

THE SPORTS LAW
REVIEW

THIRD EDITION

Editor
András Gurovits

THE LAWREVIEWS

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PREFACE

This third edition of *The Sports Law Review* is intended as a practical, business-focused legal guide for all relevant stakeholder groups in the area of sports, including sports business entities, sports federations, sports clubs and athletes. Its goal is to provide an analysis of recent developments and their effects on the sports law sector in 23 jurisdictions. It will serve as a guidebook for practitioners as to how a selected range of legal topics is dealt with under various national laws. The guidance given herein will, of course, not substitute for any particular local law advice that a party may have to seek in connection with sports-related operations and activities. It puts specific emphasis on the most significant developments and decisions of the past year in the relevant jurisdictions that may be of interest for an international audience.

The Sports Law Review recognises that sports law is not a single legal topic, but rather a field of law that is related to a wide variety of legal areas, such as contract, corporate, intellectual property, civil procedure, arbitration and criminal law. In addition, it covers the local legal frameworks that allows sports federations and sports governing bodies to set-up their own internal statutes and regulations as well as to enforce these regulations in relation to their members and other affiliated persons. While the statutory laws of a particular jurisdiction apply, as a rule, only within the borders of that jurisdiction, such statutes and regulations, if enacted by international sports governing bodies, such as FIFA, UEFA, FIS, IIHF, IAAF and WADA have a worldwide reach. Sports lawyers who intend to act internationally or globally must, therefore, be familiar with these international private norms if and to the extent that they intend to advise federations, clubs and athletes that are affiliated with such sports governing bodies. In addition, they should also be familiar with relevant practice of the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, as far as it acts as the supreme legal body in sport-related disputes. Likewise, these practitioners should have at least a basic understanding of the Swiss rules on domestic and international arbitration as Swiss law is the *lex arbitri* in CAS arbitration.

While sports law has an important international dimension, local laws remain relevant in respect of all matters not covered by the statutes and regulations of the sports governing bodies, as well as in respect of local mandatory provisions that may prevail over or invalidate certain provisions of regulations enacted by sports governing bodies. The primacy of local laws is of particular importance in international employment relationships, for example, between clubs and foreign players, where the local laws of the clubs usually provide for a set of mandatory provisions that may impede performance by the athletes of their contractually agreed rights as regards the employers should they not fulfil the employment agreement. To avoid dependency on proceedings before local state courts and their application of local laws, which may be completely unknown to them, foreign athletes may seek to get the employers'

consent to arbitration (with place of arbitration in a jurisdiction that allows for arbitration in international employment relationships, such as, e.g., Switzerland) and to confer to the arbitral tribunal the competence to decide the dispute *ex aequo et bono*. This is an approach that to our knowledge is increasingly applied in basketball and that may facilitate emergence of an international *lex sportiva* in employment matters also in other sports.

Each chapter of this third edition will start by discussing the legal framework of the relevant jurisdiction permitting sports organisations, such as sports clubs and sports governing bodies (e.g., national and international sports federations), to establish themselves and determine their organisational structure, as well as their disciplinary and other internal proceedings. The section detailing the competence and organisation of sports governing bodies will explain the degree of autonomy that sports governing bodies enjoy in the jurisdiction, particularly in terms of organisational freedoms and the right to establish an internal judiciary system to regulate a particular sport in the relevant country. The purpose of the dispute resolution system section is to outline the judiciary system for sports matters in general, including those that have been dealt with at first instance by sports governing bodies. An overview of the most relevant issues in the context of the organisation of a sports event is provided in the next section and, subsequent to that, a discussion on the commercialisation of such events and sports rights will cover the kinds of event- or sports-related rights that can be exploited, including rights relating to sponsorship, broadcasting and merchandising. This section will further analyse ownership of the relevant rights and how these rights can be transferred.

Our authors then provide sections detailing the relationships between professional sports and labour law, antitrust law and taxation in their own countries. The section devoted to specific sports issues will discuss certain acts that may qualify not only as breaches of the rules and regulations of the sports governing bodies, but also as criminal offences under local law, such as doping, betting and match-fixing.

In the final sections of each chapter the authors provide a review of the year, outlining recent decisions of courts or arbitral tribunals in their respective jurisdictions that are of interest and relevance to practitioners and sports organisations in an international context, before they summarise their conclusions and the outlook for the coming period.

This third edition of *The Sports Law Review* covers 23 jurisdictions. Each chapter has been provided by renowned sports law practitioners in the relevant jurisdiction. As editor of this publication I would like to take the opportunity to thank all of the authors for their skilful and insightful contributions to this publication. I trust that you will find this global survey informative and will avail yourselves at every opportunity of the valuable insights contained herein.

András Gurovits
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SINGAPORE

*Lau Kok Keng and Chia T-Chien*¹

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Organisational form

Sports governing bodies

The Ministry of Culture, Community and Youth (MCCY) deals with sports, arts, community and youth issues in Singapore. Sport Singapore (SportSG), formerly known as the Singapore Sports Council, is a statutory board established by an Act of Parliament, the Singapore Sports Council Act (Cap 305), and operates under the auspices of the MCCY.

In turn, SportSG manages sport and community building in Singapore by working with the various National Sports Association (NSAs) and public and private sector partners.

Additionally, the Singapore National Olympic Council (SNOC) coordinates the selection of Singapore athletes to represent the country in International Olympic Committee (IOC)-sanctioned events such as the Olympics, Paralympics, Commonwealth Games and Asian Games. Pursuant to IOC rules, it regulates the conduct of national athletes representing the nation in such events, including the enforcement of anti-doping requirements and Rule 40 of the Olympic Charter, which places restrictions on advertising involving the use of the image of participating athletes during a blackout period in order to prevent athletes from hawking their own sponsors who are not official Games sponsors.

