

Financial controls

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

The Sports Law mainly regulates financial controls for participant organisations within professional sports in Türkiye. This law envisages balanced budget rules and spending principles for both sports clubs and sports federations.

In addition to governmental legislation, each sports federation may impose its own financial regulations. According to the Sports Law, sports clubs must adhere to specific financial regulations set forth by their respective federations and leagues. These regulations often include financial reporting requirements, budgetary controls and rules on financial fair play to prevent clubs from overspending.

As football has the biggest market share among sports in Türkiye, its financial controls are the most stringent. For instance, besides UEFA’s financial restrictions, such as Financial Fair Play rules, the Turkish Football Federation also applies its own financial rules for the Turkish Super League participants. Every Turkish Super League participant has a certain spending limit for the season. These spending limits are determined in line with the financial situation of the relevant club. Not complying with these spending limits may lead to financial penalties or even point deductions for sports clubs.

Law stated - 25 July 2024

DISPUTE RESOLUTION

Jurisdiction

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

As a general rule, jurisdiction over all disputes is exercised by independent and impartial Turkish courts. However, article 59 of the Constitution stipulates that disputes concerning the administration and discipline of sports activities by sports federations may only be referred to arbitration, with decisions rendered by the arbitral tribunal being final. Thus, avenues for recourse to courts are closed for the judgments of arbitral tribunals.

For disputes falling outside the scope of article 59 of the Constitution, there is no regulation foreseeing mandatory arbitration except for a few internal regulations issued by the relevant sports federation. Nevertheless, parties may decide to resolve these types of disputes, mostly arising from contractual relationships, via voluntary arbitration.

Football is the only professional sport statutorily recognised and the Turkish Football Federation has its own arbitration tribunal. The Football Dispute Resolution Board is competent for voluntary arbitration, whereas the Turkish Football Federation Arbitration Board is competent for compulsory arbitration.

The voluntary and compulsory arbitration procedures for sports other than football are similar to football; the competent body for resolving disputes is the Ministry of Youth and Sports Arbitration Board.

Law stated - 25 July 2024

Enforcement

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

Disciplinary boards of the relevant federation or the Central Sports Discipline Board for the affiliated sports federations specify the consequences of certain violations, by setting forth a discipline directive. A discipline directive regulates the types of action for which the disciplinary board may decide on warnings, reprimands, fines, suspensions from matches, etc.

In football, penalties and decisions made by the federations' legal bodies may be appealed to the Turkish Football Federation Arbitration Board, while for other sports, the Ministry of Youth and Sports Arbitration Board will hear appeals.

Law stated - 25 July 2024

Court enforcement

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

According to article 59 of the Constitution, there is a compulsory arbitration avenue for decisions concerning governance and discipline, and decisions rendered by arbitration boards are final. Apart from these two types of decisions, the decisions made by the regulatory bodies are not final judgments and are appealable before the Turkish Football Federation Arbitration Board or the Ministry of Youth and Sports Arbitration Board.

Law stated - 25 July 2024

SPONSORSHIP AND IMAGE RIGHTS

Concept of image rights

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

Although it is not directly regulated under the Industrial Property Law No. 6769 (IPL), athletes may register their image rights as trademarks before the Turkish Patent and Trademark Office. Accordingly, this is common, especially for prominent athletes.

The image rights of football players are specifically defined and regulated under the Club Licensing and Financial Sustainability Directive issued by the Turkish Football Federation.

Law stated - 25 July 2024

Commercialisation and protection

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

Image rights are recognised as property rights. Therefore, image rights may solely be used by the right holder (including the commercial use of them).

To benefit from legal protection, the right holder may register the image right (for example, their name) as a trademark. If the image right has already been copyrighted, the means of protection specific to copyrights may also be utilised.

In case of infringement of an image right, the infringer may face legal and criminal liability under Turkish law. Accordingly, the right holder may file a criminal complaint before the public prosecutor's office, as well as request the sanctions regulated in article 30 of the IPL. In the event of a breach of article 30, the infringing party may be sentenced to imprisonment or a judicial fine. If the said violation is committed within the scope of an activity of a legal person, security measures specific to legal persons shall be executed. To be sentenced for the offences regulated under this article, the trademark must be registered in Türkiye.

In addition, the party whose right has been violated may request the detection and cessation of the infringement and compensation, in the event of material loss.

Law stated - 25 July 2024

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

Since image rights belong to the athlete as a rule, the contract signed by the athlete and sports club may contain provisions in relation to the exploitation of the image rights. Therefore, by way of signing a contract, they could be transferred to the club or to a third party in whole or as a part.

Most sport clubs and athletes agree on the contract terms with regards to the share of the revenues generated from their image rights.

The agreement by the parties concerning the revenue from the image rights varies in proportion to the power of the clubs and the fame and prominence of the athlete.

Law stated - 25 July 2024

Morality clauses

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

As a reflection of the principle of freedom of contract, the contractual parties may add any terms and conditions to the contract. However, article 27 of the Code of Obligation sets the boundaries of the said principle. Contracts contrary to mandatory provisions of law, morality, public order and personal rights, or those whose subject matter is impossible, shall be considered null and void.

Morality clauses may be added to the contracts signed by the athletes and sports clubs. Accordingly, in sports contracts signed in Türkiye, a penal clause may be stipulated if the athlete has been injured as a result of participating in an extreme sports activity or gambles or consumes alcohol, provided that these activities affect their performance adversely on the pitch. Furthermore, the contract may be terminated as a last resort depending on the seriousness of the circumstances.

Law stated - 25 July 2024

Restrictions

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

Advertising or promoting the use of tobacco products, alcohol or any activity that may encourage them to consume is prohibited in all media in Türkiye. Selling or serving tobacco products and alcoholic beverages in stadiums or indoor sports halls in which sports competitions are held is prohibited. Also, it is against the law that their names, logos, emblems or signs are explicitly seen in sports facilities.

In addition, online betting and foreign betting companies, other than those legally established in Türkiye, are also prohibited from sponsoring or advertising.

Law stated - 25 July 2024

BRAND MANAGEMENT

Protecting brands

13 | How can sports organisations protect their brand value?

As per the Industrial Property Law No. 6769 (IPL), the trademark owner may apply for registration in the Turkish trademark registry, provided that the trademark is found to comply with the relevant legislation by the Turkish Patent and Trademark Office and is registered in the Turkish trademark registry.

Once the trademark has been registered, its use without the permission of the trademark owner or an indistinguishably similar trademark or imitation of the trademark shall be considered an infringement. In this case, the trademark owner may apply to the court for the determination, prevention and cessation of the infringement of the trademark right, as well as the compensation for the material and moral damages suffered as a result of the infringement of the trademark right.

If the trademark has not been registered in the Turkish Trademark Registry, the trademark protection cannot be benefited from in terms of the IPL. Nevertheless, unregistered trademarks may enjoy protection in accordance with the unfair competition provisions of the Turkish Commercial Code.

Law stated - 25 July 2024

14 | How can individuals protect their brands?

Once the trademark has been registered, its use without the permission of the trademark owner or an indistinguishably similar trademark or imitation of the trademark shall be considered an infringement. In this case, the trademark owner may apply to the court for the determination, prevention and cessation of the infringement of the trademark right, as well as the compensation for the material and moral damages suffered as a result of the infringement of the trademark right.

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Law stated - 25 July 2024

Cybersquatting

15 | How can sports brands and individuals prevent cybersquatting?

Cybersquatting, the practice of registering, selling, or using a domain name with the intent of profiting from the goodwill of someone else's trademark, is a significant issue in many countries, including Türkiye. The legal framework and mechanisms to address cybersquatting in Türkiye involve both national laws and international agreements.

Türkiye's primary legislation for dealing with trademark issues, including cybersquatting, is the Turkish Industrial Property Law (IPL). The IPL provides protection for trademarks, patents, industrial designs, and geographical indications.

According to the IPL, unauthorised registration and use of a domain name that is identical or confusingly similar to a registered trademark can constitute trademark infringement. The trademark owner can take legal action to prevent unauthorised use and seek remedies.

The Internet Domain Names Regulation governs the allocation and management of internet domain names in Türkiye. It outlines the responsibilities of the Internet Assigned Numbers Authority (IANA) and the Domain Name System (DNS). This regulation includes provisions to prevent and resolve disputes related to domain names, including mechanisms for arbitration and mediation.

Türkiye follows the Uniform Domain Name Dispute Resolution Policy (UDRP) established by the Internet Corporation for Assigned Names and Numbers (ICANN). This policy provides a framework for resolving disputes over domain names, particularly those involving allegations of cybersquatting.

Trademark owners can file a complaint with ICANN-approved dispute resolution providers, such as the World Intellectual Property Organization (WIPO), to seek the transfer or cancellation of a domain name.

Türkiye is a member of several international agreements that influence its approach to cybersquatting, including the Paris Convention for the Protection of Industrial Property and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

However, effective enforcement requires ongoing efforts to raise awareness, address jurisdictional challenges and adapt to technological advancements. Trademark owners should be proactive in protecting their rights and utilising available legal mechanisms to combat cybersquatting.

Law stated - 25 July 2024

Media coverage

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

The Turkish Penal Code and the Turkish Civil Code both address defamation. Defamation involves making false statements that harm someone's reputation.

If false and damaging statements are published, individuals or organisations can seek legal recourse through civil or criminal defamation lawsuits. If incorrect information is published, individuals or organisations may request a correction or retraction from the media outlet.

Under Turkish law, affected parties can request the opportunity to publish a reply or rebuttal to address and correct the information.

Türkiye's Personal Data Protection Law (KVKK) protects individuals against the misuse of their personal data. Organisations can take legal action if their data privacy rights are violated by the media.

Law stated - 25 July 2024

BROADCASTING

Regulations

17 | Which broadcasting regulations are particularly relevant to professional sports?

Broadcasting regulations are overseen by the Radio and Television Supreme Council (RTÜK) and cover a wide range of areas, including content, advertising and the protection of minors.

Broadcasters must obtain the appropriate licences from RTÜK to legally transmit sports content. This includes both television and online broadcasting platforms. The sale and purchase of exclusive broadcasting rights for sports events are subject to regulations to ensure fair competition and accessibility. Exclusive rights agreements must comply with antitrust laws and cannot unjustly restrict access to sports content.

Live sports broadcasts must adhere to RTÜK's guidelines on content. This includes maintaining decency standards, avoiding offensive language and ensuring that any incidents during live broadcasts are handled appropriately.

Advertising during sports broadcasts is regulated to prevent excessive commercial interruptions and to ensure that sponsorships are transparently disclosed. There are specific rules on how advertisements can be integrated into live sports content.

Broadcasters must ensure that sports content is suitable for all audiences, particularly during times when children are likely to be watching. This includes managing the broadcast of content that might feature violence, such as contact sports.

Sports broadcasts must clearly identify sponsors and ensure that sponsorship messages do not mislead viewers. There are also limits on the type and amount of advertising that can be shown during sports events.

