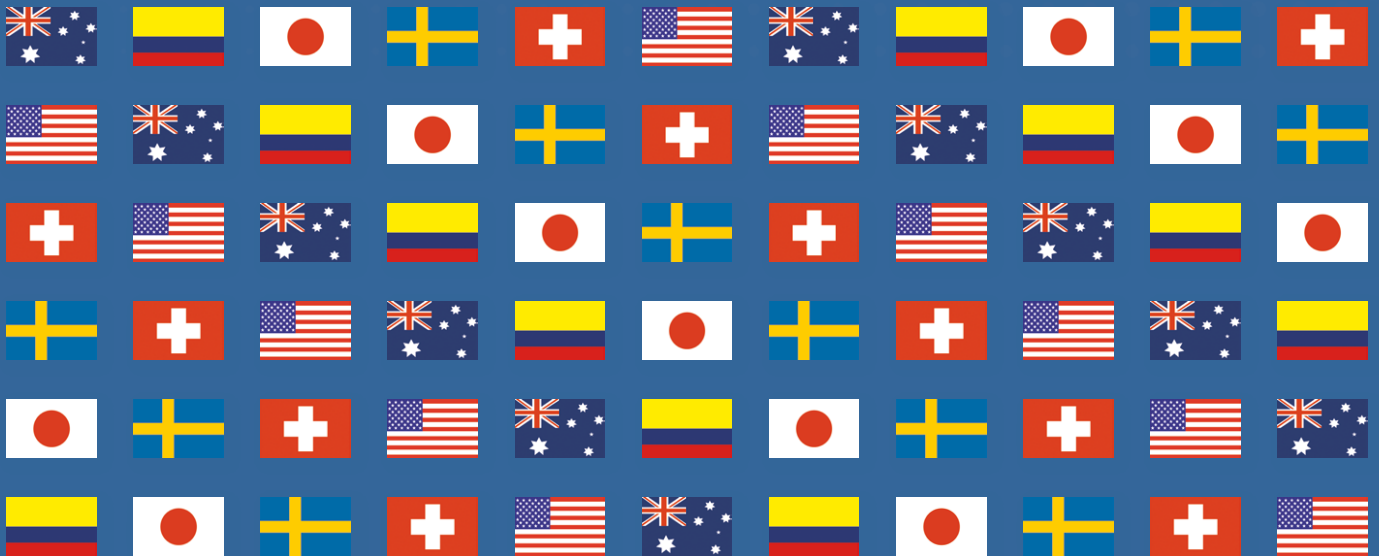


# SPORTS LAW 2024

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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, including the Australian Sports Commission (comprising Sports Australia and 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.

### 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 on-field actions of their players. However, civil and criminal law does apply to participants in Australian sporting activities. 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, players 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

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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.

### 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 Sport Australia, 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.

### 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.

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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.

## 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 in 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).

### 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

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enforcement if this is provided for in the relevant sporting rules, by contractual relationship or by separate agreement.

## 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.

## 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.

### 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).

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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.

## 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.

### **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

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the contracting party. Conversely, athletes will usually seek a narrow drafting of the conduct that may trigger the operation of these types of clauses.

## 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 broadcasted at certain times of the day. Alcohol is also prohibited from being advertised during the screening of programmes classified for children.

Despite the restrictions on alcohol advertising noted above, there are some loopholes in sports marketing that allow for alcohol companies to advertise during children's programmes. For example, there is an exemption that allows alcohol advertisements to appear on weekends and public holidays.

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.

## 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

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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.

## **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.

## **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.

## **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

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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.

## BROADCASTING

### Regulations

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

Broadcasting in Australia is governed by the Broadcasting Services Act 1992 (Cth). 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.

### 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 growing number of smartphones and other sophisticated recording devices.

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## 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.

As a result of the covid-19 pandemic, state government-based rules and regulations for organising public events in Australia arguably became one of the more significant regulatory issues for venue hire and event organisation businesses to navigate.

### 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.

### 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

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selling tickets to a major event within a package unless they are authorised in writing to do so by a declared major event organiser.

## 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 is required to provide supporting documentation with their application, including identity documents and a letter of endorsement from their supporting Australian organisation or government agency.

#### 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.

### 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.

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**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 is able to 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.

## 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, player 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.

### 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

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from restricting union membership. Some state-based laws also prohibit discrimination on grounds of union membership.

### 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.

## 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 a player 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 a player's contract will depend on whether the restraint is reasonable in the circumstances.

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

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## 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, players cannot unilaterally elect to 'buy their way out' of their contractual obligations, including any obligations that bind the player after the contract has expired or has been terminated.

If a player 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, players may negotiate with their club for an agreed mutual termination of the contract, which may be subject to the payment of a certain fee.

## Welfare obligations

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

Sporting clubs are 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 a duty of employers of athletes to ensure that the athlete has a safe working environment free from risks to health and safety.

## 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.

### 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.

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## 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 a player 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.

## 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 to resolve 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.

## 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

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athlete that 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.

## UPDATE AND TRENDS

### Key developments of the past year

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

An emerging trend in Australian sport is the shift in the way athletes express their own opinions. While athlete activism is not new, the ease of access to social media has increased the ability and comfort of athletes to express their views on their own platform. Most commonly, athletes have been seen to publicly express their disapproval of their team's corporate partners in an attempt to take more control over their personal brand identity.

Notably, one of the better-known examples of athlete activism in Australia from the past year was where Australian netballer Donnell Wallam requested an exemption from wearing Netball Australia sponsor Hancock Prospecting's logo on her player uniform. Reportedly, Wallam requested the exemption because of historical racist remarks made against First Nations people by Hancock Prospecting's late founder, Lang Hancock. Following this request, Wallam's teammates publicly expressed their support and discussions between the players and Netball Australia failed to resolve the matter. This then led to Hancock Prospecting completely withdrawing its sponsorship.

The recent spotlight on athlete activism has led to a shift in the way sponsors, teams and players consider their obligations under sponsorship agreements. Stakeholders are now considering in more depth how they can be better protected in maintaining important commercial relationships and a positive public image for all involved.

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# Colombia

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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 in processes of 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.

### 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 a 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

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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.

### 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 million Colombian pesos and equivalent to approximately US\$250 – 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.