Professional and non-professional sports clubs

Currently, sports in Singapore is not regulated by any specific legislation. Sports consultants, academies and other businesses can register as sole proprietorships under the Business Names Registration Act 2014 (No. 29 of 2014) or as limited liability partnerships under the Limited Liability Partnerships Act (Cap 163A), while sports clubs can be registered either as a society under the Societies Act (Cap 311) or operate through a private limited company incorporated under the Companies Act (Cap 50). Sports academies may also be required to be registered as a private education institution (PEI) under the Private Education Act (PEA). Registration with the Committee for Private Education under the PEA is mandatory for PEIs offering programmes leading to the award of a diploma or degree, or full-time post-secondary education leading to the award of a certificate.

NSAs have to be registered both as a society and charity under the Charities Act (Cap 37) to be eligible to receive funding from SportSG. NSAs that are registered as charities would in turn be subject to the Code of Governance for Charities and Institutions of

¹ Lau Kok Keng is a partner and Chia T-Chien is an associate at Rajah & Tann Singapore LLP.

Public Character (Charities Code). The Code aims to ensure that charities put into place best practices in governance and management, and are accountable to the public and other stakeholders.

Each sport is governed and regulated by its respective NSA, and clubs (professional and non-professional) are usually members or affiliates of the respective NSAs to be able to participate in the national league for the relevant sport, and to have their activities sanctioned. For instance, Netball Singapore is the NSA for netball, and it hosts the domestic M1 Netball Super League. Teams that wish to play in this league have to be Netball Singapore affiliate members. Likewise, clubs participating in the professional S-League and the amateur National Football League have to be affiliate members of the Football Association of Singapore.

ii Corporate governance

The requirements for good governance for NSAs are set out in the Charities Code, which combines three sets of codes and guidelines applicable to the charity sector, including the Code of Governance for National Sports Associations. In addition, NSAs that obtain funding from SportSG are also required to adhere to financial regulations and guidelines imposed by SportSG, and to develop multi-year plans aligned with SportSG's objectives. The Charities Code ensures effective leadership, accountability, sound financial management and stakeholder involvement. The adoption of the Charities Code, coupled with satisfying SportSG's conditions and requirements, is crucial for the NSA to secure funding and other non-financial support.

Singapore's Prevention of Corruption Act (Cap 241) (PCA) criminalises various forms of corrupt practices. The Corrupt Practices Investigation Bureau (CPIB), Singapore Police Force, Commercial Affairs Department, Attorney General's Chambers, Monetary Authority Singapore and even the Singapore Exchange Limited are agencies that enforce anti-corruption laws in Singapore. Corruption in sports can take many forms and involve various parties, including players, referees and team officials. For example, various criminal prosecutions have been brought in the Singapore courts against those involved in fixing soccer matches, both local and foreign. In addition, a Singaporean who was involved in the securing of votes for a candidate in the presidential elections of an international federation (IF) a few years ago was found guilty of breaching the IF's Code of Ethics and given a two-year ban from holding any office or position within the IF and its member federations.

The establishment of the Interpol Global Complex for Innovation in Singapore in 2015 has enhanced Interpol's presence in Asia and helps provide training, education and preventive measures in relation to competition manipulation as well as irregular and illegal sports betting.

iii Corporate liability

There are no statutory provisions that specifically deal with the liability of officers of a sports organisation. As mentioned, sports organisations and their officials are usually registered as societies or companies, and its officers therefore subject to the provisions of the Societies Act or the Companies Act respectively.

Registered charities and their governing boards are also subject to the Charities Code, which operates on a 'comply or explain' basis. This means that although compliance of the Code is not mandatory, reasons for non-compliance nonetheless have to be provided.

Officers of a registered society (which would include its president, secretary and members of its executive committee) may be liable for the society's non-compliance with

its statutory obligations under the Societies Act, such as the requirement to provide the Registrar of Societies with information as may be required concerning the society, or with any documents, accounts and books relating to the society, and the requirement not to amend its Constitution without the prior written approval of the Registrar. In addition, an officer of a society may also be liable for an offence under Section 19 of the Societies Act if he or she has misappropriated any property of the society or has wilfully applied the society's funds for unauthorised purposes, and fails to return such property or money to the trustees of the society when ordered by the court to do so.

Sports officials and associations can also be civilly liable in negligence should mishaps or incidents arise in the course of the sports events organised by them, or at venues operated by them or under their control. In cases where spectators are injured on the premises of event venues, such as due to slipping on a wet surface, the venue operator could be sued for negligence. If an official from an NSA gives a media interview and makes derogatory remarks about third parties, he or she could also be sued for defamation.

Finally, SportSG issues general regulations and other guidelines for officials to adhere to. For instance, there is a Coach's Code of Ethics that lays down an ethical framework for coaches to conduct their interactions with their athletes, given their close contact. This in turn enhances the public's confidence in coaches and sports organisations. The National Registry of Coaches (NROC), created in 2003 to raise the standard and professionalism of sport coaching in Singapore, also keeps a list of coaches certified under the Singapore Coach Excellence Programme in their respective sports. All NROC-registered coaches must hold Standard First Aid certification. They also have to abide by the Coach's Code of Ethics and meet the requirements for the 'Continuing Coach Education' Programme.

Under the Code of Ethics, if an NSA receives a complaint about a potential breach by a coach, the NSA has to keep SportSG updated as soon as reasonably possible. If the coach is found guilty, some of the disciplinary actions include requiring the coach to issue a verbal apology, or in very serious cases, suspension or termination of the coach's NROC membership in all sports and disciplines.