There are restrictions on the total amount of advertising time per hour, and these limits must be observed even during sports broadcasts. To prevent monopolistic control over sports broadcasting, RTÜK enforces regulations ensuring that no single broadcaster can exclusively control the broadcasting rights to major sports events.

Some major sporting events, often referred to as 'listed events', must be available on free-to-air television to ensure public access. This can include important national or international sports events such as European Championships, World Cups, UEFA competitions' finals and the Euro league Final Four. This is to prevent pay-per-view or subscription services from exclusively holding rights to events of national significance.

Broadcasters must maintain editorial independence and ensure that their coverage of sports events is fair, balanced and impartial. RTÜK actively monitors compliance with

broadcasting regulations. This includes reviewing broadcasts, investigating complaints, and conducting regular inspections. Non-compliance with broadcasting regulations can result in various, including fines, suspension of broadcasting licences and other administrative sanctions.

Law stated - 25 July 2024

Restriction of illegal broadcasting

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

The Law on Intellectual and Artistic Works regulates the authorisation of RTÜK on illegal broadcasts. RTÜK can issue fines, revoke licences or take legal action against entities involved in illegal broadcasting.

Internet service providers in Türkiye may need to block access to websites and platforms that are known to illegally stream sports events. This must be done through court orders or directives from regulatory authorities.

Rights holders may also issue takedown notices to websites, platforms and social media channels that host or promote illegal streams.

Sports federations can also be authorised to take access blocking decisions. For instance, the Law on the Establishment and Duties of the Turkish Football Federation has been amended with an additional article 1 in 2022 and allows the Turkish Football Federation (TFF) Board of Directors to take access blocking decisions.

Law stated - 25 July 2024

EVENT ORGANISATION

Regulation

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

The Regulation on Private Physical Education and Sports Facilities issued by the Department of Sports Organisations describes certain procedures, especially security and health conditions, regarding the facilities where sports organisations take place, regardless of the sports branch.

Organisers must obtain permits from local authorities, such as municipal offices or governorates. This includes permits for public gatherings and special events, which are necessary for legal compliance.

The venue must have the appropriate licences to host sports events. This can include a general business licence, a specific licence for sports facilities and any other relevant permits.

Compliance with the Occupational Health and Safety Law (Law No. 6331) is mandatory. This includes ensuring the safety of all staff, participants and attendees. Moreover, venues must have clear emergency procedures, including fire safety measures, evacuation plans and first aid facilities. Provision of adequate medical services and emergency response teams is essential, especially for high-risk sports events.

The Turkish Football Federation (TFF) and other national sports federations have specific requirements for event organisation and venue standards. In particular, compliance with the Stadium and Security Committee Instruction of the Turkish Football Federation and the Hall Standards and Security Instruction issued by the Turkish Basketball Federation is essential.

Law stated - 25 July 2024

Ambush marketing

20 | What protections exist against ambush marketing for events?

Although there is no specific law in Türkiye regarding ambush marketing, the concept of 'Unfair Competition' regulated primarily in the Turkish Commercial Code, as well as within the scope of Advertising Law and Intellectual Property Law, protects the rights of event organisers. For instance, the Court of Appeal found that the advertising and promotional activities carried out by various parties in some organisations involving the Turkish National Football Team were deceptive and ordered the cessation of this practice within the framework of unfair competition provisions.

Various legal actions can be taken in different branches of law to prevent ambush marketing in Türkiye and such actions are also prohibited under the Law on Advertisement.

Within the scope of the principles of supervision by the Advertising Self-Regulatory Board, article 4 of section B of the 'Supervisory Principles' heading on deceptive marketing states that "no one should endeavour to give the impression of sponsoring an event or media coverage of an event, whether sponsored or not, unless he is an official sponsor of a product or media coverage. The sponsor and the sponsored party should ensure that the measures they take to combat 'ambush marketing' are appropriate and do not damage the sponsor's reputation or have an undue impact on the public."

Law stated - 25 July 2024

Ticket sale and resale

21 | Can restrictions be imposed on ticket sale and resale?

The Law on Prevention of Violence and Disorder in Sports aims to prevent black market ticket sales by transitioning to an e-ticketing system. Accordingly, individuals can purchase tickets up to the limit set by the event organiser or the host club. Additionally, to prevent black-market ticket sales, a ticket transfer ban is enforced for certain sports events where

black-market ticket sales are likely to occur. Ticket restriction is particularly applied during international tournaments or derby matches.

Law stated - 25 July 2024

IMMIGRATION

Work permits and visas

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

As per article 48/k of the Regulation on the Implementation of the International Labour Law, professional foreign athletes and coaches, as well as sports physicians, sports physiotherapists, sports mechanics, sports masseurs or masseuses and similar sports personnel who enter Türkiye with a sports visa are considered exempt from work permit requirements. The exemption period is limited to the duration of the contract, and The Ministry of Youth and Sports or the Turkish Football Federation must approve this exemption.

Foreign athletes, coaches, and administrative staff must apply for a work permit exemption through the Ministry of Labour and Social Security via the online system if they are in Türkiye. If they are not in Türkiye, they must apply through the Turkish embassy in their home country or the country where they legally reside.

Law stated - 25 July 2024

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

Participation in tournaments for short-term visits does not require a work permit or visa. Under article 48/e of the Regulation on the Implementation of the International Labour Law, foreigners working within the scope of sporting activities are deemed to be under a four-month work permit exemption.

Foreign professional athletes, coaches, and administrative staff who are citizens of countries exempt from visas can enter Türkiye for between 30 to 90 days without requiring a special visa. However, if they are citizens of a country for which obtaining a visa is a prerequisite for entry into Türkiye, they must apply for a tournament-specific sports visa limited to the duration of the tournament. Those requiring a visa can also participate in tournaments by applying for a tourist visa.

Law stated - 25 July 2024

Residency requirements

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

The work permit exemption explained above also counts as a residence permit, which grants the right of residence. Therefore, professional foreign athletes, coaches, and administrative staff gain the right of residence along with the work permit for the duration of their contracts.

Foreign athletes who wish to reside in Türkiye for an exceeding time of their exemption period specified in their contract must apply for a residence permit. In this case, to obtain a long-term residence permit they must comply with the following rules stated under article 43 of the Law on Foreigners and International Protection 6458:

- having resided in Türkiye with a residence permit for at least eight years continuously;
- not having received social assistance in the past three years;
- having sufficient and regular income to support oneself or their family, if any;
- having valid health insurance; and
- not posing a threat to public order or security.

Law stated - 25 July 2024

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

Foreigners holding a residence permit may be granted family residence permits for their foreign spouse, their or their spouse's non-adult foreign child and their or their spouse's dependent foreign child for each period not exceeding three years. However, the duration of the family residence permit cannot exceed the duration of the supporter's residence permit in any case.

Law stated - 25 July 2024

SPORTS UNIONS

Incorporation and regulation

26 How are professional sporting unions incorporated and regulated?

According to article 51 of the Turkish Constitution, employees and employers may form unions and higher organisations without prior permission. There is no specific regulation for sports unions in Türkiye. Thus, sports unions are incorporated and regulated by the rules of the 'Unions and Collective Bargaining Agreements Law.

The right to form a union shall be solely restricted by law on the grounds of national security, public order, prevention of commission of crime, public health, public morals and protecting the rights and freedoms of others.

Law stated - 25 July 2024

Membership

27 | Can professional sports bodies and clubs restrict union membership?

As per article 51 of the Turkish Constitution, employees can become members of a union and freely withdraw from membership, to safeguard and develop their economic and social rights and the interests of their members in their labour relations. No one shall be forced to become a member of a union or to withdraw from membership. The Turkish Criminal Code also includes a provision on 'Prevention of the exercise of union rights', which envisages imprisonment of up to two years.

Law stated - 25 July 2024

Strike action

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

In Türkiye, there are two types of strikes: legal and illegal. In the event of a dispute during the conclusion of a collective bargaining agreement, a strike conducted in accordance with the provisions of Law 6356 to protect and improve the economic and social status and working conditions of workers is defined as legal. All other strikes are illegal. Therefore, all strikes other than legal strikes are essentially restricted by law.

Since the conditions for a legal strike only arise during the negotiations of collective bargaining agreements and since we have not come across any collective bargaining initiative in the field of sports in Türkiye, in practice, it does not seem possible for sports unions to take strike action.

Law stated - 25 July 2024

EMPLOYMENT

Transfers

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

In Türkiye, football player transfers are regulated by the Regulation on the Status and Transfers of Professional Football Players issued by the Turkish Football Federation (TFF).

According to this regulation, players' transfers between clubs can only occur within certain time frames. These time frames are divided into summer and winter transfer windows. Outside of the transfer window, the transfer of a player to any club is restricted by the regulation.

Besides, the TFF releases the 'Expenditure Limits' table every year to ensure the economic sustainability of clubs, and sanctions (warnings, squad restrictions and transfer bans) are

applied to clubs that exceed the limits specified in the table. This practice prevents clubs from facing more serious sanctions from UEFA and FIFA.

Moreover, the TFF limits the application of the Bosman Rule, which is applied worldwide, concerning domestic transfers of players in Türkiye. As per the Bosman Rule, a player can sign a contract with another club six months before the end of their contract. However, the Bosman Rule does not apply to transfers of players between Turkish clubs. Therefore, a player cannot engage in transfer negotiations with any Turkish club before their current contract expires.

Law stated - 25 July 2024

Ending contractual obligations

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

In Türkiye, clubs sign fixed-term contracts with athletes. In cases where athletes do not wish to remain bound by the contract for the agreed period, they can take the following actions:

1. Unilateral termination of the contract (which may incur significant termination costs).
2. Reaching an agreement with another club and terminating the contract with their current club by paying the buyout clause specified in the existing contract.

Law stated - 25 July 2024

Welfare obligations

31 | What are the key athlete welfare obligations for employers?

In Türkiye, athlete welfare obligations for employers, particularly sports clubs and organisations, are governed primarily by regulations and guidelines set forth by the TFF and other relevant sports governing bodies.

Employers must provide access to qualified medical professionals, including team doctors, physiotherapists and sports psychologists. This ensures that athletes receive appropriate medical care, injury prevention, treatment and rehabilitation services.

Employers must ensure that training facilities and playing surfaces meet safety standards to minimise the risk of injuries during training sessions and matches. They must adhere to anti-doping regulations and implement testing protocols to maintain a fair and clean sporting environment. This includes educating athletes on anti-doping rules and procedures.

Employers should provide access to nutritionists and dieticians to support athletes in maintaining proper dietary plans that optimise their performance and recovery. Recognising the importance of mental health, employers should offer mental health

support services, including access to counsellors and psychologists, to assist athletes with stress management and psychological well-being.

Employers must fulfil their contractual agreements with athletes, including timely payment of salaries, bonuses and other entitlements specified in employment contracts.

Law stated - 25 July 2024

Young athletes

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

In Türkiye, there are specific regulations and restrictions concerning the employment and transfer of young athletes. These regulations are primarily aimed at protecting their rights, welfare and development, ensuring they are not exploited or subjected to unfair treatment.