### 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 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.

## 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.

### 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.

### 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.

## 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 via the registration of a trademark, 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.

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## 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.

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

To promote the sport and upcoming events.

## 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 conducts that are not accepted under certain circumstances.

## Restrictions

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

Since 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.

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## 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.

#### 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 from three years after the granting decision has become definitive.

### 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 cyber-squatting. The protection is executable judicially and by means of administrative actions such as Uniform Domain Name Dispute Resolution Policy proceedings.

### 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).

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## 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.

### 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.

## EVENT ORGANISATION

### Regulation

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

Venue hire and event organisation is mainly 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 the permission for the public event must previously demand payment of the corresponding taxes.

### 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.

### Ticket sale and resale

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

Ticket sales of public events is regulated in Single Circular, Title II, No. 2.10. Accordingly, the organiser is, for example, obliged to provide information of the event as well as admission

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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.

## 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](#) webpage 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 prior to 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.

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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.

**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 a 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.

### 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 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 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.'

**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 never longer that of the owner of the Visa Type M or R and it does not permit working.

## SPORTS UNIONS

### Incorporation and regulation

#### 26 | How are professional sporting unions incorporated and regulated?

In the Labour Code, the right of union association 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 that are 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.

### 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 by means of violence or threat attempts in any way to inhibit this right shall be punished with a pecuniary sanction.

### Strike action

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

According to article 12 of the Labour Code, the right of taking strike actions 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. Prior to 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 counterpart. 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 with 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 with a minute. If the conflict is still not completely resolved, the strike

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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.

## 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 the international regulations. For football, this is the Regulations of the Players Statutes. Transfers can only take place within the respective transfer windows.

### 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.

### 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 by means of 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.

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## 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 are obliged to 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.

### 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).

## 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.

## 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. In fact, 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 during the five years immediately prior to the date of presentation of the application;

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- the persons are by birth Latin American or Caribbean, who have lived continuously for one year immediately prior to 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 during the two years immediately prior to the date of filing the application.

Absence from Colombia for a period of 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.

## 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\$498,00; the equivalent of 48 tax value units (for 2023, this is approximately US\$10.38 per unit). If the award is money, the organiser of the event is obliged to apply the tax deduction prior to handing over the award. If it is in-kind the winner must pay the respective tax within six months after receipt.

## UPDATE AND TRENDS

### Key developments of the past year

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

In Colombia, the Bill for a Modification in the Labour Act and the Bill for a Modification of the Legislation in the Field of Sports are being discussed that might have an impact on the sports environment.

Regarding the Modification of the Labour Act, the most likely impact is the proposal to change the term of a labour contract automatically to indefinite and use fixed-term contracts only in exceptional situations. While the bill intends to improve work stability, the contrary will likely occur as the termination of a fixed-term contract without just cause would create the obligation to indemnify the remaining term of the contract, while with an indefinite contract, the indemnification would merely be a month of salary for each worked year.

Regarding the Bill for a Modification of the Legislation in the Field of Sports, besides clarifications of definitions etc, one of the main amendments created by the proposed bill is to involve women and active sportspersons (via chosen representatives) more in the different decision-taking organs of the sports federations.

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The bills still are debated and modified by specially created committees, and if approved, they still will require approval by the Senate and Chamber of Representatives. Therefore, it is likely that their ratification (if any), remains unlikely.



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# Japan

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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 (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.

### 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.

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## 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. Prior to the enactment of the Act on Promotion of Doping Prevention Activities in Sports, there were discussions to introduce criminal punishment, but the enactment of the provisions on criminal punishment was suspended.

The NPB is not a member of JADA, and the NPB Anti-Doping Commission conducts its own doping inspection.

## 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.

## 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 (J.League), a chairman is placed as a representative and supervises J.League operations under the J.League rules. The chairman has the authority to render final decisions concerning the settlements of disputes, as well as sanctions for J.League-affiliated organisations and individuals.

In the 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.

### 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 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.

### 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.

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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.

## 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.

### 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 for the purpose of exploiting such image to attract an audience or customers. For example, the following are examples of publicity rights infringement:

- using one's likeness itself as an object of appreciation;
- putting one's likeness on goods to differentiate them from other goods; and
- using one's likeness to advertise goods and services.

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

In general, an athlete's image rights belong to the athlete. However, the professional player contract normally stipulates that the player must cooperate with the club whenever the club makes a request to commercially use the player's image and give them 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.

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In the Japan Professional Football League (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.

## 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 of time due to any player's misconduct'. However, in contrast to contracts in the J.League, there is generally no morality clause in individual player contracts.

These provisions are executed from time to time, and players have been sanctioned according to these clauses.

## 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.

## 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.

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If there is an infringement of rights under such laws, sports organisations can demand an injunction and claim compensation for damage. In some cases, such acts of infringement of rights, are subject to criminal charges.

Under the Civil Code, sports organisations can protect their brands against defamation by demanding injunctions against such actions and claiming compensation for damage.

#### **14** | How can individuals protect their brands?

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.

### **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.

### **Media coverage**

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

Individuals can make a claim for damages and injunctions based on defamation or infringement of privacy rights. Other measures, such as a request for an apology letter to restore honour and reputation, are also available.

However, as a result of freedom of expression, the requirements for an injunction are considered to be strict. It is, therefore, rare for an injunction to be granted.

## **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.

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## 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.

## 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 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 in accordance with the Local Autonomy Act.

### 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.

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## 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 the purpose of 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 be in violation of the contract.

Purchasing tickets with the intention of reselling or reselling tickets at 'public places' is prohibited under the Ordinance to Prevent Public Nuisances.

In addition, permission under the Second-hand Articles Dealer Act is necessary when conducting business as a resale dealer, and resales are forbidden without such permission.

In recent years, there have been criminal cases in which fraud charges were applied owing to actions involving resale intent when purchasing tickets.

## 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?

It is desirable for Japanese clubs to apply for and obtain a Certificate of Eligibility (COE) for foreign professional athletes (and coaching and administrative staff), whereby the Minister of Justice certifies conformance with their status of residence in advance of their arrival in Japan. This would allow them to obtain visas and pass through immigration and passport control inspections smoothly.

After the COE is issued, the athlete 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

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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.

**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.

### 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.

**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.

## 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.

### 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'.

### 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 the purpose of collective bargaining, such as for working conditions;
- are not conducted through the process of collective bargaining; and
- use violence.