Acts of criminal nature will be handled by the Singapore Police Force or other lawful authorities. For instance, if a coach verbally abuses the opposing side's players or officials during a heated match, the coach could be charged under the Penal Code (Cap 224) for assault. If there is any evidence of a club official engaging in match fixing, such a case will be investigated by the CPIB.

Internal rules, regulations and codes of conduct of the respective NSAs may also provide for liability of managers and officials should they fail to perform their obligations and duties. Disciplinary hearings may be held by internal tribunals and sanctions may be meted out against the offending managers and officers.

II THE DISPUTE RESOLUTION SYSTEM

i Access to courts

Clubs that are established as societies would usually have provisions in their respective Constitutions to allow for sporting disputes to be resolved by internal tribunals and appeals committees. In addition, many IFs require NSAs to include provisions in the NSA's Constitution that disputes involving affiliate members or athletes be resolved ultimately by

the Court of Arbitration for Sport. Disputes with IFs (including challenges against sanctions imposed by the IF) are in turn usually resolved by a tribunal set up by the IF at first instance, and by the Court of Arbitration for Sport on appeal.

Where avenues for resolving such challenges and disputes are provided for in the Constitutions of the respective clubs, NSAs or IFs, these dispute resolution processes must first be exhausted before they are taken to the courts. Otherwise, the case may be struck off as being an abuse of process. Where a tribunal duly established pursuant to the constitutional framework of the club or the NSA has decided on a matter involving an athlete or official, and has imposed a sanction that the athlete or official seeks to challenge through judicial avenues, the court's jurisdiction is generally limited to only reviewing the procedural fairness of the processes and decision under challenge. The court will not go into assessing the merits of the decision made, but will instead examine if due process had been adopted and the laws of natural justice have been applied by the tribunal in arriving at its decision. The case of *Singapore Amateur Athletics Association v. Haron bin Mundir* [1993] 3 SLR(R) 407; [1993] SGCA 79 illustrates this principle.

In that case, the High Court of Singapore ruled that internal tribunals formed by NSAs were subject to the principles of natural justice, and the court's role in such sporting disputes is restricted to ensuring that 'natural justice had been observed, and the decision had been honestly arrived at. It was not the function of the court when exercising such supervisory jurisdiction to resolve issues of fact which were within the proper sphere of the tribunal's inquiry' (at [57] and [59]).

In *Ng Gino Ernest v. Triathlon Association of Singapore* [2007] SGHC 183, the athlete applied for leave of court to commence judicial review proceedings against the Triathlon Association of Singapore (TAS) in respect of its Appeals Committee's rejection of the athlete's appeal against the TAS's decision not to nominate him for the team of triathletes to represent Singapore at the 2007 Southeast Asian Games. The athlete had contended that he had not been given a fair hearing by the Appeals Committee as two of its members had been involved in the TAS's original decision to exclude the athlete. The High Court held that the athlete had sufficiently made out a case against the Appeals Committee, and granted leave for him to pursue judicial review of the Appeals Committee's decision. However, before the matter progressed further in the courts, the parties decided to resolve their dispute through mediation at the Singapore Mediation Centre, and managed to reach an amicable settlement that saw the athlete being nominated by the TAS to represent Singapore at the said Games.

ii Sports arbitration

Given the growth of sports in Singapore and its increasingly commercialised nature, it is inevitable that disputes become more complex and varied. The Alternative Dispute Resolution for Sports (ADR Sports) was introduced in January 2008. ADR Sports was spearheaded by the then Singapore Sports Council and developed in collaboration with SNOG, Singapore International Arbitration Centre, Singapore Institute of Arbitrators and Singapore Mediation Centre.

Like all other domestic arbitrations, ADR Sports arbitration is governed by the Arbitration Act (Cap 10) of Singapore. The Arbitration Act sets out the requirements of when a matter can be brought before arbitration. The arbitration agreement could be a contract signed by a player with a club, which contains a provision for arbitration of disputes arising

under or in relation to the contract. The agreement must be in writing, and is deemed to be so if it is recorded in any form, including electronic communications, whether or not the agreement was concluded orally or any other means.

While the ADR Sports framework offers a good option for NSAs to resolve disputes with athletes and officials, it has unfortunately not been put to much use, as judicial review continues to remain the primary means of challenging sanctions and non-selections, while defamation actions involving officials are invariably commenced in the courts.

iii Enforceability

Often, decisions of a sports governing body are self-executory. So in the case where an athlete or official is banned from participation in all aspects of the sport, the relevant NSA or club will have to exclude the athlete from selection and the official from holding any office or position in organisations involved in the sport, or risk sanctions being imposed by the sports governing body.

In addition, the relevant NSA or club is likely to impose further sanctions against the errant athlete or official by way of a fine, censure or expulsion. In some cases, the NSA may even extend a national ban on the athlete after the sanction imposed by the IF expires, as was the case when the Football Association of Singapore continued to ban footballer Abbas Saad from being engaged in any football-related activities in Singapore owing to a conviction for match-fixing for a further 13 years after his worldwide ban by FIFA had been lifted.

Decisions of the Court of Arbitration for Sport (CAS) are considered as Swiss arbitral awards, given that the seat of CAS arbitrations is in Lausanne, Switzerland. International arbitral awards rendered by CAS may be recognised and enforced by national courts under the New York Convention 1958. In Singapore, international arbitral awards are enforceable under the International Arbitration Act (IAA) (Cap143A). However, since the seat of CAS proceedings is in Lausanne, any proceedings to set aside a CAS award must be brought before the Swiss Federal Tribunal. In practice, there is seldom an issue with the enforcement of a CAS award, since sanctions such as a suspension or ban imposed on non-compliant parties are executed extra-judicially.