The TFF has rules governing the minimum age at which young players can be signed to professional contracts and participate in official matches. These rules are designed to prevent premature professionalisation and ensure that young athletes receive adequate education and development. Accordingly, the transfer of young players (under the age of 18) between clubs is strictly regulated by FIFA regulations, which Türkiye adheres to.

The TFF regulates the international transfers of football players under the Regulation on the Status and Transfers of Professional Football Players. According to this regulation, players under the age of 18 are not eligible for international transfers. However, if the player's legal representative moves to the country where the transferring club is located for a reason unrelated to football, international transfers of young players may be allowed. Moreover, contracts that clubs sign with young players under the age of 18 can last for a maximum of three years.

Clubs in Türkiye are required to have youth academies that comply with TFF regulations. These academies are responsible for the development of young players, providing them with education, training and support in a structured environment.

The TFF and relevant authorities monitor clubs and transfers to ensure compliance with these regulations. This includes investigating any potential breaches of rules regarding the employment and transfer of young athletes.

Law stated - 25 July 2024

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

In Türkiye, every individual under the age of 18 is defined as a child. The TFF has regulations on child athletes within the scope of the Regulation on Welfare of Athletes and Protection of Children in Football. The purpose of the Regulation, as stated in article 1, is to take necessary measures to ensure that children playing football develop their education, learning, personality and social responsibilities in accordance with their age and development.

Law stated - 25 July 2024

Club and country representation

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

At certain times, matches of players' countries and clubs may overlap. In such cases, FIFA and FIBA regulations mandate clubs not to prevent the sending of players to their national teams. For example, every two years, while the Turkish Super League continues, teams face roster rotation issues due to many successful players representing their countries in the Africa Cup of Nations tournament.

Furthermore, it is common for players to get injured while representing their countries in matches. In some cases, players suffer serious injuries during international matches and cannot play for their clubs for a long time. In such situations, FIFA is required to compensate the player's club for the injury suffered by the player.

Law stated - 25 July 2024

Selection and eligibility

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

Selection and eligibility disputes in sports are typically handled by the relevant national sports federations or governing bodies responsible for each sport.

Each national sports federation in Türkiye has its own set of internal regulations governing selection criteria and eligibility requirements for athletes participating in national teams or competitions.

The decisions made by sports arbitration boards are final, and recourse to judicial proceedings cannot be sought against these decisions. Article 59 of the Turkish Constitution states that recourse to compulsory arbitration can only be sought against decisions of sports federations regarding the management and discipline of sports activities, and that the decisions of the arbitration board are final and cannot be appealed to any judicial authority.

Law stated - 25 July 2024

TAXATION

Key issues

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

Sponsorship revenues, image rights, advertising revenues and revenues from events, etc, are considered income derived from sports. To determine whether the athlete is subject to full taxation, the 'centre of vital interests' must be examined. If the centre of vital interests of the athlete is deemed to be in Türkiye, then the athlete will be subject to full taxation, and therefore, all income earned worldwide will be considered. The location of the centre of vital interests must be considered on a case-by-case basis.

Athletes are taxed according to temporary article 72 of Income Tax Law 193. Under this article, athletes are subject to a three-tiered tax breakdown: 20 per cent for those playing in the top league, 10 per cent for those in the top six leagues and 5 per cent for those in other leagues.

Additionally, under article 103 of the Income Tax Law, athletes who earn more than approximately €85,000 in each tax year must declare their income to officials.

Law stated - 25 July 2024

UPDATE AND TRENDS

Key developments of the past year

37 | Are there any emerging trends or hot topics in your jurisdiction?

One of the most important developments in sports for Türkiye is the enactment of the Sports Clubs and Sports Federations Law in 2022. With this law, significant principles regarding the management of sports clubs and federations have been established, and a supervision mechanism under the Ministry of Youth and Sports has been launched.

In addition, one of the most debated topics in recent years is the ownership model in football. Although it is known that club supporters and members in Türkiye are still mostly against the sale of sports clubs, this model seems inevitable in the evolving world of football.

The sale of 70 per cent of Göztepe's shares to Sport Republic in 2022 has been one of the significant milestones in this field. With this sale, Rasmus Ankersen has made history as the first foreign president of a Turkish club. For us, another significance of this sale was Sport Republic being represented by OGB throughout the process.

Finally, Türkiye has been hosting significant football tournaments in recent years, and finals of some sports events will also be held in Türkiye in the coming years. For example, the 2022 UEFA Champions League Final was played at Istanbul's Atatürk Olympic Stadium. It has been announced that the finals of the 2026 UEFA Europe League and the 2027 UEFA Conference League will also be held in Istanbul.

Law stated - 25 July 2024

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UPDATE AND TRENDS

Key developments of the past year

REGULATORY

Governance structure

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

The regulation of professional sports in the United States is generally managed by one of two types of entities: private, for-profit organisations or national governing bodies. Many of the leading professional sports leagues in the United States are private, for-profit organisations, including the National Basketball Association (NBA), the National Football League (NFL), Major League Baseball (MLB), the National Hockey League (NHL), Major League Soccer (MLS), the Women's National Basketball Association (WNBA), the Professional Women's Hockey League (PWHL) and the National Women's Soccer League (NWSL). These entities tend to be the primary revenue drivers within the landscape of American professional sports. National governing bodies generally oversee sporting events and Olympic and Paralympic sports participation. USA Gymnastics, the United States Tennis Association and the United States Soccer Federation are all examples of national governing bodies that operate under the umbrella of the United States Olympic & Paralympic Committee, a quasi-governmental entity that operates as a non-profit corporation.

Both types of entities are generally governed according to rules and internal regulatory procedures outlined in league documents such as league constitutions and by-laws. Typically, leagues will appoint a commissioner to serve as a chief executive officer who is responsible for managing the day-to-day operations of the league.

Because most professional sports organisations wield substantial market power, professional athletes often form unions to advocate for player rights and interests. These unions work with professional sports organisations to enter into a collective bargaining agreement (CBA), which is an agreed-upon set of rules and regulations concerning employment that leagues, teams and players agree to follow. Some CBAs may also regulate the conduct of other people involved in the business of sports, such as player-agents.

While professional leagues are generally permitted to regulate their own activities through internal rules and policies, they must abide by state and federal law. Antitrust laws, gambling laws and criminal laws are all examples of state and federal laws that intersect with the regulation of professional sports; state governments and the federal government may intervene if there are questions about a league's compliance. For example, the federal government has stepped in at times to investigate both Olympic sports (sexual abuse of athletes) and private sports (concussions in American football, steroids, and antitrust issues).

Law stated - 11 July 2024

Protection from liability

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

As a general rule, athletes engaged in ordinary and expected behaviour are not liable for resulting injuries. Under civil law in most jurisdictions, injuries arising from contact are actionable only when an athlete's conduct causing injury is either wilful or in reckless disregard for the safety of another player. While an analysis of recklessness typically depends on the facts of a particular event or injury, as a baseline rule, acting recklessly means engaging in behaviour outside of the 'ordinary conduct' for that particular sport. For example, tackling is expected in football, rugby and even ice hockey but may be out of bounds for runners racing a marathon. Liability may also be invoked if the conduct was intentionally beyond the scope of the normal course of play (eg, a tackle during a play is intentional and within bounds in American football, but a tackle long after a play has completed, if intentional, may not be within bounds of the expected course of play). A minority of jurisdictions have adopted broader protections, finding that participants in any sports are not civilly liable for injuries caused by conduct that is 'inherent' in the sport, regardless of the state of the mind of the athlete.

Similarly, in the criminal context, athletes generally only risk liability if their behaviour ventures well beyond the expected behaviour of their sport. In practice, criminal liability is rarely pursued and limited to only extreme circumstances. For example, in 1988, Dino Ciccarelli received jail time for hitting another player with his hockey stick. Boston Bruins defenceman Marty McSorley was charged in 2000 with assault with a weapon for his actions during a game. On the other hand, during a basketball game in 1977, Los Angeles Lakers forward Kermit Washington delivered a near-fatal punch to Houston Rockets forward Rudy Tomjanovich during a fight that broke out during a game. Tomjanovich suffered a fractured skull, broken jaw and nose, and leakage of spinal fluid. Washington was suspended by the NBA but was not arrested or charged criminally. These examples help to illustrate how unusual it is for participants to face liability for on-field (or on-ice) conduct.

Law stated - 11 July 2024

Doping regulation

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 regulation of doping in Olympic sports is largely managed by the US Anti-Doping Agency (USADA). The USADA is recognised by the United States Olympic & Paralympic Committee and the World Anti-Doping Code (WADA): it follows WADA's standards for testing and investigations and is responsible for the anti-doping programme for all US national governing bodies and events. The USADA also handles testing and adjudication of violations for Olympic athletes. This includes professional athletes in private leagues who also participate in Olympic sports; they are subject to USADA testing in the lead up to the Olympics or a World Championship event.

Because the WADA Code does not bind private professional leagues, those leagues conduct their own anti-doping programmes. Procedures for testing usually include collecting random blood or urine samples that are tested by an independent laboratory. These private procedures are generally negotiated between the private league and the respective players' union, and codified in a CBA or league doping policy. Punishment for a

doping violation can range from fines to suspensions and, in extreme cases, lifetime bans. Athletes who wish to challenge findings or punishment imposed by their league may file an appeal or grievance, which typically would be adjudicated in the first instance through arbitration proceedings at the league level, and then, if necessary, in the US court system.

Athletes who violate league-administered doping guidelines can face civil or criminal liability for taking a banned or illegal substance, as well. Some athletes have also faced criminal and civil lawsuits as a result of making false statements to government officials in connection with doping allegations. Most notably, cyclist Lance Armstrong was alleged to have defrauded the US government (in regard to his primary sponsor, the US Postal Service) by making false statements regarding his use of the drug erythropoietin, a banned substance, and violated the terms of his sponsorship agreement with the Postal Service. Armstrong eventually settled the dispute.

Secondary liability relating to doping offences has expanded in recent years. In 2020, Congress enacted the Rodchenkov Anti-Doping Act, which prohibits persons, other than athletes, from affecting or conspiring to affect international sports competitions through the use of banned substances. In May 2023, under this new law, federal prosecutors in New York secured a guilty plea from Eric Lira, a Texas-based doctor, who violated the Act by distributing banned performance enhancing drugs to Nigerian athletes before the 2020 Tokyo Olympic Games.

Law stated - 11 July 2024

Financial controls

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

Under United States law, the imposition of salary control regulations is generally illegal under antitrust laws. However, the non-statutory labour exemption allows leagues to enter into otherwise illegal restraints if such restraints are part of a union-negotiated CBA. Most CBAs currently in effect allow for various forms of financial controls, including, but not limited to, team salary caps, luxury tax systems to deter higher spending by wealthier teams, predetermined entry-level contract structures and minimum and maximum player salaries.

