体育法律资讯

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速览

【热点体育动态】

越南放弃2019年亚运会举办权

一年半之前，越南河内击败唯一的竞争对手印尼泗水夺得2019年亚运会举办权，这也被外界视为越南向整个亚洲展示自己经济活力和国家实力的举动。但是，前天深夜，越南总理阮晋勇却代表越南政府表示：“由于缺少经费和反对声音日盛，越南政府决定放弃主办权。”亚奥理事会将于9月20日在韩国仁川决定接办城市。

越南没钱只能放弃

越南总理阮晋勇代表政府发表了这份放弃主办权的公开声明，在这份声明中，越方表示：“成功举办地区和国际体育赛事固然将对国家经济社会发展、提升越南形象做出贡献，然而一旦不能成功举办，可能会产生相反的效果。越南在金融危机和全球经济下滑中受到了巨大的影响，国家经济水平仍处于困境。目前，越南的中央和地方预算有限，仅会用于更加紧急的任务中。”

此外，本月初，由于越南足球出现了大量的假球丑闻，亚足联宣布对越南联赛进行全面调查。足球作为整个亚运会，越南民众最看重的项目之一，很可能将受到很大的波及。

在种种负面消息的影响下，越南主办2019年亚运会的支持率，在国内连续走低，最终越南政府也做出了放弃主办权的决定。

亚奥理事会宣布9月确定接办者

此次越南放弃主办权，在亚运会的历史上并非首次。1978年亚运会举行时，最开始获得主办权的是巴基斯坦，但因为国内形势所

迫，巴基斯坦放弃了主办资格，最终由泰国举办了这届亚运会。

虽然到目前为止，越南政府还没有向亚奥理事会递交正式的放弃主办文件，但是亚奥理事会方面在之前就已经获知了越南政府准备放弃主办权的消息，并且已经有了一定的应对措施。

亚奥理事会终身名誉副主席魏纪中表示：“过去是给亚运会承办者4年时间，到21世纪才改成7年，因此时间对各方面来讲都是够的。亚奥理事会对此是有准备的，也有潜在的替代城市。退办和接办都要经过规定的程序，争取在年内完成，此事对亚洲体育不会有很大影响。”

昨天，亚奥理事会已经针对越南放弃主办权的决定，紧急做出了相应措施。亚奥理事会宣布，将于今年9月20日在韩国仁川进行的亚奥理事会执委会会议上，决定将由哪座城市接替河内。

亚奥理事会昨日发表一份声明。声明中说，自从河内获得2019年第18届亚运会主办权后，亚奥理事会先后3次对河内的筹备工作进行了考察。亚奥理事会认为，必须保证2019年的亚运会高质量高标准地举行。亚奥理事会对越南日前宣布放弃主办2019年亚运会表示理解。

亚奥理事会表示，他们对越南做出放弃主办2019年亚运会的决定感到高兴，因为越南没有拖到更晚的时候做出放弃的决定，否则亚奥理事会届时将很难找到接办城市。

潜在备选名单中没有中国城市

在越南放弃主办后，亚奥理事会方面也迅速表示，已经有潜在的城市愿意接手本届亚运会的主办权。

据外电报道，目前有意承接本届亚运会主办权的城市主要有两个，一是在当年的申办竞争中输给河内的印尼泗水市，他们也是准备最为充分的城市；二是阿联酋迪拜，迪拜在得知河内可能退出后，已经向亚奥理事会表达了接办的兴趣。

在外媒透露的潜在备选城市名单中，并没有中国任何一座城市。北京青年报记者昨天向国家体育总局求证此事时，也没有得到任何明确的回应，相关人士私下表示，我国城市接办的可能性几乎没有。

乒联再出世乒赛新规遏制中国

国际乒联理事会5月3日通过决议，决定从2015年苏州世界乒乓球锦标赛单项赛开始，允许不同协会选手配对参加双打比赛。这次会议还决定，削减今后世乒赛的参赛名额，降到男女最多各有96队参赛。另外，这次会议还通过决议——今后世乒赛每个队参加单打比赛的人数将从最多7人减至5人，这项新政策对国乒的影响最大。

根据乒联的规定，每个协会最多可以报5名男单和5名女单，如果某协会有1名选手排名在世界前100位他们可以再多报1人，如果该协会有1名选手排名在世界前20位他们又可以再多报1人，这样，每个协会参加单打的选手最多可以有7人。

根据公布的最新政策，国际乒联决定将每个协会参加世乒赛单打比赛的名额由五个缩减为三个，但如果该协会有一名球员世界排名前100，那这个协会将获得一个附加资格；如果有一名球员排名在世界前20，那么这个协会将会再获得一个附加资格。每个协会最