III ORGANISATION OF SPORTS EVENTS

i Relationship between organiser and spectator

The relationship between organisers and spectators is largely a contractual one, governed by the organiser's terms and conditions (T&Cs) of entry, and subject to any overriding mandatory law such as the provisions of the Unfair Contract Terms Act (Cap. 396) (UCTA).

Under the UCTA, avoidance of liability for negligence, breach of contract or unreasonable indemnity clauses are generally restricted or prohibited. For instance, Section 2(1) prohibits the use of any contract terms or notices to restrict or exclude one's liability for death or personal injury resulting from negligence. Section 2(3) provides that a person's agreement to or awareness of any such contract term of notice, should not be taken as indicating his voluntary acceptance of any risk. As a result, ticketing terms purporting to exclude or restrict liability for death or personal injury resulting from negligence are unenforceable at law.

Nonetheless, in cases of other loss or damage, the ticket would be valid provided the term or notice satisfies the requirement of reasonableness. Under Section 11 of the UCTA, the reasonableness test would be satisfied if the term would have been a 'fair and reasonable one to be included having regard to the circumstances that were, or ought reasonably to

have been, known to or in the contemplation of the parties when the contract was made'. In relation to a notice (not being a notice having contractual effect), the requirement of reasonableness under Section 11(3) is that 'it should be fair and reasonable to allow reliance on it, having regard to all the circumstances obtaining when the liability arose or (but for the notice) would have arisen'.

In Singapore, many major sporting events such as the International Champions Club, the World Rugby Sevens Series and the WTA Finals are held at the Singapore Sports Hub, with SportsHub Pte Ltd (SportsHub) being the exclusive agent for such events. SportsHub has its standard T&Cs when selling tickets to spectators, and these T&Cs are found on the tickets itself. Usual terms incorporated into these tickets include conditions for entry, prohibitions on the use of cameras during the event, and any complaints made to be directed towards the promoter and not SportsHub, save when SportsHub is the promoter of such an event.

It is increasingly common for organisers and agents such as SportsHub to incorporate terms that address the issue of ticket scalping. Given that there is no legislation to protect organisers and spectators from ticket scalpers, organisers and agents have responded to this problem by resorting to contractual prohibitions against any resale of tickets brought from them. This affords some level of protection for spectators, who risk being exploited by fraudulent or unscrupulous resellers. This also protects organisers and agents, who may face direct competition from the parallel market formed by these resellers. At the same time, to cater to genuine cases of ticket holders who are unable to attend the sports event owing to superseding extenuating circumstances, SportsHub has incorporated a term allowing for the resale of tickets bought from them only with prior consent given by SportsHub itself.

ii Relationship between organiser and athletes or clubs

The contract between the organiser and participants will have to ensure that essential aspects of the event such as the availability of the venue, is finalised to prevent any potential breaches of the contract in the future. Organisers will have to exercise due diligence in ensuring that risks have been minimised when planning and executing the event.

Regulatory approvals are generally not required in order to stage a sporting event if the organiser is a registered society, trade union, company or an association. Otherwise, any person who provides or assists in providing any public entertainment without a licence if necessary, shall be liable on conviction to a fine not exceeding S\$10,000. For sports events, organisers would most likely have to apply for a public entertainment *ad hoc* licence.

In the unfortunate situation where the organiser has failed to secure a public entertainment licence for the sports event and consequently the event cannot continue, it is arguable that the organiser cannot assert frustration of the contract signed with the sports club or athlete, as it can reasonably be anticipated that such a licence would have had to be secured by the organiser before staging the event in public.

Securing the participation of athletes and clubs at the event is usually done by contract, and any liability that accrues is subject to the provisions of the contract between the parties.

iii Liability of the organiser

Generally, organisers of sports events owe a duty of care towards athletes and spectators to provide a safe environment in which the sporting activity can take place. This will minimally involve providing a safe venue, security arrangements for crowd control and evacuation, and medical assistance and facilities should the need arise. In lightning-prone Singapore, which

experiences an average of 168 thunderstorm days per year, lightning warning systems are installed in every stadium, and when triggered, would require standard operating procedures to be adopted by event organisers, match officials, clubs and athletes.

It is common for organisers of sports events to incorporate terms into tickets that exonerate them from any legal liability in the event of personal injury or death that occurs at the sports event. However, Section 2 of the UCTA prohibits anyone from excluding their liability for personal injury or death resulting from their negligence. The waiver of liability for other forms of damage or losses would be subject to the 'reasonableness' test.

Additionally, even if the risks of the event are derived from the nature of the sport itself, organisers may be under a duty to take precautions to safeguard spectators from foreseeable risks. This may be highly applicable in sports with a high level of danger, such as the Singapore F1 race, where the run-off area for cars is significantly smaller compared with conventional circuits.

If a riot occurs at the venue of the sporting event, the owner or occupier of the venue may be liable under the Penal Code (Cap 224) if, knowing that the riot was likely to take place, fails to notify the police as soon as possible, or did not use all lawful means in its power to prevent such a riot from taking place, and if it takes place, for not using all lawful means to suppress or disperse the riot or unlawful assembly.

iv Liability of the athletes

There is no specific legislation governing the liability of an athlete. However, an athlete can be subjected to criminal liability if he or she acts in a manner that is not consistent with, or in the course of performing an act that is not part of the sport he or she is participating in, thereby causing injury or death to his or her opponent, or to a member of the public. For instance, if during the course of a tournament, a tennis player takes his or her racquet and smashes it against a spectator's head, thus causing injury or death to the spectator, this is likely to expose the player to a criminal charge for murder, manslaughter or assault. The player could also be the target of a civil suit by the spectator's family members for trespass and battery under tort laws.