For example, the NFL, NBA and NHL all impose on member teams a salary cap and a salary floor (the maximum and minimum amount a team can spend on player salaries). While these amounts are generally tethered to annual revenue, each league's approach to setting the amounts may differ. In the NBA, the salary cap is US$141 million for the 2024-2025 season, with a salary floor of US$127 million per team. The NBA model involves a 'soft' cap, under which team spending on player salaries can exceed the salary cap through various exceptions involving traded players, rookies (first-year players), and current team members whose contracts are expiring. NBA teams are also subject to a luxury tax, the amount of which depends on how much, and how often, a team exceeds the salary cap. The NBA shares national media rights revenue equally among the member clubs, which allows teams in smaller media markets to spend nearly as much as those in larger media markets.

The NFL has imposed a salary cap of US$255.4 million for the 2024-2025 season. The salary floor constitutes roughly 89 per cent of the NFL salary cap. The NHL has a salary cap of US$88 million for the 2024-25 season, with a salary floor of US$65 million. Unlike the NBA, the salary caps in the NFL and NHL are 'hard' caps that member clubs, for the most part, cannot exceed.

The MLB, on the other hand, does not have a salary cap and instead controls team spending through a luxury tax that imposes financial penalties if spending exceeds a certain threshold. Under the MLB model, clubs that spend above certain payroll thresholds must pay a 'competitive balance tax', which is used to fund player benefits and individual player retirement funds. Clubs that exceed the competitive balance tax threshold are subject to an increasing tax rate depending on how many consecutive years that club has exceeded the tax.

Each of the leading women's sports leagues operating in the US also imposes a salary cap agreed upon under their respective CBAs. The CBAs do not require the salary cap to be tied to a set proportionate basis of revenue. The salary caps in these leagues have been evolving rapidly. For example, the salary cap in the NWSL for the 2024 season is US$2.75 million, up from US$1.375 million in 2023, and US$650,000 in 2021. The WNBA salary cap for the 2024 season is US$1,463,200, but restrictions on roster size and player salaries have come under fire from commentators and the public as the league has grown in revenue and prominence. The PWHL has an effective salary cap for its inaugural season of roughly US$1.265 million, nearly double the salary cap under the now defunct Premier Hockey Federation (PHF). The PWHL minimum and maximum salaries were US$35,000 and US$80,000, respectively. In comparison, the minimum and maximum player salaries in the PHF's final season were US$13,500 and US$80,000, respectively.

Law stated - 11 July 2024

DISPUTE RESOLUTION

Jurisdiction

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 and the league. 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. Procedures governing player-team disputes are often agreed upon during collective bargaining negotiations and formalised in the collective bargaining agreement (CBA) between the players and the league. While they differ among the leagues, procedures generally allow for appealing an internal decision both within the league and to federal or state courts.

In some cases, disputes involving leagues or teams may be heard in court, such as when a party to a dispute is not bound to the league constitution or by-laws, the CBA, or other governing documents, and thus is not bound by an arbitration provision contained in those agreements. In some cases, a dispute may be heard in court if it falls outside the scope

of the arbitration clause of the CBA (eg, claims of discrimination or commercial disputes). As these disputes are typically brought under state or federal laws, jurisdiction ultimately depends on the underlying laws regarding personal and subject-matter jurisdiction.

Law stated - 11 July 2024

Enforcement

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

League decisions are typically enforced by the league, the respective players' unions and the internal appeals process, in accordance with the organising documents for the league or the CBA. After exhausting their appeal options at the league level, players or teams may sometimes appeal a decision with which they disagree in court under a narrow set of circumstances outlined in the Federal Arbitration Act (FAA) or under the Labor Management Relations Act (LMRA). However, appeals of arbitration decisions in the court system are rarely successful because the appellant must clear a high bar to overturn an arbitrator's decision under US law.

Law stated - 11 July 2024

Court enforcement

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

Decisions of professional sports regulatory bodies can be challenged or enforced in court, though these challenges face a high bar for success. Because federal law typically enforces decisions made by an arbitrator when a CBA or other contract authorises them to decide disputes, a reviewing court 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 Mgmt Council v Brady, 820 F 3d 527 (2d Cir 2016). Similarly, outside of the labour context, the FAA may only vacate an arbitration award where: (1) the award was procured through corruption or undue means; (2) there was evident partiality or corruption in the arbitrators; (3) the arbitrators were guilty of misconduct and a party was prejudiced; or (4) 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.

Despite this high bar, there are high-profile examples of leagues and athletes attempting to challenge league decisions in court. For example, in 2016, the NHL suspended Dennis Wideman for 20 games for deliberately knocking down an official during a game. An independent arbitrator reduced the suspension from 20 games to 10 games. The NHL appealed to a federal court, seeking to reinstate the full suspension. The appeal was unsuccessful, however, and the federal court confirmed the arbitrator's award. High-profile NFL players including Tom Brady, Ezekiel Elliott, and Adrian Peterson have also challenged league disciplinary decisions in court.

Law stated - 11 July 2024

SPONSORSHIP AND IMAGE RIGHTS

Concept of image rights

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

There is a legally recognised concept of an individual's image right in the United States, commonly referred to as the right of publicity. The right of publicity is an individual's ability to control the commercial exploitation and appropriation of their identity. Live Nation, Inc v Illinois National Insurance Co, 312 Fed Appx 898 (9th Cir 2009). While the right of publicity is considered an intellectual property right and is similar to trademark, copyright and privacy law, it is a distinct legal right. The protected components of an individual's 'image' are typically their name, nickname, image, likeness, signature and other characteristics that are inherently connected to that individual.

In the United States, the primary source of this right is through state laws; federal law does not protect an individual's publicity right. Notably, state laws vary in scope and strength of legal protection. Currently, more than 30 states recognise the right of publicity in some form.

Law stated - 11 July 2024

Commercialisation and protection

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

Among the key legal considerations related to the protection of image rights are the elements of a right of publicity claim, potential First Amendment defences to any right of publicity challenge, and the available remedies in cases of infringement on this right.

Elements

While state laws vary, a plaintiff bringing a claim based on their right of publicity typically must prove two primary elements: (1) validity and (2) infringement. To prove validity, a plaintiff must prove that they own an enforceable right in an identity or persona. This means they must point to some aspect of their persona that identifies them — their name, their likeness, their nickname or another distinctive characteristic that identifies them. To prove infringement, a plaintiff must typically prove that a defendant used that aspect of the plaintiff's identity or persona without authorisation and that the defendant's unauthorised use is likely to cause commercial damage to the plaintiff's identity or persona's value.

Often the primary challenge in these types of cases is whether the plaintiff can show a likelihood of commercial damage. For example, in ETW Corp v Jireh Publishing, Inc, the Sixth Circuit Court of Appeals rejected golfer Tiger Woods's right of publicity claim in a case

concerning the unauthorised use of his image in artwork, ruling that it was not established that 'the appearance of Woods' likeness in artwork prints which display one of his major achievements' would 'reduce the commercial value of his likeness'. 332 F 3d 915, 938 (6th Cir 2003).

The elements an individual must prove — and how difficult they are to prove — to prevail in a right of publicity case will vary depending upon which state the case is brought. This is because individual states may be more or less protective of image rights. For example, in California, case law provides for a valid claim of right of publicity infringement if a defendant has misappropriated an individual's identity for commercial and non-commercial purposes. Eastwood v Super Ct, 149 Cal App 3d 409, 417 (1983).

First Amendment defence

One common defence to an allegation of the right of publicity infringement is that the use at issue is protected free speech under the First Amendment to the US Constitution. This defence can be hard to establish in cases when the alleged infringement is for commercial purposes. Courts will consider advertising and merchandise use as 'commercial speech', which is afforded the lowest level of protection under the First Amendment. Notably, the 'commercial speech' designation does not protect a would-be infringer from legal liability for infringing on another's right to publicity. For example, in Zacchini v Scripps-Howard Broadcasting Co, the US Supreme Court rejected a television statement's First Amendment defence of free speech immunity for violating the publicity rights of a notable performer. 433 US 562 (1977). The Court held that the station did not have a free speech right to broadcast the performer's routine on its newscast, reasoning that doing so would undercut the performer's economic incentive to invest in the performance's commercial success.

Remedies

Remedies for the right of publicity violations can include injunctive relief and/or monetary damages. Injunctions bar ongoing infringing conduct, while monetary damages can be awarded to compensate the plaintiff for the infringement. Courts often measure damages to an individual's right of publicity by analysing the fair market value of the identity in question, loss of future earning potential and the amount of profits earned by the infringer. In cases of wilful violations, punitive damages may also be awarded.

Law stated - 11 July 2024

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

In most circumstances, a professional athlete and that athlete's team and league can use that athlete's name, image and likeness for commercial purposes. The primary mechanism through which image rights are used commercially is through a licensing agreement. In the US, athletes may license their image and likeness to teams, leagues, players unions and brands interested in commercial initiatives. These licence agreements dictate the scope and length of the use of an athlete's image and likeness. Players unions may also benefit

from group licensing agreements through which the union is given the right of commercial use to their union-member athletes. The players' unions then sub-license these rights of commercial use to other brands to monetise their union members' names, images and likenesses.

A prominent example of this union sub-licensing process is OneTeam Partners. OneTeam Partners is a joint venture consisting of the NFL Players Association, MLB Players Association (MLBPA), the Major League Soccer Players Association, the Women's National Basketball Players Association, the US Women's National Team, and the US Rugby Players Association that collectively licenses athletes' name, image, and likeness rights. The company's objective is to maximise the value of athletes' right of publicity across video games, collectibles, merchandise and other commercial endeavours. It has done so by, for example, negotiating a licensing deal with video game developer EA Sports that allowed Division 1 college football players to have their name, image and likeness portrayed in college football video games in exchange for compensation.

Law stated - 11 July 2024

Morality clauses

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

Morality clauses are generally enforceable in the United States, including in the sports context. These clauses are found both in endorsement contracts between athletes and brands, and between athletes and teams and/or leagues. While morality clauses with teams or leagues are generally included in a standard player contract and thus are consistent across all players in that league, morality clauses as part of endorsement contracts between athletes and brands are typically negotiated on an individual basis.

Morality clauses are aimed at ensuring that each party can preserve its reputation by terminating a contract if the other party to the contract engages in illegal or otherwise morally questionable behaviour. A well-drafted morality clause will specify the types of conduct that could trigger a termination of a player contract or endorsement deal to avoid later disputes about whether conduct breaches the clause.

Law stated - 11 July 2024

Restrictions

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

Restrictions on sponsorship, advertising and marketing in professional sports vary by league. For example, MLB recently permitted teams to sell sponsorship patches on in-game uniforms and helmets, but the league has traditionally prohibited sponsorship from categories such as alcohol and betting, among other things. On the other hand, the NBA

has official sponsorships with both FanDuel and DraftKings in the sports-betting industry. In addition, NASCAR allows for alcohol brand sponsorships on cars that compete in races.