## 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 (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 the 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.

### 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

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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 prior to the expiration of the contract with the original club. However, players cannot transfer in the middle of the contract term, unless an agreement on a penalty is made between the original club and the new club.

## 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' for the purpose of relieving promising athletes who become unable to play because of injury or illness from economically dire conditions.

## 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.

### 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

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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.

### 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.

### 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.

## 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 or tennis tournament or boxing event, receives remuneration for participating or a supplementary prize, such as a car or a watch, from an organiser in Japan, any such compensation is considered as 'compensation for the provision of personal services' under the Income Tax Law, and is subject to separate tax withholding at the source at a rate of 20.42 per cent.

If a tax treaty exists between Japan and the country where the foreign athlete resides, tax exemptions may be available. Therefore, it is necessary to confirm the relevant tax treaty in force. For example, there is an exemption in the Convention Between Japan and the US for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income. Specifically, there is no withholding tax if the total income from his or her activities as an athlete received in the tax year is less than US\$10,000. On the other hand, there is no provision for reduction or exemption of tax liability under the tax treaty between Japan and the United Kingdom, and taxes should be withheld by the organiser at a rate of 20.42 per cent.

If the supplementary prize is a product, such as an automobile or a watch, it is valued at 60 per cent of the retail price for tax purposes.

In cases where a sporting event organiser withholds income tax from remuneration, the tax liability will be limited to such withholding, and foreign athletes do not need to file a tax return.

In cases where a non-resident foreign athlete signs a contract with a Japanese club or team and the contract provides for remuneration for the player, the athlete's remuneration is also considered as 'compensation for the provision of personal services' under the Income Tax Law. Therefore, the club or team will withhold income tax, and these foreign athletes do not need to file a final return as explained above.

## 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), the World Swimming Championships are scheduled to be held in Fukuoka in 2023, and the Asian Games 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

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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.



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# Sweden

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## REGULATORY

### Governance structure

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

The right to participate in clubs and societies is guaranteed by the Swedish Constitution. Sport in Sweden is historically organised as an independent voluntary movement (generally known as the Scandinavian or Nordic model). The sports movement has been entrusted with the task of organising sports in Sweden with considerable freedom, but with the help of substantial financial support from the government.

Local sports clubs are the foundation of the sports movement. There are more than 20,000 local sports clubs registered as non-profit associations with the purpose of organising sports activities, having elite sports and sport for all under the same umbrella.

The Swedish Sports Confederation is the unifying organisation at the national level, consisting of 72 special sports federations and 21 district sports federations, which organises more than 250 different sports and about 22,000 sports clubs. Membership is only admitted to non-profit associations. The Swedish Sports Confederation supports its members and, in an official capacity, represents the whole sports movement in contact with the authorities. Throughout the country, clubs are organised according to two principles: one geographical and one linked to the sport. The geographical organisation takes the form of district sports federations, while particular sports are organised into special sports district federations and special sports federations. The Swedish Sports Confederation has its own supreme court, the Supreme Sports Tribunal. The tribunal deals with appeals against legal decisions handed down by the sports federations.

The sports clubs hold participating licences to take part and compete in sports activities arranged by their respective special sports federation. The sports clubs are allowed to transfer these rights to a wholly or partly owned limited liability company under certain conditions; for instance, that the sports club holds the majority of the votes at the shareholders' meeting of the limited liability company (the 51 per cent rule) and that the limited liability company is prohibited from transferring the sporting rights to a third party. Many

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sports clubs with elite professional sports activities, such as the top-level clubs in football and ice hockey, have used this opportunity to have their elite teams in a separate legal entity, which may attract financial investors from private businesses. So far, only one of these limited liability companies has listed its shares on the public market.

The supreme authority of sports in all Olympic matters is the Swedish Olympic Committee. The committee consists of 41 member federations, the national sports federations for the Olympic sports and 15 recognised federations (namely, recognised by the International Olympic Committee but not currently on the Olympic programme).

## Protection from liability

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

According to the statutes of the Swedish Sports Confederation, sanctions can be imposed on member organisations and individuals (including participating athletes). Athletes bind themselves contractually to comply with the rules of their club, their special sports federation, the Swedish Sports Confederation and the relevant regulations from international sports governing bodies.

An athlete's civil liability (non-contractual liability) is governed by the Tort Liability Act (1972:207) and case law. Athletes may be held liable for damage or injury caused to other athletes, officials or spectators, among others, when the athlete acts intentionally or negligently. Liability is evaluated on a case-by-case basis in light of the athlete's obligations resulting from legislation and the sports governing body's sport-specific rules.

Normally, athletes have accepted the risks inherent in the specific sport. In some sports, violence is a natural part of the exercise, such as boxing. However, violence between athletes may constitute a criminal case even in sports where more violence than normal is allowed and some actions can by juridical argumentation be given criminal liability. If a clear distinction cannot be found, an assessment of each sport itself needs to be done. As long as the athlete adheres to the relevant sporting rules, his or her actions will most likely not incur any civil or criminal liability. However, violence that takes place in a different part of the playing field than the game will meet with a greater risk of prosecution and conviction. Offences against personal reputation may also occur in the form of slander.

Sports-related violence and defamation cases are subject to public prosecution. Authorities will generally have to investigate criminal matters ex officio.

## 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 Swedish anti-doping programme has previously been monitored by the Swedish Sports Confederation within its internal organisation (the Doping Commission). From 2021, a newly established and separate National Anti-Doping Agency (Anti-Doping Sweden) has taken

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over all the responsibilities previously handled by the Doping Commission. The Regulations for Anti-Doping generally apply to all athletes who engage in competitive sports. All positive doping results are investigated by Anti-Doping Sweden, which decides whether the matter should be reported for disciplinary action. The primary instance of a decision on disciplinary actions for all sports is the Doping Panel of the Swedish Sports Confederation. The decision may be appealed to the Supreme Sports Tribunal.

The Doping Act (1991:1969) covers certain specific doping substances that are criminalised: synthetic anabolic steroids, testosterone, growth hormones and chemical substances, which enhance the production or release of testosterone and its derivatives or growth hormones. These substances may not be imported, transferred, manufactured, offered for sale and such like. Anyone wilfully breaking the Act will be sentenced to a maximum of six years' imprisonment.