An athlete who engages in acts of corruption by accepting bribes, whether in cash or kind, to fix a match or engage in conduct aimed at influencing the result of a game or competition, could also be subjected to criminal sanctions for corruption-related offences under the PCA.

v Liability of the spectators

A spectator can be subject to criminal or civil liability, depending on the conduct or action he or she engages in. If a spectator hits another spectator at a sports event due to anger over a result thus causing bodily harm, he or she would be liable under the usual criminal offences for causing hurt or injury to the other spectator.

Section 354 of the Penal Code stipulates that the assault or use of criminal force to a person with the intent to outrage modesty is a criminal offence, which is punishable with a jail term of up to two years, or a fine, or with caning, or a combination of the above-mentioned punishments. Section 268 criminalises acts and omissions that constitute public nuisance, which includes defacing walls of stadia with vulgarities, spitting on the floor of the sporting venue or touting outside a stadium.

Under Singapore law, acts of sedition are punishable pursuant to the Seditious Act (Cap 290). Therefore, any spectator who utters words insinuating ill-will and hostility between different races or classes of the population of Singapore could be liable for an offence under the Seditious Act.

The Protection from Harassment Act (Cap 256A) was enacted to protect persons against harassment and unlawful stalking. For instance, acts such as using threatening, abusive, insulting words or behaviour, or making threatening, abusive or insulting communication thereby causing the victim harassment, alarm or distress would render the perpetrator liable for an offence and subjected to a fine, imprisonment or both. A spectator threatening a fellow spectator could thus be charged for an offence under this Act. The spectator's obligations are also subject to the terms and conditions found on the entry ticket into the venue. Breaching the terms and conditions of the ticket could lead the eviction of the spectator from the venue.

vi Riot prevention

If rival spectators at a football match engage in a brawl at the stadium, they could be liable under the Penal Code for being a member of an unlawful assembly (Sections 141 and 142 of the Penal Code). An assembly of five or more persons using criminal force on any person, or to commit any offence resist the execution of any law or of any legal purpose or to compel a person to do what he or she is not legally bound to do, for instance, would be considered as part of an unlawful assembly.

The use of a deadly weapon while joining an unlawful assembly (Section 144) or joining or continuing to join an unlawful assembly that has been commanded to disperse (Section 145) are also offences under the Penal Code.

If a member of an unlawful assembly uses force, every member of that unlawful assembly would be guilty of rioting, and all members would be subject to sanctions under the Penal Code if found guilty.

IV COMMERCIALISATION OF SPORT EVENTS

i Types of and ownership in rights

Singapore has seen a substantial increase in the exploitation of commercial rights in sports by corporate partners in recent years. Major international and regional sporting events that have been hosted in Singapore include the Southeast Asian Games, the F1 night race, the WTA finals, the World Rugby Sevens Series and the International Champions Cup Singapore. These high-profile events have attracted high levels of live television and on-site spectatorship, and have made the sports industry here an attractive commercial proposition for sponsors.

Sports-related rights that have been the subject of commercial exploitation in Singapore include sponsorship, IP licensing (such as branding, merchandising and naming rights), broadcasting and image rights exploitation. Most of these rights are governed by contractual arrangements. The owner of the sports property usually holds the commercial rights to the event, and grants licenses for specific types of exploitation to either the highest bidder for a specific category of rights, or to parties with whom the rights owner sees a potential for having the best synergistic fit or partnership with. Commercial rights to sporting events, teams or athletes are seldom allowed to be sub-licensed or assigned, given the need for control over the way they are exploited, although broadcasting rights may be sub-licensed within a region, or to other broadcasters within the same territory, provided that consent of the rights holder has been obtained.

ii Rights protection

Sporting events are lucrative opportunities for rights holders to generate revenue and build awareness for their businesses and brands, mainly through advertising and sponsorship. Given the often substantial investments put into acquiring exclusive sports commercial rights, sponsors have come to expect that the value of their investments would be protected against unauthorised exploitation of these commercial rights. The regularity with which ambush marketing occurs around major sporting events is testimony to the value of these commercial rights.

Unauthorised exploitation of sports-related rights (including through ambush marketing activities) may be prevented or stopped through the enforcement of trademark rights or copyright.

While a trademark owner or copyright owner may bring a civil action to restrain continued unauthorised use of its intellectual property rights in breach of trademark and copyright laws as well as the laws of passing off, practical issues in relation to the efficacy of such enforcement measures arise in the context of infringement relating to a short-term event like a month-long tournament or a two-week long game. While urgent interim measures are available in Singapore to temporarily restrain such infringing activities, the cost of pursuing civil proceedings and the need to continue the proceedings well past the conclusion of the sporting event presents an unattractive option for rights holders. Singapore does not yet offer administrative measures to enforce IP rights, nor are there specific anti-ambush marketing laws in place to allow sports commercial rights holders who have not secured trademark protection in Singapore to have recourse against infringing parties.

The proliferation of websites offering unauthorised live streaming or broadcasts of sports events is also a challenge currently facing rights holders. The present state of copyright laws does not sufficiently cater for over-the-top distribution of unauthorised digital content, and the ease with which Android television boxes (which stream live sporting content) are available in Singapore has posed as-yet unresolved legal challenges to rights holders.

Some of the ambush marketing activities revolving around major sporting events are conducted either in concert with or with the connivance of the athletes themselves. To safeguard against this, the SNOC requires all athletes who represent Singapore at major multi-sport games to comply with Rule 40 of the Olympic Charter and the by-law to Rule 40 of the Olympic Charter as a condition for their participation in the games. Essentially, Rule 40 of the Olympic Charter does not allow a competitor, coach, trainer or official participating in the Olympic Games to use his or her person, name, picture or sports performances for advertising purposes for a limited period before and after the Olympic Games, and during the Olympic Games.