Restrictions may be imposed by leagues unilaterally or may be imposed by agreement among the league and players. In some instances, banned sponsorship categories are agreed upon in the respective CBAs. The NBA, for example, removed cannabis as a banned sponsorship category after an agreement with the NBA Players Association (NBPA) in the 2023 CBA. In the NFL, however, the league maintains more control over banned sponsorship categories.

Restrictions on sponsorship categories often change over time. For example, the NFL recently relaxed its internal rules that strictly limited what types of alcohol brands athletes and teams could partner with. These changes to limitations may follow the evolving legality of the sponsorship category at issue. For example, as cannabis and sports betting have started to become legalised throughout the United States, professional leagues have started to allow teams and athletes to enter into endorsement contracts with brands within these categories.

Teams and players may also be restricted from certain sponsorship agreements based on an exclusivity restriction. If a team grants sponsorship exclusivity to a certain brand, their contractual arrangement often makes that brand the only company in a given industry allowed to partner with the team (eg, the exclusive car sponsor of a team). One challenge leagues, teams, and athletes face is how to navigate competing sponsorships, where, for example, a team has an exclusive sponsorship with one brand while the relevant league or association enters into an agreement with with a competing brand. In this situation, the team will generally not be considered in violation of their exclusivity arrangement with the brand in question, unless the contract stipulates exclusivity across team and league layers.

Law stated - 11 July 2024

BRAND MANAGEMENT

Protecting brands

13 | How can sports organisations protect their brand value?

Sports organisations can protect their brand value, and mitigate the risk of exposure to negative press, in a variety of ways. Morality clauses are a primary brand-protecting tool for organisations. Teams and leagues will often include clauses in contracts that allow for the team or league to terminate the agreement if the athlete engages in conduct that is illegal, or otherwise morally reprehensible or offensive. For example, according to the NBA-NBPA Collective Bargaining Agreement, teams may terminate a player contract if a player fails to conform their conduct 'to standards of good citizenship, good moral character, and good sportsmanship…' (article XXXVI, section 16(a)(i)). Teams and leagues may try to draft broad language along these lines to cover conduct that could range from drunk driving to social media posts that cause outrage among the general public.

Organisations can also limit the categories of brands with which teams and athletes can enter into sponsorship contracts. Sports leagues and teams can also protect their brand

value by declaring certain brand categories off-limits for endorsement contracts that might be perceived as morally reprehensible or offensive.

Law stated - 11 July 2024

14 | How can individuals protect their brands?

Like teams and leagues, individuals can also bargain for morality clauses that protect the athlete against negative press or general reputational harm. For example, some endorsement contracts will have two-way morality clauses that also permit an athlete to terminate a contractual association with a brand if the brand engages in illegal, morally reprehensible, or offensive conduct. Athletes should also carefully scrutinise the types of brands with which they associate to avoid tarnishing their personal brands and reputations.

Moreover, athletes can protect their brands by protecting their intellectual property, and carefully negotiating endorsement contracts in ways that limit the usage of their name, image and likeness. Contractual provisions to this effect include scope of services clauses, morality clauses, specifications about intellectual property ownership and confidentiality provisions.

Law stated - 11 July 2024

Cybersquatting

15 | How can sports brands and individuals prevent cybersquatting?

Cybersquatting is the unlawful registration of internet domain names of a well-known trademark by those who do not have ownership rights in, or authorisation to use, the trademark and subsequent selling of the domain names to the trademark owner. Cybersquatting can infringe on trademarks and other intellectual property rights concerning reputational harm, property and ownership rights. One common example of cybersquatting is when teams, leagues, athletes and other industry stakeholders cannot register a desired internet domain name that uses a valid trademark they own or can use because a cybersquatter has already registered that domain name. Cybersquatting can also create issues where infringers create confusingly similar domain names to those of brands and individuals, and cause consumer and reputational harm.

Consider, for example, the recent NHL expansion team, the Seattle Kraken. Hearing of the new team, a bad faith actor might create an internet domain name that is identical, or substantially similar to the Seattle Kraken (ie, 'SeattleKrakenHockey.com') that confuses consumers into thinking the domain belongs to the new NHL team. After causing reputation and brand damage and confusing consumers, the infringers might then try to force the Seattle Kraken, or the NHL, to pay a large sum of money to transfer ownership of the domain name or names. Some federal courts have described this subsequent payment as a form of 'ransom'.

In the United States, industry stakeholders have various tools at their disposal to protect their trademarks and other intellectual property rights against cybersquatting. Another

common method trademark owners employ to combat cybersquatting is bringing a lawsuit under the Anti Cybersquatting Consumer Protection Act (ACPA). Congress enacted the ACPA in 1999 to protect consumers and trademark holders from cybersquatting. The ACPA provides trademark owners with a legal cause of action against anyone who 'registers, traffics in, or uses' a domain name that infringes on their trademark through consumer confusion and bad faith intent. The elements of a claim under the ACPA are: (1) the trademark must be famous or distinctive, and valid; (2) the domain name at issue must be 'identical or confusingly similar' to the trademark; and (3) the allegedly infringing individual or entity possessed a bad faith intent to profit from the domain name. This confusion analysis is similar to that of a trademark infringement claim, which also requires that the infringing party's use of the trademark creates a likelihood of confusion among potential consumers regarding the source or affiliation affiliations of the product or service. Notably, under the ACPA, a plaintiff does not need to formally register the trademark; owners of unregistered trademarks would need to prove a strong association with the good or service at issue such that the use of those goods or services by others would constitute a false representation of ownership. Generally, however, brands and individuals can prevent the harms of cybersquatting by properly registering a brand name as a trademark; a trademark owner with a formally registered trademark will more easily satisfy the first element concerning a valid trademark. Remedies under the APCA can include cancellation or transfer of the domain name at issue and monetary damages.

Another legal tool that brands and individuals have to prevent cybersquatting is the Trademark Dilution Revision Act (TRDA) and similar state laws. The TRDA, enacted in 2006, made it easier for owners of famous trademarks to prove dilution of their mark by defining what a 'famous' trademark is, and by clarifying the standard of proof trademark owners must meet to prove dilution of a famous trademark. The TRDA defines a 'famous' trademark as one that is 'widely recognised by the general consuming public of the United States as a designation of source of the goods or services of the mark's owner'. Through the TRDA, trademark owners can prevent others from diluting their trademark by bringing a lawsuit for injunctive relief, and sometimes monetary damages that account for lost profits and bad faith conduct.

Outside of federal and state legislation, brands and individuals can also rely on the Internet Corporation for Assigned Names and Numbers (ICANN) for protection against cybersquatting. ICANN is a private, nonprofit corporation that works through private-public partnerships to manage the distribution of IP addresses, helps to register and protect domain names and holds infringers accountable. ICANN and the United States Department of Commerce have worked together over the past few decades to carry out these functions. ICANN helps combat cybersquatting through its Uniform Domain Name Dispute Resolution Policy, an arbitration system that is often faster, and less expensive, than public litigation under the ACPA or TRDA. Notably, the ICANN dispute resolution system provides for equitable remedies such as the transfer of the infringing domain name, but not monetary damages. Therefore, in seeking to protect their trademarks and intellectual property rights from cybersquatting, athletes and brands should carefully consider whether public litigation or dispute resolution through ICANN is a more appropriate course of action.

Law stated - 11 July 2024

Media coverage

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

Under First Amendment legal principles, athletes and organisations are limited in their ability to protect against adverse media coverage. Freedom of the press is viewed as a core value and is particularly strong in the context of media coverage of notable public figures, including athletes. While defamation, libel, and slander laws protect athletes against certain types of false stories, the allegedly defamed individual generally must prove that the speaker acted with actual malice, which is typically defined as either reckless disregard for the truth or knowledge of the statement's falsity. There is very little protection against adverse media coverage that is either true or the result of an innocent mistake.

Law stated - 11 July 2024

BROADCASTING

Regulations

17 | Which broadcasting regulations are particularly relevant to professional sports?

The most relevant broadcasting regulations for professional sports are the Sports Broadcasting Act of 1961, the Copyright Act of 1976 and the Federal Communications Commission (FCC) regulations.

The Sports Broadcasting Act of 1961 was passed in response to a challenge to league broadcasting rules under the antitrust laws. US antitrust laws such as the Sherman Act prohibit certain restraints on trade or efforts to monopolise an industry. In 1953, the United States brought a suit against the NFL alleging the league's bylaws on broadcast restrictions violated the antitrust laws. United States v Nat'l Football League, 116 F Supp 319 (ED Pa 1953). Specifically, the NFL's bylaws outlawed any team from broadcasting its game within 75 miles of another team's city when that other team was playing unless the other team allowed the outside broadcast. The court found that the NFL's conduct was a restraint that 'eliminated competition' among the teams in the sale of TV rights. Following the decision, the NFL lobbied Congress to pass legislation that would help the league avoid these antitrust problems. Congress enacted the Sports Broadcasting Act in 1961 to enable professional sports leagues to pool their separate rights to broadcast games and to share the revenue from the pooled sale of those rights, without fear of violating the antitrust laws. The Sports Broadcasting Act gave professional sports leagues a broad exemption from antitrust scrutiny in regards to broadcast rights.

Congress then specifically extended copyright protection to sports telecasts in the Copyright Act of 1976. The holder of the copyright in telecasts of live sports programming is generally the sports leagues. However, sports leagues may choose to enter into contractual agreements with television broadcasters that provide the broadcasters with a licence to broadcast their games.

The FCC also regulates the broadcasting of professional sports. In 2014, the FCC repealed its sports blackout rules, which prevented cable and satellite networks from telecasting sporting events in a particular area when a local broadcast station had negotiated with the league to possess the exclusive rights to broadcast that sporting event in that area. Blackouts of sports events are the result of contractual agreements between the sports leagues and the broadcast networks and stations. In most cases, the blackout results when a sports league prohibits an event from being televised locally if the event does not sell out all its tickets. Each sports league has different rules about when a televised event can be blacked out.

Law stated - 11 July 2024

Restriction of illegal broadcasting

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

Streaming or otherwise redistributing unauthorised broadcasts of sporting events constitutes copyright infringement. As owners of the broadcasting rights of their games, professional sports leagues can enforce their rights through claims against a variety of possible defendants, but all options stem from the basic claim of copyright infringement.

Professional sports leagues can also use the Digital Millennium Copyright Act (DMCA) to require United States internet service providers to take down infringing websites in the US. The DMCA was enacted to preserve copyright protections on the internet while providing immunity from copyright infringement to passive service providers. The DMCA permits a copyright holder to send a takedown notice to websites containing copyright infringing material. However, the DMCA limits a website's liability for copyright infringement if it meets certain conditions; (1) it 'does not have actual knowledge that the material' is infringing; (2) 'in the absence of such knowledge, is not aware of facts or circumstances from which infringing activity is apparent;' or (3) if the hosting website does have knowledge or is aware of the infringing material, 'acts expeditiously to remove, or disable access to, the material'. Sports leagues often use DMCA takedown notices to ensure that websites like YouTube, Reddit, X (formerly known as Twitter), or Instagram remove uploads of full or partial broadcasts of sporting events.