## Financial controls

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

Several sports governing bodies have established club licensing systems to ensure that the clubs have an adequate level of financial stability, management and organisation, a suitable sporting infrastructure, and well-equipped and safe arenas. Club licensing systems mainly occur within the elite levels of team sports, such as ice hockey and football. The regulations provide for sanctions to be taken against clubs that exceed spending within a set budgetary framework. Swedish clubs competing at an international level must also comply with the criteria set out by international sports governing bodies, such as UEFA's Club Licensing and Financial Fair Play Regulations.

Salary caps (or wage caps) have not been implemented in Swedish professional sports so far. The club licensing systems render help to control the costs of teams and will most certainly have an impact on the salary costs as well. Generally, salary and other employment benefits are subject to individual negotiations between the sports club and the athlete.

## DISPUTE RESOLUTION

### Jurisdiction

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

The use of arbitration is the preferred method of dispute resolution in the Swedish sports sector. Athletes bind themselves contractually to comply with the rules of their club, their special sports federation, the Swedish Sports Confederation and the relevant rules from international governing bodies. The sports federations, clubs and athletes are obliged to follow the internal judiciary instances of the sports governing bodies and to finally resolve disputes by arbitration. Most special sports federations have their own arbitration board. Under certain circumstances, the Supreme Sports Tribunal deals with appeals against sport-related decisions and disciplinary sanctions handed down by the special sports

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federations. The Supreme Sports Tribunal also serves as the second instance of appeal for decisions made by the Doping Panel based on the Regulations for Anti-Doping.

In the absence of an agreement to arbitrate, the public courts have jurisdiction over all disputes outside the specific rules of the sport, such as disputes related to commercial agreements or marketing practices, as well as civil and criminal liability cases.

A public court may not, following an objection of a party, rule on an issue that, pursuant to an arbitration agreement, shall be decided by arbitrators. A party must invoke an arbitration agreement on the first occasion that it pleads its case on the merits in the court. In such a case, the court will dismiss the legal proceedings, unless the arbitration agreement is invalid.

## Enforcement

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

An arbitration award is enforceable as a court judgment (the Enforcement Code (1981:774)). An enforceable award must be in writing and signed by a majority of the arbitrators.

## Court enforcement

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

There are no established principles in Sweden regarding when the public courts can examine and decide on lawsuits in relation to decisions of sports governing bodies; for instance, decisions on membership issues or disciplinary sanctions. Generally, the public courts are very restrictive with challenging decisions from sports governing bodies and there are very few court cases on this issue. However, a public court may set aside a decision from a sports governing body if the decision involves substantial financial consequences for the parties involved, or if the decision is based on obviously unreasonable circumstances, such as discrimination because of race or religion.

## SPONSORSHIP AND IMAGE RIGHTS

### Concept of image rights

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

Swedish law recognises an independent right to protect an individual's name or picture against exploitation in commercial contexts by the Act (1978:800) on Names and Images in Advertising (the Names Act). The Names Act gives fundamental protection against commercial use of an individual's name or picture in marketing without the explicit permission of the individual. Anyone who intentionally or with gross negligence violates the Names Act may be liable for a fine. The person whose name or picture was used is entitled to reasonable

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compensation for the infringement. If the violation was intentional or negligent, the infringer shall also pay compensation for other damage suffered by the individual. A criminal action for violation of the Names Act may not be brought by the public prosecutor unless there is a complaint from the injured party or prosecution is necessary for the public interest.

## Commercialisation and protection

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

Top athletes would be well advised to protect their image rights with enforceable intellectual property rights, such as trademark registrations. The Trademarks Act (2010:1877) is the primary legislation governing trademarks in Sweden. Sweden is also an EU member state and has implemented the EU Trademark Directives. Sweden is also a party to several international agreements regulating trademarks, such as the Madrid Protocol. EU trademarks are recognised in Sweden, as well as international trademark registrations administered by the World Intellectual Property Organization designating Sweden.

A trademark can be registered in the Trademark Register kept by the Swedish Patent and Registration Office. Protection is valid for 10 years and can be renewed for an unlimited number of consecutive 10-year periods. Individuals or legal entities can register Swedish trademarks. The owner of the mark can bring an action against anyone making unauthorised use of the mark. A name or logotype that is subject to trademark protection grants exclusive rights to the proprietor and prevents all third parties from unauthorised use of the name, or any sign confusingly similar to that name, within the course of trade. A trademark may consist of words, signatures, symbols or patterns, provided that the signs are distinctive.

A trademark may be assigned or licensed. Licensing of a trademark in Sweden is mainly governed by the agreement between the rights holder and the licensee.

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

As far as team sports are concerned, clubs pay their players typically for training and playing on the field under an employment contract and against a salary. In addition, clubs can normally use a player's image right (eg, physical characteristics, name, personal likeness) to generate revenue from sponsoring and merchandising agreements. In most major team sports, the player is obliged to participate in the club's advertising and sponsorship activities to a reasonable extent and without any extra compensation. The club is often entitled to use the player's name and picture in advertisements and such like. The playing contracts will normally restrict the player from carrying out personal advertising work in the club's kit or using the club's intellectual property, and also from entering into personal endorsement agreements that may conflict with the club's existing sponsors. The precise restrictions will depend on the terms of the playing contract (and, in some cases, the applicable collective bargaining agreement). The playing contracts normally include provisions that the player, before agreeing to any personal endorsement deal or promotional activity, must ensure that they notify or obtain the required approval of their club.

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Individual athletes may have similar obligations; for instance, athletes who compete for the national team in competitions such as the World Championships or the Olympic Games. The individual athletes should ensure that their personal endorsement agreements include clauses that ensure they are not deemed to be in breach of contract by virtue of observing the rules and regulations of the national team or any national or international competition in which they compete.

## Morality clauses

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

In individual sponsorship agreements, sponsors of athletes might protect themselves against serious sporting offences, such as doping and match-fixing. In many cases, the sponsors go further and seek protection with the use of a morality clause, with which the sponsor protects itself against moral issues such as infidelity, alcoholism, gambling and other behaviour on the part of the athlete that does not reflect the sponsor's brand values.