To lend effect to Rule 40, a blackout period is imposed on athletes, who are prohibited from promoting their personal sponsors that are not official event sponsors during as well as just before and just after the games period. In a recent incident involving a Singaporean marathon runner, the athlete was given several warnings for promoting his personal sponsors on his social media account.

Organisers of events can also incorporate in the ticketing terms prohibitions against spectators bringing in or displaying items of brands that are not officially affiliated to the event. Additionally, it is commonplace in contracts signed between IFs and a host country, to require the host country to enact legislation that protects the competition's intellectual property and to provide for measures to combat against acts of ambush marketing.

The advent of social media has made it more difficult for official sponsors and partners of major sports events to police and prove their case of ambush marketing, especially in countries without event-specific ‘rights of association’ laws, such as Singapore. Unofficial businesses intent on ambush marketing may decide to collaborate with social-media savvy athletes to find ways of having their brands promoted in association with the event through the athlete, often through sublimated messaging that nonetheless allow the audience to identify and associate the brand with the event without using any of the event’s trade marks or proprietary IP. Enacting legislation or regulation prohibiting any such ingenious methods of advertising businesses may be deemed to be too onerous and anticompetitive, and in any event, its enforcement is likely to be met with resistance and defiance from the athletes themselves, who should be focused on their performance at the sporting event rather than its commercial aspects.

iii Contractual provisions for exploitation of rights

Sponsors are key to funding major events, either through monetary sponsorships, services, or in kind. In return for their investment, sponsors are allowed to associate themselves with the Games, which provides advertising opportunities and a chance of getting their brand out to the public.

Logos, word marks, trademarks and mascot images are the basic tools used by sponsors to demonstrate their association with an event. Organisers would usually sign sponsorship agreements with a sponsor allowing the sponsor to use event logos and trademarks for purposes and in relation to the category of products or services as set out in the sponsorship agreement. The scope of rights under the sponsorship agreement is important as it sets out what the sponsor can use these event marks for, whether exclusively or non-exclusively, in what media, for what purposes, in what territory and for how long.

Apart from rights of brand association, sponsors should also be clear about the other benefits they are entitled to, such as brand exposure and advertising opportunities, hospitality, access passes, tickets to the sporting events as well as fringe events, and media exposure.

There are few mandatory provisions that are required by law to be included in commercial contracts in Singapore. However, it should be noted that Section 3 of UCTA provides that, where in a contract one party A is dealing with the other party B as a consumer or on party B’s written standard terms of business, party B cannot rely on its standard contractual terms to exclude or restrict itself from any liability when party B is the one who breaches the contract, or claim to be entitled to render a service substantially different from what was expected of it, or to claim that it does not need to perform its contractual obligations, whether in part or fully, unless the contract term satisfies the requirement of reasonableness.

V PROFESSIONAL SPORTS AND LABOUR LAW

i Mandatory provisions

There is no specific provision in Singapore governing employment contracts of athletes, with the Employment Act (Cap 91) being the main legislation governing employment issues. In any event, apart from naturalised athletes who take up citizenship in Singapore and train full-time on professional contracts to represent the country, the only sport in Singapore in which an athlete is employed on a full-time professional basis is soccer.

The employment relationship for a professional soccer player in Singapore is governed not just by the contract between the player and his club, but also by the Rules of the S-League,

and the FIFA Regulations on the Status and Transfer of Players (RSTP). While the S-League club could include a clause to terminate the player by giving notice or payment in lieu of notice (which is perfectly permissible under Singapore's labour laws in most circumstances), such termination may be prohibited under FIFA regulations. Therefore, if terminated as such, the affected player could bring his or her case to FIFA and claim compensation on the basis that the termination is unlawful and without just cause under RSTP. Ultimately, if FIFA decides that its regulations have been breached, it would have the power to sanction and impose financial penalties on the club, even if the labour laws of the club's country allow for such termination.

ii Free movement of athletes

Currently, there are no laws in Singapore that limit the number of foreign athletes competing in a domestic championship. Any restrictions on foreign participation are imposed by the organiser or sports property owner (e.g., the Football Association of Singapore currently allows up to a maximum of four foreign players to be registered with and to play for a S-League club).

The use of foreign-born athletes to ply their trade in Singapore is encouraged through the Foreign Sports Talent Scheme (FSTP). The FSTP was introduced in 1993 to boost the standards of selected sports by allowing for the importation of foreign talent into the country. Sports such as table tennis, badminton, soccer and athletics have embraced the FSTP and have featured foreign, naturalised athletes in competitions where they represent Singapore after being adopted as new citizens in the country.

The permissibility of having foreign athletes competing and representing a club or country in a championship is likely to be determined by the rules of the competition or the relevant IF's rules. In this regard, Singapore does not have any laws that are similar to the European Union's laws on freedom of movement of workers.

iii Application of employment rules of sports governing bodies

There is currently no legislation in Singapore that prohibits employment-related provisions in the constitution and regulations of sports governing bodies from being incorporated into employment agreements with athletes. However, like all other soccer players, professional soccer players in Singapore who sign contracts with Singapore-based clubs are also subject to the RSTP, whether or not the player's contract incorporates reference to the RSTP.

VI SPORTS AND ANTITRUST LAW

The Competition Act (Cap 50B) (CACT) governs antitrust issues in Singapore. Part III of the CACT prohibits (1) agreements that prevent, restrict or distort competition within Singapore; (2) practices that amount to an abuse of a dominant position in any market in Singapore; and (3) mergers that result in a substantial lessening of competition in any market in Singapore. The first two prohibitions are subject to exclusions specified in the Third Schedule, while the third is subject to exclusions specified in the Fourth Schedule of the CACT.