Law stated - 11 July 2024

EVENT ORGANISATION

Regulation

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

Regulation of venue hire and event organisation depends in large part on state and local laws, which can vary from state to state and town to town. Venues and event organisers

must be mindful of applicable restrictions on crowd size, security and other relevant ordinances.

In addition to being subject to state and local laws, venue and event organisations are subject to the Americans with Disabilities Act (ADA), which imposes certain accessibility obligations for those with disabilities. Title II of the ADA states that 'no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity'. The law requires sports teams to make reasonable modifications to policies, practices and procedures to make their goods and services available to people with disabilities.

Law stated - 11 July 2024

Ambush marketing

20 | What protections exist against ambush marketing for events?

Ambush marketing does not ordinarily violate any laws, unless the ambush marketer uses the trademarks of an event organiser or an official sponsor, or otherwise engages in unfair or deceptive conduct. The main protections against ambush marketing exist under trademark law, false advertising law and the law of unfair competition. For example, false advertising claims based on the Lanham Act (15 USC § 1125(a)) are actionable if the marketing creates a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the product.

The use of a third party's trademark may be considered permissible 'normative fair use' if the use does not suggest a relationship between the advertiser and the trademark owner, and the trademarked goods or services cannot be readily identified without using the trademark. However, most sports organisations are vigorous enforcers of their intellectual property rights. For example, the NFL polices unlicensed advertising that refers to the 'Super Bowl'. In one situation, the NFL sent a cease-and-desist letter to a church group that used 'Super Bowl' to describe a viewing party for the game. While the league has since changed its policy and no longer objects to religious organisations that refer to their events as 'Super Bowl' parties, provided that no NFL logos are used, many broadcasters generally will not accept advertising that refers to the Super Bowl unless the advertiser obtains NFL approval first to mitigate the risk of an infringement claim. This leads to many advertisers using generic references, such as the 'Big Game' to avoid a potential dispute.

Law stated - 11 July 2024

Ticket sale and resale

21 | Can restrictions be imposed on ticket sale and resale?

Because tickets are often treated as licences to enter premises, venue operators are permitted to impose restrictions on the conditions of entry, so long as they do not violate

an individual's civil rights. Venue operators are permitted to impose limits on ticket sales (including limits on the number of seats that one person or entity may purchase), or restrictions on resale.

Various state and local laws also govern the resale of tickets for admission to events. These may include prohibitions on the use of deceptive domain names, prohibitions on the use of software to circumvent security measures, and ticket volume limitations. In general, however, the resale of tickets is often permitted through appropriate channels, and websites including Ticketmaster, StubHub and SeatGeek facilitate the resale of tickets among consumers, often without limitation on resale pricing.

Law stated - 11 July 2024

IMMIGRATION

Work permits and visas

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

Professional athletes can obtain several different types of visas: B-1 (or the visa waiver programme, depending on the athlete's country of origin), P-1, O-1A and O-1B visas. Various factors can influence which visa might be appropriate. When the athlete is 'internationally recognized', the athlete may be eligible for the P-1 visa classification. Alternatively, the O-1 visa category is reserved for individuals with 'extraordinary ability'. To obtain an O-1 visa, athletes must demonstrate that they possess 'a level of expertise indicating that they are one of the small percentage who have risen to the top of the field of endeavour'. Teams, leagues, and consulates often work closely with professional athletes to help them navigate the process of securing an appropriate visa depending on their circumstances.

The United States also provides visas for coaches and other workers who support athletes, such as trainers, mental conditioning consultants, movement specialists, and nutritional advisers, among others. Those professionals may be eligible for an H-1B visa for workers in specialty occupations. This visa is issued for up to three years and is renewable for a second three-year period.

Law stated - 11 July 2024

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

'Visa requirements for athletes and staff are regulated by the United States Citizenship and Immigration Services (USCIS). Athletes who come to the United States temporarily for the sole purpose of competing in a particular competition are eligible to apply for the P-1A visa. The length of stay allowed by the P-1A visa typically matches the duration of the event or season. However, under existing regulations, P-1A individual athletes are

initially authorised to remain in the United States for up to five years. Athletes who are 'internationally recognised' as an individual or as part of a team are eligible for this visa.

Essential support personnel-, such as coaches, scouts, trainers, broadcasters and referees, may be eligible for the P-1S visa if they are integral to the P-1A athlete and perform services that cannot be readily performed by a United States worker. The P-1S visa is a non-immigrant visa intended for support personnel to join P-1A athletes coming to compete in the United States. The applicant must also provide a statement explaining their essential skill and their experience with the P-1A athlete as well as a copy of their contract with their United States employer. Initially approved P-1S visas are valid for the period necessary to complete the event at issue, not exceeding one year. However, the USCIS can authorise extension of stay petitions for P-1S essential support personnel of P-1A individual athletes for as long as is needed to complete the event at issue, so long as this period does not exceed five additional years or 10 total years. A USCIS policy memo recently confirmed that athletes are not limited to these 10 years; however, after this initial 10-year stay, the athlete must leave the United States and reapply for a new P-1A visa.

Law stated - 11 July 2024

Residency requirements

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

Athletes with 'extraordinary ability' seeking permanent resident status in the United States may be eligible for the EB-1A visa. The USCIS issued a memorandum in 2010 providing a two-step analysis for evaluating whether an individual has demonstrated extraordinary ability.

In step one, an adjudicator determines whether the athlete has submitted sufficient evidence in support of their application. This step is satisfied if the athlete provides evidence of a one-time internationally recognised achievement (including, but not limited to, an Olympic medal or NBA championship). In Muni v INS, 891 F Supp 440 (ND Ill 1995), the Court granted an NHL player's visa petition, noting that the Oilers' Stanley Cup victories, to which Muni contributed as a player, constituted sufficient evidence of a major, internationally recognised award. However, simply playing in a major sports league alone is likely not sufficient on its own. Alternatively, the athlete can satisfy step one by providing at least three types of evidence from the list of 10 criteria provided by the USCIS: (1) evidence of receipt of a lesser nationally or internationally recognised prizes or awards for excellence; (2) evidence of membership in associations in the field which demand outstanding achievement of their members; (3) evidence of published material about the applicant in professional or major trade publications or other major media (4) evidence that the applicant has been asked to judge the work of others, either individually or on a panel; (5) evidence of the applicant's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance to the field; (6) evidence of the applicant's authorship of scholarly articles in professional or major trade publications or other major media; (7) evidence of the applicant's work being displayed at artistic exhibitions or showcases; (8) evidence of performance of a leading or critical role in

distinguished organisations; (9) evidence that the applicant commanded a high salary or other significantly high remuneration in relation to others in the field; and (10) evidence of the applicant's commercial successes in the performing arts. The adjudicator must examine the quality and calibre of the evidence to determine whether the criteria for that type of evidence are satisfied.

In step two, the adjudicator considers all the evidence submitted in totality to determine whether the athlete possesses extraordinary ability. Ultimately, this determination hinges on whether the athlete belongs to the small percentage of athletes who have risen to the pinnacle of their sports or have sustained national or international acclaim. In both steps of this analysis, the adjudicator applies a preponderance of the evidence standard.

An offer of employment is not required for EB-1A eligibility. However, the applying athlete needs to provide evidence that they plan to continue working in the area of their expertise. Notably, the 'extraordinary abilities' standard for the EB-1A visa is considered a high bar; thus, it requires an athlete to demonstrate a level of expertise indicating that the individual 'is one of that small percentage who have risen to the very top of the field of endeavour'. Thus, many athletes seeking permanent residency may instead consider the EB-2 or EB-3 visas.

The EB-2 visa governs athletes with 'exceptional ability', while the EB-3 visa applies to professional and skilled workers. Exceptional ability 'means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business' and is a significantly lower standard than the 'extraordinary abilities' standard of the EB-1A visa. Unlike the EB-1 visa, which allows an athlete to self-petition for a visa, the EB-2 and EB-3 visas require an offer of employment. Further, unlike the EB-1, the EB-2 and EB-3 visas require the petitioning athlete to obtain a labour certification with the Department of Labor. Thus, while the bar is lower for the EB-2 and EB-3 visas compared to the EB-1 visa, they require a lengthier application process.

Law stated - 11 July 2024

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 temporary, non-immigrant workers typically qualify for the dependent non-immigrant classification of a temporary worker. Notably, a foreign athlete can be both an immigrant and non-immigrant worker, depending on the type of visa they obtain. A non-immigrant worker enters the United States temporarily, while athletes who enter the United States with the intent and ability to remain permanently are more likely to be considered non-immigrant workers. Typically, these family dependents in these categories are allowed under United States law to remain in the United States and attend school for the same duration of time as the temporary visa recipient. However, they may not obtain employment in the United States. This category of individuals includes spouses or dependent children under 21 years old.

Family members of an athlete, coach, or administrative staff member who obtains permanent resident status will also usually qualify for permanent resident status. As

permanent residents, these family members may legally obtain employment in the United States.

Law stated - 11 July 2024

SPORTS UNIONS

Incorporation and regulation

26 | How are professional sporting unions incorporated and regulated?

Professional athletes in many United States sports leagues have formed unions that devise CBAs to protect the rights of athletes. Unions are formed and controlled by their members and generally have an administrative staff that runs the daily operations of the union, including handling collective bargaining issues and related disputes, licensing and revenue generation ventures.

As set out by the National Labor Relations Act (NLRA), the National Labor Relations Board (NLRB) 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. Sports unions are incorporated and regulated via the US Department of Labor and the NLRB.

Law stated - 11 July 2024

Membership

27 | Can professional sports bodies and clubs restrict union membership?

The NLRA prohibits employer interference with the formation and membership of unions. As such, professional sports bodies and clubs cannot restrict players from becoming union members.

While sports bodies and clubs cannot restrict union membership, individual unions can impose certain restrictions on membership. For example, to become a member of the NBPA, a person must play in the NBA, while the MLBPA has recently expanded to include players in the minor (lower-tier) leagues. Unions may also require that a player pay dues to obtain membership. Each of these organisations has different rules that govern the membership of players who are free agents or who have retired.

Law stated - 11 July 2024

Strike action

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

The NLRA protects employees' rights to engage in concerted action, including strikes. When the collective bargaining process fails, lockouts or strikes can result. Professional sports unions have launched strikes in which athletes have refused to play when they have been unable to reach an agreement with leagues on playing conditions and compensation through the collective bargaining process. Similarly, team owners can trigger lockouts, in which they refuse to allow players to access team facilities, in response to these types of disputes. The most recent lockout occurred in Major League Baseball from 2 December 2021 through 10 March 2022.