To be enforceable and effective, the morality clauses must be both precise and comprehensive and must provide a sponsor with flexibility when it comes to how the sponsor wishes to deal with incidents. A right of termination will usually be required, but also a right of suspension and a right to withhold future payments, fines or an indemnity for costs incurred by the sponsor. The clause may also require the athlete to cooperate with the sponsor in managing any scandal and immediately inform the sponsor of any material incident that may constitute a breach of the clause. A sponsor may also seek to include a right for the reimbursement of any bonuses that have been paid. In some cases, the sponsor agreements include a reverse morality clause enabling the athlete to terminate the agreement if the sponsor or the brand suffers reputational damage.

## Restrictions

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

In addition to the general advertising rules established in the Marketing Act (2008:486), there is special legislation that applies to the advertising of specific products and services, such as alcoholic beverages, tobacco products and gambling and betting services.

The marketing of alcoholic beverages is highly restricted under the Alcohol Act (2010:1622). All permitted advertising of alcoholic beverages (greater than 2.25 per cent alcohol by volume) must meet a particular level of moderation (namely, it must not be intrusive, insistent or encourage the use of alcohol, and not be aimed at people under the age of 25). Advertising of alcohol on television and radio is banned (the Radio and Television Act (2010:696)).

The Tobacco Act (2018:2088) bans all forms of tobacco advertising in relation to sporting events.

The marketing of gambling services is strictly prohibited in Sweden under the Gambling Act (2018:1138). All marketing of games must be modest and not aimed at people under the age of 18 years.

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In addition to the above, the Swedish Sports Confederation, the special sports federations and the sports clubs may have internal rules on sponsorship and acceptable marketing.

## BRAND MANAGEMENT

### Protecting brands

#### 13| How can sports organisations protect their brand value?

Improving technologies and the global appeal of certain athletes have created an array of new opportunities for the participants in sports (principally, governing bodies, clubs and players) and brand protection is therefore important. The key element of this is the effective protection of intellectual property rights that inform, enhance and identify the brands that they represent. Trademarks need to be registered in the trademark registry to be sufficiently protected. They can either be assigned, or their usage can be granted through licences. The sports organisation should proactively and reactively protect its brands in new and existing markets and be aware of both the opportunities and the risks of online markets and social media.

#### 14| How can individuals protect their brands?

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A trademark may be assigned or licensed. Licensing of a trademark in Sweden is mainly governed by the agreement between the rights holder and the licensee.

### Cybersquatting

#### 15| How can sports brands and individuals prevent cybersquatting?

Swedish law does not specifically regulate the right to domain names. The Internet Foundation in Sweden is responsible for the Swedish top-level domain, .se. Disputes

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regarding cybersquatting are solved by alternative dispute resolution. For .se, alternative dispute resolution is administered by the World Intellectual Property Organization.

## Media coverage

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

The Swedish press, radio and television have considerable freedom within the framework of the Freedom of the Press Act and the constitutional right of freedom of speech. However, individuals and organisations are, under certain circumstances, protected from unwarranted suffering as a result of the publicity.

The Media Ombudsman (MO) and the Media Council (MC) are independent self-disciplinary bodies, handling complaints on the editorial content of newspapers, magazines, broadcast media and their websites and social media. MO, the investigating authority in the process, handles complaints from individuals and organisations who feel unfairly treated by the press. The complainant must be personally affected and identified in the text (eg, by name, photo or other identifiable information) with offensive or otherwise damaging information about them. The complaint must be submitted within three months of the publicity. If the MO finds that a publication is subject to criticism, the case will be submitted to the MC for review and decision. If the MC decides that the publication should be criticised for breaching press ethics rules, the restitution for the complainant is that the media shall publish a statement of the MC decision in the same channels as the original publication. The media is also obliged to pay a fee to the MO and the MC as necessary.

## BROADCASTING

### Regulations

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

Broadcasting agreements are regarded as the most valuable source of revenue to the rights holders, and the development of the internet and other media as additional broadcasting media will have an impact on the business of broadcasting in the coming years. There is no specific legal framework for the exploitation of broadcasting rights. Swedish law does not recognise independent proprietary rights to an event per se. However, the event organiser or rights holder can protect and commercially exploit the various commercial rights in the event through agreements regarding the entry to the event. These rights allow the rights holder to exclude unauthorised persons or media from the venue. Other important rights derive from the Swedish Copyright Act, which protects related rights (or neighbouring rights) of the producer, allowing the reproduction and distribution of recordings, and allowing the broadcasting organisation to retransmit and distribute its broadcasts. Broadcasting rights in many high-profile sports are sold collectively by the special sports federation or the league, such as the Swedish Hockey League, on behalf of its member clubs.

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## Restriction of illegal broadcasting

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

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## EVENT ORGANISATION

### Regulation

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

The sports event organiser can usually protect the sports event and the commercial rights to the event through a combination of real property law, contractual provisions, intellectual property law and tort law. The event organiser often controls access to the venue in which the event is going to be held. The event organiser may restrict third-party access to the venue and ensure, through various agreements, that spectators and others admitted to the event are not entitled to benefit commercially from their attendance. The control over the venue is based on the laws of real property, contract and tort law. Tort law generally makes a trespasser of anyone who enters the land without permission or enters with permission but then violates the terms and conditions of that permission. The event organiser can also protect and commercially exploit the various commercial rights in the event through agreements regarding entry to the event (ticketing), sponsorship, broadcasting, merchandising, catering and hospitality, among others.

### Ambush marketing

### 20 | What protections exist against ambush marketing for events?

There is no specific legal framework prohibiting ticket touting, and it is a common phenomenon at online outlets. Ticket resale above face value is still legal in Sweden regardless of limitations imposed by the event organiser. Official ticket sellers have tried to prevent grey marketing by including a prohibition against reselling the tickets in their sale agreements or on the tickets themselves. Thus, reselling the ticket would be considered a contractual

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breach. Ticket quotas per customer and designating tickets for specified customers who can identify themselves have also been used to prevent grey market sales.

### **Ticket sale and resale**

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

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## **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?**

EU citizens have the right to live and work in Sweden without a residence permit or a work permit. If they can support themselves, they automatically have right of residence in Sweden.