Broadcast rights for sports events (e.g., the English Premier League (EPL)) are regulated by the Media Development Authority of Singapore (MDA) Act's Code of Practice for Market Conduct (Code). The Code aims to ensure fair market conduct and effective competition in the Singapore media industry in order to encourage investments and to safeguard the public's

interest and welfare. In particular, Section 4 of the Code lays down the prohibition on unfair competition methods, while Section 7 of the Code prohibits agreements that restrict or distort competition within the media industry.

An example of such an agreement is SingTel's agreement with the Football Association Premier League to acquire EPL broadcast rights for Singapore in 2011. The MDA had determined that the agreement contravened Section 7 of the Code, and SingTel was then required to share its EPL content with StarHub under a cross-carriage arrangement mandated by Section 2.7 of the Code.

SportSG is a statutory board of the Ministry of Culture, Community and Youth. Under Section 33(4)(b) of the CAct, statutory boards are exempted from certain provisions of the Competition Act such as agreements preventing, restricting or distorting competition.

VII SPORTS AND TAXATION

Foreign athletes who appear at a sporting event (e.g., HSBC Rugby 7s, International Champions Cup) are considered as non-resident public entertainers, while the club staff (e.g., coaches, physiotherapists and kit-man) can be considered as resident public entertainers or non-resident public entertainers depending on how long they are in Singapore. Non-resident public entertainers are those in Singapore for fewer than 183 days according to the Inland Revenue Authority of Singapore (IRAS).

Non-resident public entertainers are subject to withholding tax on their taxable income, which includes both cash and non-cash payments less deductible expenses. For foreign athletes falling under this category, taxable income includes, but is not limited to: match fees, prize money, tournament winnings, win bonuses, allowances, benefits in kind, non-cash gifts exceeding S\$100. The taxable income from their appearances in events is subject to a 15 per cent withholding tax, or 10 per cent if their taxable income from appearances is due and payable during the period of 22 February 2010 to 31 March 2020. However, a foreign athlete can qualify for an exemption if the visit to Singapore is substantially funded (i.e., greater than 50 per cent) by the government of the foreign athlete's home country. This will need to be substantiated by the athlete with supporting documents.

As for staff members of sports clubs or entourages of individual athletes appearing at sporting events, their taxable income attributable to services rendered in Singapore is subject to a withholding tax of 15 per cent or the non-resident rate of 22 per cent if the non-resident professional has elected to be taxed on net income.

A foreign coach hired to work in Singapore can be categorised as a foreign professional by IRAS. As with a public entertainer (i.e., the athlete), a professional is considered non-resident if they are in Singapore for fewer than 183 days a year. The professional's income subjected to withholding tax could be 15 per cent of the gross income or fees payable to the non-resident professional or the non-resident rate of 22 per cent (20 per cent for period of engagement prior to 1 January 2016) if the non-resident professional has elected to be taxed on net income.

Exemptions are available to foreign athletes and clubs under the avoidance of double taxation agreements. Only non-residents of foreign countries who have concluded a tax treaty with Singapore can claim the benefits of such an exemption. It is the responsibility of the athlete or the club to check their status for exemption.

VIII SPECIFIC SPORTS ISSUES

i Doping

The consumption, possession or trade of illegal drugs in Singapore could lead one to be found guilty under the Misuse of Drugs Act (MDAct). Section 8 of the MDAct makes it an offence to possess a controlled drug or to consume a controlled drug. There is a list of controlled drugs provided in the MDAct, including amphetamines, cocaine and morphine, just to name a few.

However, most instances where athletes test positive for doping involve substances that are not under the list of controlled drugs. Sports doping in Singapore is regulated by Anti-Doping Singapore (ADS) through the Anti-Doping Policy of Singapore (Policy) and the ADS Anti-Doping Rules (Rules). These documents have been established in accordance with the World Anti-Doping Agency (WADA) Code and its International Standards, to which the SNOC is a signatory. The Code ensures that anti-doping rules among signatories around the world are harmonised and standardised, producing a coherent stance to combat doping at an international level.

All NSAs, athletes and teams participating in competitions are required to abide by the ADS Anti-Doping Programme, Policy and Rules otherwise they could be liable for sanctions as provided for under ADS's Rules.

The sanctions on individuals are spelt out in Article 10 of WADA's Anti-Doping Rules, which allows for a disqualification of the athlete's results in that event, and forfeiture of all medals, points and prizes, unless the athlete can establish that he or she bears no fault or negligence for the violation. Other sanctions include disqualification of results in subsequent competitions, and ineligibility to participate in events.

Article 11 deals with the consequences to teams, if more than two members of a team are found to have committed an anti-doping rule violation during an event, the team could be penalised with the loss of points, or disqualification from the competition or event. The individual athletes would also be liable for individual offences for doping. Failure by an NSA to comply with ADS Anti-Doping Programme, Policy and Rules could result in the withholding of financial support and further sanctions by the SNOC in terms of the eligibility of athletes and officials for participation in international sports events.

ii Betting

Betting in Singapore on sports is permitted only with licensed operators in Singapore. Betting in Singapore is principally regulated by the Betting Act (Cap 21), Common Gambling House Act (Cap 49) and the Remote Gambling Act (No 34 of 2014) (RGA). The first two deal with off-line betting and bookmaking, while the RGA is aimed at regulating remote gambling and remote gambling services affecting Singapore.

The Singapore government allows betting on limited sports events, namely, horse racing, soccer matches (local and foreign) and Formula 1 races. Horse racing bets can only be legally placed with the Singapore Turf Club (STC), while soccer and Formula 1 bets can only be legally placed with Singapore Pools (Pools).