Strike actions, however, can be limited by the inclusion of a 'no-strike' clause in a collective bargaining agreement (CBA). Leagues often secure no-strike clauses in collective bargaining contracts with their employees' unions. Under such clauses, the union promises not to authorise or sanction any strike during the term of its contract. A strike that violates a no-strike provision of a contract is not protected by the NLRA, and the striking employees can be discharged or otherwise disciplined. The NLRB has upheld employers' rights to terminate employees who strike in breach of such an agreement. See Boeing Airplane Co v NLRB, 174 F2d 933 (DC Cir 1949). Therefore, in the sports context, strikes and lockouts generally only occur when a CBA expires by its natural term and is due for renegotiation.

Law stated - 11 July 2024

EMPLOYMENT

Transfers

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

The collective bargaining agreements for each league establish rules surrounding free agency and individual transfers. In most United States sports leagues, teams obtain rights to contract with a player entering the league through an amateur draft. Teams select players and have the exclusive right to sign that player to a contract. Most players do not achieve free agency until that initial contract expires, although the rules vary from league to league and also may consider years of service and other qualifying conditions. Once a player reaches free agency, they are free to enter a new contract with a team of their choosing.

Another common method for players to change teams is via trade. Trades are player transfers during the term of a player's contract that can be executed at a team's discretion without the player's consent. In most United States sports, when one team trades a player to another team, the acquiring team takes on the traded player's contract obligations in exchange for other considerations (which can include other players, draft picks or cash considerations). Players may negotiate a no-trade clause into their player contract, which prohibits a team from trading that player without their express permission, but these clauses are relatively rare. No-trade clauses are generally only provided to star athletes with increased bargaining power. Some leagues, such as Major League Baseball, also allow for limited no-trades clauses, through which players can exempt themselves from trades to specified teams in their player contract. Most United States sports leagues also establish

a mid-season trade deadline, after which teams must wait until the season ends to trade players.

Many leagues limit a team's ability to acquire new players by imposing a hard or soft cap on player salaries. A hard cap, which the National Football League (NFL) uses, prevents a team from going over the salary cap for any reason. A soft cap, which the National Basketball Association (NBA) uses, sets an amount that may be exceeded under certain circumstances. There are many exceptions to the NBA's soft cap that allow teams to spend more than the salary cap in any given year. Every league imposes a roster limit, which caps the number of players that a team can have under contract in a given year.

Law stated - 11 July 2024

Ending contractual obligations

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

Generally, there are no fixed buyout prices in contracts in American sports. However, a player can request to be released or negotiate a buyout or complete release, which their team may or may not agree to depending on the circumstances.

Law stated - 11 July 2024

Welfare obligations

31 | What are the key athlete welfare obligations for employers?

Participants in professional sports assume the risk of unintentional injuries, but they do not assume the risk of intentional injuries. If a player is injured, he or she is typically eligible to receive workers' compensation under state law. A collective bargaining agreement may also require coverage or otherwise guarantee equivalent benefits.

The CBAs for each sports league govern players' rights to medical care and treatment. These provisions often require team physicians and athletic trainers to have certain credentials. They also may require protocols for specific types of injuries. For example, the collective bargaining agreement for the NFL requires teams to follow a robust protocol to evaluate players for concussions.

Although teams and leagues generally are not liable for injuries to an athlete that occur during the normal course of a sporting event, they may be liable for failing to protect their players from certain dangers that they are aware of but fail to disclose. For example, thousands of retired football players brought a class action lawsuit against the NFL in 2012 to recover for the long-term effects of concussions they suffered during their careers. The former players alleged that the NFL was negligent, as it had a duty to protect its players from the dangers of concussions, and that the NFL knew of these dangers but failed to disclose them. Although the lawsuit was settled before trial, this is one example of a situation where a team or league may face allegations that they are liable for injury to a player. Other

examples include situations where the playing conditions did not meet adequate safety standards, such as negligent field or stadium maintenance.

Many leagues have begun to focus more on athletes' mental health, as well. The collective bargaining agreement for the WNBA, for example, contains a 'mental health' section that requires the parties to provide robust mental health resources for the players. The NWSL CBA contains a similar emphasis on mental health, providing that if a licensed psychologist/psychiatrist provides a player with a recommendation to take a leave of absence due to a mental health diagnosis, the NWSL must continue to pay the player the compensation outlined in the player's standard player agreement for the term of the agreement, or up to six months, whichever is shorter, less any workers' compensation or short-term or long-term disability benefits, if any, awarded to the player solely for lost wages.

Law stated - 11 July 2024

Young athletes

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

Generally, leagues' respective collective bargaining agreements regulate age restrictions for playing in each respective league. Some leagues require players to be at least 18 years old, while other leagues require that players wait until they are a certain number of years removed from high school. Age requirements are typically collectively bargained with unions and not unilaterally imposed by the leagues.

But these age requirements—whether collectively bargained for or unilaterally imposed by the league—have been challenged under antitrust laws. One player challenged the NFL's age requirement in an attempt to enter the 2004 NFL Draft but was unsuccessful because the age limit was collectively bargained. But, another player successfully challenged the NWSL's unilaterally-imposed age requirement. In that case, 15-year-old Olivia Moultrie was granted a preliminary injunction by a federal court enjoining the NWSL's requirement that players be at least 18 years old. See OM v National Women's Soccer League-, 3:21-cv-00683-IM (D Or 2021). The court found, among other things, that Moultrie was likely to succeed on the merits of her claim that the age requirement violated section 1 of the Sherman Act. The court noted that if the players' association and the league were to collectively bargain for an age restriction, then she could lose her eligibility, but they had not done so.

Law stated - 11 July 2024

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

One key consideration in employing minors is health and safety. In the United States, Congress established the US Center for SafeSport, an independent non-profit organisation, through the Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017. Pursuant to this legislation, SafeSport develops and enforces policies, procedures and training programmes to prevent abuse and misconduct across

the United States amateur and professional sports landscape, as well as the Olympic and Paralympic games.

In more recent years, some non-governmental bodies (NGBs) have also taken steps to ensure that minors stay protected from dangers specific to playing their sport. For example, with growing concern over the effects of head injuries, an area of particular focus has been preventing concussions. USA Football has issued guidelines that recommend limiting full contact drills, which can increase the chance of injury. And the US Soccer Federation has recommended a ban on headers for athletes aged 10 and under. Other NGBs have implemented more robust concussion protocols, as well.

Law stated - 11 July 2024

Club and country representation

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

Athletes that play in the major sports leagues are employees of their respective teams or leagues, and their employment relationships are generally governed by a CBA. When they represent their country in an international event, the applicable national governing body becomes their employer as they compete in that capacity and will often pay them (or at least cover expenses) to compete in international events.

While teams and leagues often endeavour to work cooperatively with the NGB to enable athletes to fulfil their duties to both club and country, some challenges can arise when the dates of international competitions overlap with club competitions. Some leagues do not 'pause' until the players return from the international event. Instead, they will continue league competition until those players return to their respective teams. In the NWSL, for example, league games continue while many players are competing in the World Cup or Olympics. NWSL teams can sign players to short-term contracts to replace players representing their country at a national event until those players return. In the NHL, the league and players' association negotiate whether or not players under contract can leave mid-season to play for their respective national teams during the Winter Olympic Games, which occur during the NHL season. The NHL has previously scheduled a mid-season break to enable player participation in the Olympics, but they did not agree to do so during the 2022 season.

Law stated - 11 July 2024

Selection and eligibility

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

Selection and eligibility generally fall within the purview of the respective national governing body (NGB) for promoting and developing a particular sport in the United States. The NGBs oversee youth-level and elite-level national teams to prepare them to qualify for

international events, including the Olympics or the World Championships. They often select individuals to compete at events such as the Olympics (or Olympic-qualifying) through evaluation by national team coaches at competitions and team selection camps. Other team selections are results-based, depending on placement at a trials competition or a scoring system.

NGBs handle most disputes within each sport. An athlete seeking to challenge an NGB's decision regarding his or her right to participate in competition may first file a formal complaint with the NGB. In addition to filing the complaint with the NGB, the athlete may also file a section 9 complaint with the Olympic & Paralympic Committee, which notifies the Committee that an issue exists and allows it to intervene to mediate the dispute. After filing a section 9 complaint, an athlete may seek a final resolution of his or her claim by filing for arbitration with the American Arbitration Association, which may or may not be appealable to the United States court system depending upon the nature of the dispute and the process by which it was resolved.

Law stated - 11 July 2024

TAXATION

Key issues

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

Foreign athletes performing services in the United States must pay federal income tax. Taxable income includes compensation for games, endorsements, the sale of merchandise, royalties or any other income earned within the United States. Foreign athletes are also subject to special tax and withholding rules. Athletes typically must also pay state income tax to the state government on services rendered within the state if that state collects a state-level income tax, as well as to the state in which they reside (if that state levies an income tax).

Law stated - 11 July 2024

UPDATE AND TRENDS

Key developments of the past year

37 Are there any emerging trends or hot topics in your jurisdiction?

Emergence of NIL compensation for college and amateur athletes

One of the major developments in the United States sports landscape has been the ability of amateur athletes to receive compensation for their name, image and likeness (NIL). College and high school athletes were previously prohibited from receiving compensation for these rights, including for promoting products and services or making personal

appearances. Colleges and universities leveraged sports to bring in revenue, attract attention, boost enrolment and raise money from alumni. However, the only compensation that college athletes were permitted to receive was a scholarship to pay for their education. This system relied on the theory that college athletes were 'amateurs', and thus could not be compensated for their performance. The National Collegiate Athletic Association (NCAA) generally implemented and enforced these rules.

In 2019, California and Florida passed legislation that prohibited schools from punishing athletes for accepting endorsement money while in college. In response — and as other states began passing their own legislation — the NCAA amended its NIL rules to permit college athletes to receive compensation from third parties for their NIL. This has led to an explosion of endorsement and marketing contracts for prominent college and amateur athletes.

In December 2023, various states filed a lawsuit, State of Ohio et al v NCAA, Case No. 1:23-CV-00100 (ND W Va), alleging that the NCAA's rules requiring an athlete to sit out for a year if they transfer more than once in their college careers violate antitrust law. The Justice Department later joined this lawsuit. In May 2024, the Court approved a consent judgment and permanent injunction that prevents the NCAA from enforcing its transfer restrictions. Athletes are now free to transfer between schools without any forced break from competing.

In January 2024, Tennessee and Virginia filed a lawsuit, the State of Tennessee and Commonwealth of Virginia v NCAA, Case No. 3:24-cv-00033 (WD Ten), suing the NCAA over the NCAA's restrictions preventing players from communicating with boosters or third-party collectives regarding NIL compensation during the recruiting process. On 23 February 2024, the Court granted a temporary injunction enjoining the NCAA from enforcing any policies that prohibit athletes from negotiating NIL compensation with any third-party entity including boosters or an NIL collective. On 1 May 2024, the plaintiffs filed an amended complaint adding Florida, New York and the District of Columbia as new plaintiffs in the lawsuit. The NCAA has until 30 August 2024 to respond to the amended complaint. The preliminary injunction remains in place and the parties will now begin to litigate the matter on the merits.