多可有5名球员参加单打比赛。但是赛事主办国所在协会男女可各有6名选手参赛。

2015年单项世乒赛将在苏州举行，届时我们最多只能派遣6名选手参加单打比赛，以后只要不是在国内城市举办的单项世乒赛，我们中国队只能最多派遣5人参加单项比赛。这对于阵容齐整、整体实力强大的中国队来说，受到的影响显然比较大。

今日的国际乒联的决议还规定，从苏州世乒赛开始，每个协会将只能派出两对选手参加每项双打比赛（以前的规则是三对选手），但是可以由不同协会的选手配对参赛。1977年伯明翰世乒赛，中国选手杨莹与朝鲜选手朴英玉搭档夺得世乒赛女双冠军。1995年天津世乒赛，普里莫拉茨/萨姆索诺夫这对跨国组合获得男双亚军，但随后国际乒联就禁止球员跨协会组队参赛。

这次会议还宣布，2016年团体世乒赛在马来西亚的吉隆坡进行。2016年的吉隆坡团体世锦赛上，男女参赛队的数量均限制在96支之内。本届东京世锦赛无名额限制，结果共有110支男队和95支女队参赛，给赛事组织和管理带来了比较大的负担。

【体育法律实务】

美国职业体育仲裁制度研究

之全美职业棒球大联盟仲裁制度

美国是世界体育强国，这已是不争的事实。美国在国际体坛的骄人成绩已使其体育制度纷纷成为各国效仿的对象。另一方面，与美国经济的发展速度相适应，美国的仲裁也迅速发展，仲裁制度相对完善，仲裁机构也成规模发展，这就促使仲裁是美国诉讼制度之

外解决民事纠纷的主要途径。在体育运动方面，仲裁是解决体育争议的比较常用的替代性的解决方法。美国的业余体育和职业体育这两种体育运动所产生的争议原则上都可以通过仲裁来解决，只是在解决争议时的法律依据有所不同。在仲裁机构方面，美国仲裁协会是美国最大的也是最著名的仲裁机构。它有权力来仲裁包括体育以及与体育有关的各种各样的争议。美国仲裁协会为了解决体育争议而于 2001 年专门成立了体育仲裁小组。这个仲裁员小组目前由来自全美国精选的中立仲裁员组成，其中 20%是妇女。该专门仲裁小组的成立将解决涉及运动员合同、赞助、薪金以及其他运动领域内的特有问题。

随着职业体育运动的发展日益复杂化，仲裁已经成为当事人避免花费昂贵的诉讼的一种最有效的解决争议的方式，尽管仍有一些争议要到法院去裁决。职业体育运动当事人之间的关系主要是以合同尤其是雇佣合同的形式存在的，并且在合同中通常规定解决争议的仲裁条款。而仲裁在美国的司法体系中占据着很大的作用，尤其是强制性的、有约束力的仲裁对仲裁当事人特别是雇佣关系中的当事人提出了某些宪法上的挑战。国会通过了联邦仲裁法以鼓励在劳动合同和其他涉及商事的合同中使用解决争议的仲裁方法，而联邦仲裁法则被形容为是雇主滥用雇员权利的一个工具，因为通过把仲裁作为他们的唯一和专有的救济手段，雇员被要求放弃他们向法院寻求其他司法救济的方法。尽管如此，但是目前在雇佣合同中规定强制性的、有约束力的仲裁条款不再是罕见的情况。对雇佣合同中的强制性的、有约束力的仲裁条款的关注使人们更加意识到类似合同中的仲裁条款对雇员来讲可能会是极大的不公平。

尤其是在美国四大职业体育运动联盟（全美职业棒球大联盟、全美职业篮球联合会、全美职业橄榄球联盟和全美职业冰球联盟）中，仲裁是很普通的事情。其中的全美职业棒球大联盟、全美职业篮球联合会和全美职业冰球联盟是由来自美国和加拿大的职业球队组成的，其存在是以跨国为基础的，只有全美职业橄榄球联盟不包括其他国家的球队，但也具有明显的国际因素或者国际成分。这四大职业体育运动大联盟的国际化因在欧洲、亚洲、墨西哥以及其他国家举行表演比赛、准许其商品在世界范围内销售、向外国广播公司出售电视转播权以及为开发其形象或产品而参加专门举行的国际比赛等途径而得到了加强。在这四大职业大联盟各自的集体谈判协议中都有仲裁条款，这些仲裁条款解决的多是球员的申诉和薪金争议，而当争议发生的时候代表球员或者运动员的是球员工会。与仲