Athletes who are non-EU nationals need to apply for a work permit to compete for a sports club. The Swedish Migration Agency grants work permits and decides on permanent residence permits. The Swedish Sports Confederation is the referral body for athletes, coaches and administrative staff seeking work permits in Sweden. The individual must apply for a work permit and the permit must be granted before entering Sweden. The hiring club must be a member of the Swedish Sports Confederation and a signed contract with satisfying terms regarding salary must be present. The Swedish Sports Confederation must also certify that the employment is essential for the positive development of the sport in Sweden. The work permit, if granted, applies for the duration of the contract and only for work in the club mentioned in the contract, however, it can only be for a maximum of two years. It can thereafter be extended for another two years. If the athlete changes club or employer during the first two years, a new work permit must be applied for. A decision on a work permit can be appealed within three weeks.

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

Professional athletes, and coaching and administrative staff, can participate in international competitions in Sweden for a maximum of 90 days within 12 months without obtaining a work permit. However, non-EU citizens from certain countries may need a visa to travel to Sweden.

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## 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?

A permanent residence permit may be granted after four years with a work permit. It is a requirement that the individual has been employed and worked during these four years.

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

The applicant's family (spouse, common-law spouse or registered partner and unmarried children under 21) may receive permits for the same period as the applicant. If the applicant obtains a work permit for six months or longer, family members can also obtain a work permit for the same period as the main applicant. To obtain a personal identity number, the intended stay in Sweden must be at least 12 months. If a permit is granted for fewer than 12 months, the person cannot register with the Swedish Population Register at the Tax Authority and is therefore not eligible for any Swedish social benefits. It is, therefore, important that they have sufficient insurance coverage for illness and accidents and such like.

## SPORTS UNIONS

### Incorporation and regulation

- 26** | How are professional sporting unions incorporated and regulated?

The Swedish sports sector is fragmented between some unions and employer associations with very specific domains and others with a very general domain, and there is no unifying body that represents the whole sports sector. Sweden's largest trade union, Unionen, handles the collective bargaining agreements for contracted players in football, ice hockey and other team sports, on behalf of players' organisations such as the Swedish Ice Hockey Players' Association and the Swedish Footballers' Association. The Employers Alliance represents employers in the non-profit sector and handles the collective agreements on behalf of the clubs' organisations, such as Svensk Elitfotboll and the Swedish Hockey League.

Generally, the collective bargaining agreement lays down a number of terms and conditions of employment for the athletes, as well as general rules concerning the work situation, such as paid sick leave, working hours, vacation and insurance.

### Membership

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

Sports governing bodies and clubs may not obstruct the athlete from being a member of a trade union or from taking part in athletes' club councils or other interest groups of athletes.

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## Strike action

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

If a trade union or group of employees calls for a strike, it should, first of all, be determined whether the strike is lawful. It is not lawful if:

- the strike is not officially ordered by the employees' trade union; or
- the trade union is bound by a collective bargaining agreement with the employer.

If the strike is not lawful, the employer may request that the strike is declared unlawful by a court. The employer may also claim damages from the participating employees or trade union. In addition, the employer may take action in the form of a lockout. If the strike is lawful, the employees' right to strike is protected by mandatory law. Thus, the employees cannot be terminated or subjected to other sanctions because of their participation in the strike.

## EMPLOYMENT

### Transfers

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

Swedish employment law is generally applicable to the relationship between clubs and athletes within all sports. It has been well established that athletes in the most commercialised team sports (eg, football and ice hockey) are regarded as employees. Many team sports prescribe that standard-form contracts are to be used to govern employment relationships between clubs and players. The standard forms are set out by the governing bodies (such as the Swedish Ice Hockey Federation and the Swedish Football Association) following consultation with the body that represents the players in that sport. In some sports, these standard employment contracts form an integral part of the collective bargaining agreement in place for that sport. Temporary (fixed-term) employments are generally allowed, up to a maximum of two years. Longer fixed-term employments have been agreed upon in the collective bargaining agreements (such as within football, which allows fixed-term agreements for up to five years). The individuals and clubs must adhere to the transfer restrictions set out by the governing bodies and the corresponding rules from international governing bodies, such as FIFA's Regulations on the Status and Transfer of Players and FIFA Transfer Matching System.

### Ending contractual obligations

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

Generally, fixed-term employment contracts may only be terminated upon expiry of the contract or by mutual agreement. Most athletes have a fixed-term contract without any provision regarding premature termination. This means that the parties cannot terminate the contract (or the athlete cannot switch clubs) before the fixed date, unless a material

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violation of the contract has occurred or if the parties mutually agree to terminate the contract. According to Swedish employment law, it is possible to terminate the employment relationship with immediate effect only if the employee or employer has grossly violated his or her liabilities according to the contract (such as criminal behaviour or doping allegations).

## Welfare obligations

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

The Swedish Sports Confederation works proactively with its member clubs to make sports in Sweden more socially responsible and sustainable by implementing regulations, guidelines and education related to, for example, doping, sports integrity, diversity, inclusion, athletes' health, insurance matters, sexual harassment and violence in the workplace. Most of these welfare obligations follow Swedish law as well.

## Young athletes

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

Young athletes (under the age of 18) can enter into binding agreements (eg, a player's contract with a club) only with the consent of their guardians. The athlete and the club must adhere to the transfer restrictions set out by the governing bodies (eg, the Swedish Football Association) and the corresponding rules from international governing bodies, such as FIFA's Regulations on the Status and Transfer of Players, which prescribes that international transfers are only permitted for players over the age of 18, unless the individual player who is under 18 meets specific qualifying criteria.

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

Minors in Sweden have limited legal capacity between the ages of 16 and 18. Minors can enter into binding agreements (such as a player's contract) only with the consent of their guardians. The minor may terminate the agreement with the club on his or her own and – if he or she is 16 – enter into a new player contract with another club without obtaining consent from his or her guardians. The minor or the guardian may terminate the player's contract with immediate effect, if this is necessary with regard to the minor's health, development or education. If the guardian has terminated the player's contract for this reason, the minor is not allowed to enter into any new agreement without the guardian's consent.

## Club and country representation

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

The right or obligation for an athlete to represent the national team differs from sport to sport. An elite ice hockey player has an obligation under the player's contract with the club to represent the national team if so required. In other team sports, the club has an obligation towards the athlete to make sure the athlete is available to represent the national team. Normally, the club will pay the player wages and other fees even during the period when he or she is representing the national team.