The RGA also regulates cross-border betting. Individuals in Singapore are only allowed to bet online with an exempt operator in Singapore (i.e., STC and Pools). Betting with non-exempt operators such as overseas online bookmakers is illegal. An individual found guilty of doing so could be liable to a fine of up to S\$5,000, imprisonment of up to six months, or both (Section 8 of the RGA).

The RGA also makes it an offence for a remote gambling operator based overseas to offer remote gambling services to individuals in Singapore. If found guilty of offering an individual in Singapore remote gambling services, the bookmaker could face a fine of up to S\$500,000, imprisonment for a term of up to seven years, or both (Section 10 of the RGA).

iii Manipulation

Match fixing is a criminal offence in Singapore. It is regulated by the PCA. Section 5 of the PCA makes it an offence for a person him or herself or in conjunction with another to corruptly solicit, receive, agree to receive, or to give, promise to give or offer any person, whether for the benefit of that person or another person, gratification as an inducement or reward to do something.

Section 6 of the PCA deals with agents. For instance, it is an offence for an agent to accept or obtain from any person for him or herself or others gratification as an inducement or reward for having shown favour or disfavour to any person in relation to his or her principal. It is also illegal for a person to give or offer gratification to any agent as an inducement or reward for doing something in relation to his or her principal's affairs or business. Anyone found to have violated Sections 5 and 6 of the PCA will be liable to a fine not exceeding S\$100,000 or to imprisonment for a term not exceeding five years, or both. Some examples of the punishments meted out include FIFA-accredited Lebanese referee Ali Sabbagh being sentenced to six months jail in 2013 for accepting sexual favours in return for agreeing to fix football matches. In 2007, a former Malaysia national coach Chow Kwai Lam was sentenced to a fine of S\$50,000 for offering a bribe of between S\$200 and S\$300 to a player in a football club as inducement to influence a football match.

Section 37 of the PCA allows for the authorities to deal with a Singapore citizen who commits a corrupt act outside Singapore, as though it were committed in Singapore. As such, match fixing committed by a Singapore citizen outside Singapore (e.g., in Italy) will be dealt in respect of that offence as if it had been committed within Singapore.

As part of efforts to combat match fixing, Pools is now a member of the World Lottery Association's Global Lottery Monitoring System (GLMS). The GLMS brings together state-authorised lotteries to share the best of industry practices and for the collection and dissemination of information.

The GLMS was launched on 1 June 2015. It uses the fraud detection system from Sportsradar to detect any unusual betting patterns. This enables lottery operators around the world to swiftly respond to any allegations of match fixing or betting-related manipulation.

iv Grey market sales

The sale of sports events tickets, or event tickets for that matter, in the grey market is not illegal in Singapore. In fact, the advent of platforms such as Facebook Marketplace, Carousell and Craigslist have accelerated the development of a reseller market in Singapore. This has resulted in ticket scalping, a practice whereby original buyers resell their tickets at a much higher price than the purchase price.

While there are ticket scalping laws in other countries such as Australia, there are currently no such laws in Singapore. The sale of tickets not through established channels by the event organiser can only be curtailed by contractual provisions provided in the sale of the tickets to the original buyer. For instance, Live Nation Lushington voided a number of

Coldplay tickets for the band's concert in Singapore when it was revealed that some tickets were being resold online at a substantially marked-up price. Live Nation Lushington held that these resale tickets contravened the terms and conditions stated on the tickets.

There are also ticket scammers, where scammers claim to have tickets available to an event online for purposes of making a quick buck. Police reports can be lodged and the authorities will arrest these scammers for cheating under the Penal Code. An individual can be punished with imprisonment of up to three years, or fined, or both.

Online platforms have given opportunistic resellers an insatiable appetite to sell tickets at exorbitant prices. While there has been both support and derision for these resellers, the Singapore government can look at imposing a price floor on such resale items in order to encourage competition and at the same time ensure that buyers are not exploited.

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Lau Kok Keng heads up the sports law practice of Rajah & Tann. He has worked with various domestic and international sports governing bodies and federations, football clubs, sports agencies, commercial rights holders, sponsors, television broadcasters, cable operators, sports associations, sports bookmakers, and sports and media personalities. This work includes handling a broad spectrum of legal issues arising from the hosting of multi-sport regional and international events such as the Olympic Games, Asian Youth Games and Southeast Asian Games (SEA Games), and dealing with brand protection, ambush marketing, commercial licensing, sponsorship and public viewing issues arising from single-sport international tournaments like the FIFA World Cup, the UEFA Euro Championships, the IRB Sevens World Series and the International Champions Cup.

Apart from being an arbitrator with the Court of Arbitration for Sports and a member of the SEA Games Ad Hoc Arbitration Tribunal, Kok Keng regularly sits on committees of inquiry and disciplinary panels of national sports associations and professional football clubs in Singapore, and advises sports federations and societies on breach of ethics cases. He also conducts workshops on sports arbitration for the Chartered Institute of Arbitrators Singapore Branch and the Kuala Lumpur Regional Arbitration Centre in Malaysia.

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T-Chien's focus is on legal issues that arise in the gambling, sports and entertainment industries. She handles both contentious and non-contentious advisory work. She has also advised and assisted media personalities, national sports bodies and associations, as well as sports bookmakers in regulatory and constitutional matters. She has drafted sponsorship, collaboration and licensing agreements for use in connection with major sporting events such as the International Champions Cup and the IRB Sevens World Series.

T-Chien also works on intellectual property and commercial litigation matters, including trademark and copyright infringement claims, and general contractual disputes.

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