NIL remains a hot topic in part because, as of today, there is no nationwide framework of rules governing NIL compensation. Instead, there is a patchwork of different state laws that often conflict with those of other states. This has created confusion, as well as concern that state-level lawmakers may use NIL laws to give their in-state schools a competitive advantage in recruiting top performers. Some of these laws affect high school athletes' ability to receive compensation for licensing their NIL, as well. At the high school level, we are now seeing some elite athletes move to a different state so that they can receive compensation even before starting their college career.

Direct compensation of college athletes

While the change in the NCAA's NIL policy has opened the door for college athletes to be compensated by third parties, their right and ability to earn money directly from their college remains a focus of litigation. NCAA rules have long prohibited colleges from compensating college athletes with anything more than a scholarship to cover the cost of attendance on the theory that amateur athletes should not be paid. College

athletes challenged the NCAA's limits on schools offering education-related benefits, such as graduate or vocational school scholarships, payments for academic tutoring, and paid post-eligibility internships as violating the antitrust laws by preventing schools from competing for talent by offering better benefits. In 2021, the US Supreme Court issued its decision in NCAA v Alston, 141 S Ct 2141 (2021). The Supreme Court held that the NCAA's limits on education-related benefits to athletes violated antitrust laws, finding that the NCAA's longstanding reliance on the tradition of amateurism does not shield it from all antitrust challenges to its compensation restrictions. Although the decision did not directly address non-educated-related benefits to athletes, it has raised the question of whether the Supreme Court might reject as unlawful any bar on compensating college athletes based on the amateurism theory.

A related issue being litigated in the United States legal system is whether college athletes are 'employees' under federal and state law. If college athletes are deemed 'employees' they could be entitled to various employment-related benefits and protections including, for example, the right to unionise, the right to compensation for their services and the right to workers' compensation for work-related injuries.

Just months after the Supreme Court decided Alston, Jennifer Abruzzo, General Counsel of the National Labor Relations Board (NLRB), issued a memorandum stating that certain college athletes fall under the National Labor Relations Act (NLRA)'s definition of 'employee'. The memorandum further stated that colleges are harming student athletes' engagement in concerted activity in violation of section 8(a)(1) of the NLRA by referring to college athletes as 'student athletes' because it leads them to believe they are not covered by the NLRA.

While not binding law, the memorandum has served as a starting point for the NLRB's efforts to have college athletes classified as employees under the NLRA. In December 2022, the National College Players Association filed unfair labour charges against the NCAA, the Pac-12 Conference and the University of Southern California alleging, among other things, that they interfered with college athletes' rights by misclassifying them as 'student-athletes' rather than employees. The NLRB then filed a complaint against the same three institutions in May 2023, requesting that an administrative law judge order them to cease and desist from misclassifying college athletes as 'student athletes' and to instead classify them as employees. The matter is ongoing, and a hearing in front of the administrative law judge has been scheduled for November 2024.

There have also been efforts to classify college athletes as 'employees' under the Fair Labor Standards Act (FLSA). In 2019, a group of college athletes sued the NCAA and various colleges seeking wages for their services as college athletes under the FLSA and other state laws. See Johnson, et al v National Collegiate Athletic Association, et al, 2:19-cv-05230-JP (EDPa 2019). A lower federal court denied the NCAA and colleges' motion to dismiss, and the case is currently pending before the federal court of appeals.

Similarly, there are currently two cases pending before the NLRB concerning the employment of college athletes. First, a complaint was filed in May 2023 against the University of Southern California (USC), the NCAA and the Pac-12 conference. There, the NLRB alleged that USC football and basketball players should be considered 'employees' under the NLRA. Hearings in the USC proceeding concluded in April 2024, and a decision is now pending. Second, on 5 February 2024, an NLRB regional director issued an administrative decision that determined that Dartmouth University men's basketball players

are employees of the school. On 5 March 2024, the players voted 13-2 to unionise, which created a legal obligation for Dartmouth to bargain with the players regarding the terms and conditions of their employment. However, Dartmouth has refused to bargain with the players and their union, arguing that the players were wrongfully deemed employees, and Dartmouth has since filed a request to review with the NLRB asking the Board to reverse the regional director's finding that Dartmouth's athletes are employees under the NLRA. Dartmouth has announced that if the Board upholds the finding that the athletes are employees, they will continue to refuse to bargain, likely setting up a federal antitrust lawsuit in the coming months.

On 23 May 2024, a US$2.8 billion settlement was tentatively reached in the antitrust lawsuit House v NCAA, between the NCAA and 'Power Five' athletic conferences (the Atlantic Coastal Conference, Big 12, Big Ten, Pac-12 and the Southeastern Conference) on the one hand, and over 14,000 former NCAA student athletes. If approved, the landmark settlement will pay back damages to former college athletes and remove scholarship caps on NCAA athletic departments. The settlement may lead to a more concrete revenue-sharing model between the NCAA and major conferences and student-athletes moving forward, furthering the trend of student-athletes receiving direct compensation, although this is still very much in the early stages.

Antitrust disputes in professional sports

Many of the major changes in the college sports landscape have been sparked by or aided by lawsuits alleging antitrust violations by the NCAA and universities. College sports do not stand alone in this respect, as several professional sports entities also face recent antitrust challenges.

Major League Baseball, for example, has recently faced multiple lawsuits challenging its one-hundred-year-old exemption from antitrust laws. For example, in Nostalgic Partners LLC v the Office of the Commissioner of Baseball, 1:21-cv-10876-ALC (SDNY),* four minor league baseball teams alleged that MLB violated antitrust laws when it contracted the number of minor league affiliates and fixed the output of affiliations, reducing competition in the market. The Nostalgic Partners case settled in 2023, keeping the antitrust exemption intact. Another lawsuit, brought by a former player, Daniel Concepcion, alleges that the MLB conspired to fix wages below minimum wage in the minor leagues. See Concepcion v Office of the Commissioner of Baseball, 3:22-cv-01017-MAJ-BJM (DPR). A third lawsuit alleges that MLB's merchandising practices violate antitrust laws. See Casey's Distrib, Inc v Office of the Commissioner of Baseball, et al, 1:22-cv-04832-ALC (SDNY).

The PGA Tour has faced its own recent antitrust issues. After LIV Golf was created in 2022, the PGA suspended all players who chose to play for LIV Golf from PGA Tour-sponsored events. In response, on 11 July 2022, the US Department of Justice announced that it was launching an investigation into the PGA's actions concerning LIV Golf. And on 3 August 2022, several suspended players filed a lawsuit against the PGA Tour for violating antitrust laws. See Mickelson v PGA Tour, Inc, 5:22-cv-04486-BLF (ND Cal). During the summer of 2023, the leagues ultimately agreed to settle their claims, but the antitrust concerns did not dissipate. Instead, the merger may have created more controversy from the perspectives of players and fans, and it has also drawn the attention of the Department of Justice and

Congress, as well. This is an ongoing issue with Congressional hearings and potential litigation to continue.

Sports betting

Legalised sports betting has rapidly expanded across the United States. This rapid growth is due, in large part, to the 2018 United States Supreme Court decision in Murphy v NCAA, where the Supreme Court struck down the Professional and Amateur Sports Protection Act (PASPA). Since its enactment in 1992, PASPA has prohibited states from legalising sports betting on professional and amateur sports. Relying on the Tenth Amendment to the United States Constitution, the Supreme Court ruled that, so long as Congress does not use its powers to regulate the industry directly, Congress cannot prevent states from legalising and regulating sports betting within their own borders. While the Murphy case did not automatically legalise sports betting in all 50 states, the decision allowed states to make that regulatory decision themselves, which PASPA had prohibited.

Because regulation of sports betting varies state-by-state, the patchwork of state laws concerning sports betting presents a non-uniform set of regulatory frameworks that govern this booming industry. As of June 2024, 38 states, as well as the District of Columbia and Puerto Rico, have legalised some form of sports betting. Some notable differences across state gambling laws include, but are not limited to, the minimum age to gamble (21 or 18 years old), whether sports betting can be done online or only in person (there are nine states where sports betting is allowed in person but prohibited online), and restrictions concerning betting on certain high school and college sports (25 states prohibit athletes from betting on sports within their state borders).

Sports betting has presented a significant economic benefit to those states that have legalised it. New York, for example, earned US$700 million in tax revenue from sports betting in 2022. New York also imposes a 10 per cent tax on commercial land-based sportsbooks and a 51 per cent tax on online sportsbooks, as well as a one-time US$25 million fee for online sportsbooks to operate within the state.

Sports leagues have also embraced the business of legalised sports betting, despite the risks. For example, the National Football League has recently partnered with Caesars, FanDuel and DraftKings to, among other goals, advertise those products to fans and across league media platforms. MLB also recently named FanDuel as an official sports betting partner. These partnerships create a stark contrast from the position once taken by these leagues where sports betting partnerships were prohibited.

Despite the vast economic opportunities presented by legalised sports betting, there are also important legal risks that industry stakeholders must consider. In the last few years, the United States has seen several scandals where professional athletes and referees violate league rules, and sometimes the law, through gambling activities. Jontay Porter, a former NBA player for the Toronto Raptors, was permanently banned from the NBA after a league investigation revealed that he bet on NBA games and fixed 'prop' bets within his control. The investigation concluded that Porter limited his performance in certain games to benefit his betting interests. MLB also recently disciplined umpire Pat Hoberg for violating the league's gambling rules, shortly after the league issued a lifetime ban on San Diego Padres player Tucupita Marcano for placing over 230 bets on MLB games. Regulation and avoiding match fixing has been, and continues to be, a significant concern for the leagues.

Private equity in sports team ownership

The introduction of private equity investment in American sports franchises represents a significant development in sports club ownership structures.

Historically, private equity funds did not invest heavily in American sports leagues because league rules, until recently, did not permit institutional investment in teams. However, as team valuations began skyrocketing, team owners needed to raise capital without losing control of their respective teams, and prospective team owners needed to raise money to meet the rising costs of teams that a very limited pool of individuals could otherwise afford. Club owners were also traditionally averse to selling equity in teams to institutional investors, who were known for significantly restructuring organisations, often to the displeasure of local communities. Private equity firms have now realised the immense investing potential in sports clubs, which have proven to perform well economically even in unfavourable macroeconomic environments. Private equity funds are also drawn to the variety of revenue streams associated with professional sports teams.

Today, most leagues have embraced institutional investment. While many leagues have implemented safeguards that prevent private equity funds from purchasing majority stakes in member clubs, some leagues, like the National Women's Soccer League (NWSL), allow private equity funds to purchase majority stakes in clubs under certain conditions. Leagues also typically require votes by team owners that require majority, and sometimes supermajority approval of team sales, including institutional capital. In recent years, MLB, Major League Soccer, the National Hockey League, the National Basketball Association and the NWSL have all allowed some form of private equity investment in clubs. Each of these leagues allows up to 30 per cent of a given member club to be owned by institutional investors, although it is currently prohibited in the NFL.

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