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## Selection and eligibility

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

The principal task of selecting athletes for the relevant games and competitions lies with the club, the special sports federation or, in the run-up to major sporting events such as the Olympic Games, the Swedish Olympic Committee. The relevant eligibility and selection criteria differ from sport to sport and can include matters such as nationality, gender, age or results in certain specified competitions. In circumstances where disputes arise and athletes seek to appeal against the decision of the selectors, the rules governing the athlete's relationship with the club, the relevant special sports federation and the Swedish Sports Confederation's statutes set out the terms for the athlete's right of appeal. Decisions from the Swedish Olympic Committee may be appealed to the Court of Arbitration for Sport.

## TAXATION

### Key issues

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

Payment of remuneration to non-resident athletes may be made on particularly favourable tax terms for a limited period in accordance with the rules of the Act on Special Income Tax for Non-resident Artists and Others (1991:591) (A-SINK). The applicable A-SINK tax rate is 15 per cent. If the athlete artist frequently stays in Sweden for a continuous period of six months he or she will generally be considered to be resident in Sweden. In such a scenario, the A-SINK tax would not be applicable.

A non-resident athlete who derives taxable income from Sweden must, as a rule, also pay tax in his or her country of residence. To avoid double taxation of the same income, Sweden has entered into double taxation treaties with other countries. Double taxation is generally eliminated through the credit method. Without any double taxation treaty, there is an apparent risk of double taxation.

## UPDATE AND TRENDS

### Key developments of the past year

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

The Swedish sports movement is still mitigating the losses caused by the covid-19 pandemic. The Swedish government proposes several new measures that strengthen the work against match-fixing. The new legislation is proposed to enter into force on 1 July 2023. Gender equality in Swedish sports is also a matter of great importance for Swedish stakeholders. The Swedish Sports Confederation wants women and men to have equal power to shape sports and their participation in the sports movement. The most notable regulatory change

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in Swedish sports in 2023 is the implementation of the FIFA Football Agent Regulations, which will have a severe impact on the Swedish football agency industry.

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# Switzerland

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## 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

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by shares have a defined capital divided into shares, which are owned by the company's shareholders.

## 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.

## 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

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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.

## 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.

## 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,

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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 the authority to issue decisions against athletes in doping-related matters.

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 sport 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.

## Enforcement

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

Internal decisions of sports organisations are usually enforced by the respective sports organisations themselves 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 and the procedure of such enforcement will depend on whether the case at hand is an international one and if the decision relates to the payment of money or not.

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.

## Court enforcement

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

Decisions of professional sport regulatory bodies do not qualify as judgments or awards and are therefore not enforceable based on domestic law or international treaties. Only if such decisions are appealed before a state court or an arbitration court can their respective judgment or award be appealed. 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 such 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.

## 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.

### 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.

### 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.

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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.

## 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).

## 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 sport, 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.

## 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.

### 14 | How can individuals protect their brands?

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 another party may be available under unfair competition law.

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## 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.

## 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.

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## 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.

### 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.

## 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

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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.

## 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.

## 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

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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.

## 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 submits an application 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.

#### 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.

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Additionally, certain activities, such as participating in official matches or events organised by national sports federations, may have specific regulations or clearance requirements.

## 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 have the opportunity to 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.

### 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.

## 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 (SFA) and the Swiss Football League (SFL). Collaboratively, the SFL and SFA work with the SAFP to negotiate the terms

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encompassed within a standard player contract. SAFP represents the interests of professional football players at national and international level.

## 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.

## 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 Swiss Football Association (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.

## 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.

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Transfers are subject to specific periods (transfer windows). These are designated time 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.

### 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.

### 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

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- 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.

## 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.

### 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.

## 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 basically subordinated to FIFA and the Union of European Football Associations. The situation can be described as all parties being inter-linked 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.



## 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.

## 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 tax 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 a 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).

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## UPDATE AND TRENDS

### Key developments of the past year

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

A topic that remains an issue in the domain of sports law is doping. In 2022, the Swiss Sport Integrity (SSI) foundation, a new reporting and investigation body for ethical violations and abuses in Swiss sports, was created as the successor to Antidoping Switzerland. Since its incorporation, the SSI has consistently received a high number of reports and has judged several cases relating to anti-doping work. Its Disciplinary Chamber has issued eight decisions on anti-doping rule violations and issued various sanctions.

A recent case relating to erythropoietin doping that shocked the triathlon world and resulted in a three-year ban for the respective triathlete is evidence that doping remains a major issue.



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# United States

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## 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) and the National Hockey League. These entities tend to be the primary revenue drivers within the landscape of American professional sports. National governing bodies generally oversee sporting events and participation for Olympic and Paralympic sports. 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 structures are generally governed according to rules and internal regulatory procedures set forth in league documents such as league constitutions and by-laws. Typically, a commissioner is appointed to serve as a chief executive officer and is responsible for managing the day-to-day operation 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 the 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 sport, 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, and the government may intervene if there are questions

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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).

## 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. In most jurisdictions, injuries 'arising out of an athletic event' are actionable only when an athlete behaves in a reckless manner. While an analysis of recklessness typically depends on the facts of a particular event or injury, as a baseline rule, to act recklessly means to engage in behaviour that is outside of the 'ordinary conduct' for that particular sport. For example, tackling is expected in football, rugby and even ice hockey but would 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 is intentional and not within bounds of the expected course of play). One court cautioned that '[a] reckless disregard for the safety of other players cannot be excused'. *Nabozny v Barnhill*, 334 NE2d 258, 261 (Ill App Ct 1975). Other courts, however, do not analyse whether conduct was reckless or intentional, but rather only if it was 'inherent in a sport'. *Nixon v Clay*, 449 P3d 11, paragraph 3 (Utah 2019).

Under these standards, athletes generally only risk liability if their behaviour ventures well beyond the expected behaviour of their sport. In practice, 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 defenseman Marty McSorley was charged in 2000 with assault with a weapon for his actions during a game. And, Jose Offerman was sued in 2009 for hitting two players with a bat in a minor league baseball 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. The punch nearly killed Tomjanovich and he 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 conduct.

## 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. It handles testing and adjudication of violations for Olympic athletes. This

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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 (*vis-à-vis* 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.

## Financial controls

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

The major private leagues in the United States generally reach agreements with their players through collective bargaining to set boundaries for team spending on player salaries. Such controls include salary caps, luxury tax systems, predetermined entry-level contract structures and minimum and maximum player contracts.

For example, the NFL imposes a salary cap and a salary floor (the maximum and minimum amount a team can spend on player salaries) on member teams, while MLB constrains teams through a luxury tax that imposes penalties on teams if their spending goes over a certain threshold. Some leagues also enter into revenue-sharing agreements with the corresponding players' association, whereby the league and the players' association agree to allocate the leagues' revenues between team owners and the players according to a predetermined percentage, which becomes part of the calculus of a salary cap.

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As financial controls vary by league, understanding a league's financial controls requires detailed reading of each league's by-laws, constitution or CBA.

## DISPUTE RESOLUTION

### Jurisdiction

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

The 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 exist for appealing the internal decision of a league both within the league and to federal or state courts.

In some cases, disputes involving leagues or teams may be heard in 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.

### Enforcement

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

League decisions are typically enforced by the league, the respective player 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 set forth in the Federal Arbitration Act (FAA) or under the Labor Management Relations Act. However, as discussed further below, 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.

### 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, although these challenges face a high bar for success. Because federal law typically

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enforces decisions made by an arbitrator when a collective bargaining agreement 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:

- the award was procured through corruption or undue means;
- there was evident partiality or corruption in the arbitrators;
- the arbitrators were guilty of misconduct and a party was prejudiced; or
- the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

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 National Hockey League (NHL) suspended Dennis Wideman for 20 games for deliberately knocking down an official during the course of 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 National Football League players including Tom Brady, Ezekiel Elliott and Adrian Peterson have also challenged league disciplinary decisions in court.

## 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.

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## 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: validity and 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' 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 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 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 of 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 U.S. 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.

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## Remedies

Remedies for 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.

### 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, have the ability to 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 United States, athletes may license their image and likeness to teams, leagues, players unions and brands interested in commercial initiatives. These license 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 National Football League (NFL) Players Association, the Major League Baseball (MLB) Players Association, 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, collectables, 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.

## 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 has the ability to preserve its reputation by terminating a contract in the event that the other party to the contract engages in illegal, or otherwise morally questionable behaviour. A well-drafted morality clause will

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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.

## 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 prohibited sponsorship from categories such as alcohol and betting, among other things. On the other hand, the National Basketball Association (NBA) has official sponsorships with both FanDuel and DraftKings in the sports-betting industry. And 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 collective bargaining agreements (CBAs). The NBA, for example, removed cannabis as a banned sponsorship category after an agreement with the NBA Players Association 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 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.

## BRAND MANAGEMENT

### Protecting brands

### 13 | How can sports organisations protect their brand value?

Sports organisations can protect their brand value, and mitigate risk of exposure to negative press, in a variety of ways. As already mentioned, morality clauses are a primary

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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. . .' (Art XXXVI, Sec 16(a)(i)). Teams and leagues may endeavour 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.

As described in the answer to the question 'Restrictions', 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.

#### **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 in the event that 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.

### **Cybersquatting**

#### **15** | How can sports brands and individuals prevent cybersquatting?

Answer in progress.

### **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.

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## 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 National Football League (NFL) alleging the league's by-laws 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 anti-trust scrutiny in regard 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 that prevented cable and satellite networks from telecasting sporting events in a particular area when a local broadcast station has 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 did not sell out all its tickets. Each sports league has different rules about when a televised event can be blacked out.

### 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,

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professional sports leagues are able to 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 US internet service providers to take down the indexing websites in the United States. 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:

- it 'does not have actual knowledge that the material' is infringing;
- 'in the absence of such knowledge, is not aware of facts or circumstances from which infringing activity is apparent'; or
- 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.

## 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, programmes, 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.

### 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

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claims based on the Lanham Act (15 USC, section 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 National Football League (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 risk of an infringement claim. This leads to many advertisers using generic references, such as the 'Big Game' to avoid a potential dispute.

### **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, 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.

## **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. 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. 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

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percentage who have risen to the top of the field of endeavor'. 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 advisors, among others. Those professionals may be eligible for an H-1B visa for workers in speciality occupations. This visa is issued for up to three years and is renewable for a second three-year period.

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

Answer in progress.

### 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?

Answer in progress.

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

Answer in progress.

## SPORTS UNIONS

### Incorporation and regulation

**26** | How are professional sporting unions incorporated and regulated?

Professional athletes in many US sports leagues have formed unions that devise collective bargaining agreements 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.

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## 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 National Basketball Association (NBA) Players Association, a person must play in the NBA, while the Major League Baseball Players Association 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 membership of players who are free agents or who have retired.

## 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 to 10 March 2022.

Strike actions, however, can be limited by the inclusion of a 'no-strike' clause in a collective bargaining agreement. 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 collective bargaining agreement expires by its natural term and is due for renegotiation.

## 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 US sports, 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 US 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 US 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.

### 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 US 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.

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## 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 collective bargaining agreements 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 National Women's Soccer League (NWSL) collective bargaining agreement contains a similar emphasis on mental health, providing that if a licensed psychologist or 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 set forth 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.

## 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.

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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 for. 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.

### **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 US 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.

## **Club and country representation**

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

Athletes who play in the major sports leagues are employees of their respective teams or leagues, and their employment relationships are generally governed by a collective bargaining agreement. 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 National Hockey League (NHL), the league and players' association negotiate whether or not players under

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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.

## 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 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 Athletics 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 United States 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 US court system depending upon the nature of the dispute and the process by which it was resolved.

## 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 income tax in the United States. 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).

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## 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 US sports landscape has been the ability of amateur athletes to receive compensation for their name, image and likeness. 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.

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 prior to 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

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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 US 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 NLRB, issued a memorandum stating that certain college athletes fall under the NLRA’s definition of ‘employee’. The memorandum further stated that colleges are causing a negative effect on 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 2023.

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.

### **Antitrust disputes in professional sports**

Many of these 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 (MLB), for example, has recently faced multiple lawsuits challenging its 100-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. 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

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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 Professional Golfers' Association (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. 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 merge, 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.

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*Weil, Gotshal & Manges LLP is counsel to the minor league teams in Nostalgic Partners LLC v the Office of the Commissioner of Baseball, 1:21-cv-10876-ALC (SDNY).*



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