裁不同的是在运动队争议中很少适用调解制度，因为集体谈判协议强制性地把仲裁规定为解决争议的方法，运动员在这方面没有选择的余地。

全美职业棒球大联盟（MLB）争议的仲裁解决

全美职业棒球大联盟的发展过程中，仲裁员曾经起到了一个关键的作用。仲裁员裁决的争议从球员的纪律和劳动问题扩展到了球员在未来赛季的报酬等争议。正是仲裁使得棒球运动员的工资非常高并且增加了棒球球员在不同俱乐部之间的流动性。了解仲裁为什么能够起到这样的作用，这是与球员工会的发展相关联的。从 1885 年到 1946 年，球员们建立了四种不同的协会，每一个都取得了有限的成果，但是却没有一个能够确立长期的集体谈判关系。最终在 1954 年，球员投票决定建立全美棒球大联盟球员工会。尽管这个协会的有些目标明显是沟通和俱乐部老板之间的工作上的不满问题，但是该协会仍宣称自己是“社会性的或兄弟般的友爱组织”。然而直到二十世纪六十年代晚期和七十年代早期它自己才积极参与涉及球员利益的重大决策。全美棒球大联盟球员工会在同全美棒球大联盟谈判制定集体谈判球员合同的时候起了主要作用，因此在某种程度上球员工会限制了俱乐部老板关于贸易限制的权利，尤其是在球员的流动方面更是如此。

在全美职业棒球大联盟内，仲裁一词首次出现在 1970 年的集体谈判协议中，并且在随后的发展中形成了申诉仲裁（grievance arbitration）和薪金仲裁（salary arbitration）两种形式。在棒球大联盟委员会处罚违反纪律的球员的时候，该球员可以提起申诉仲裁，另外全美棒球大联盟球员工会同全美棒球大联盟谈判签署的集体谈判协议允许球员工会可以将大联盟委员会施加的纪律性处罚措施上诉到外部的中立仲裁员那儿进行仲裁，而且该仲裁员可以确认或者推翻委员会的决定，也可以重新作出自己的裁决。

除了协议性的申诉仲裁外，在职业棒球球员工会与球队老板之间的集体谈判协议中规定了解决薪金争议的仲裁方法，即薪金仲裁或者棒球仲裁。集体谈判协议要求这种仲裁是“最终要价（final offer）”仲裁，其中有关的球队和球员都要将其最终要价交给仲裁员，仲裁员采纳的是球员或者球队中的一方提出的薪水方面的最终建议。从体育运动的环境下来讲这种仲裁基本上是劳动仲裁的一种形式，不允许仲裁员作出救济的裁决或发表自己的意见。该制度能够促使当事人善意地进行谈判并且真诚地希望双方能够互相妥协以便能产生一个仲裁员认为最合理的最终的要价。在鼓励妥协方面仲裁员的权利受到了限制，因为仲裁员是唯一的裁决作出者。

棒球球员和球队老板在集体谈判中创建的薪金仲裁制度是为了应对职业棒球历史上的保留条款 以及俱乐部之间的共谋现象。棒球球队老板建议使用薪金仲裁是为了保持对球员工作的控制而不是允许他们成为自由球员，而球员们同意薪金仲裁是因为他们想在成为自由球员之前能够对其薪水施加一些自己的影响，同时他们也想让球队老板付给他们一份公平的工资。另外，双方当事人都担心仲裁员可能会选择另一方的要价，所以在出价方面特别谨慎。只有在一方当事人认为另一方当事人的要价是没有回旋余地的时候才有可能达不成解决薪金争议的方法。不过并不是所有的职业棒球球员都可以提起薪金仲裁，这要受到一定的条件限制。

在某些情况下的当事人的不确定性也促进了争议的解决。譬如提起薪金仲裁的球员在仲裁之前仍继续效力其所属的球队，故不用出席听证会对球队来讲是有益的，因为这可能会使得他们作出某些有辱球员以及有损球员的身体或精神的行为，或者贬低该球员

对俱乐部所做的贡献、出场记录等等。球员不出席听证会能够确保争议解决后得到某些可得的利益，包括但又不限于奖金、担保合同、非贸易条款、旅行中的单人间以及要求球队首先支付住旅馆费用而不是后来偿还给球员等。如果这些好处中的某些利益对球员来讲是重要的，他就会有利用最终要价仲裁解决薪金争议的动机。另外，选择多年期的合同也促进争议的解决。那些由普通仲裁中的听证会裁定薪金争议的球员得到的只是一年期的合同。如果任何一方想签订一个多年期的合同，他就必须选择最终要价仲裁。多年期的合同也给了当事人一个较长的时间来平衡薪金差异并且操作起来更加灵活。而且，一个较长的工作时间能够确保俱乐部得到该球员，或者讲是球员得到了工作上的保障。可以讲全美职业棒球大联盟中的薪金仲裁制度较之于传统的协商制度节省了时间和金钱，因为它提供了一个薪金协商机制和严格的提起申请、提出最终要价、仲裁员听取意见以及作出裁决方面的时间要求。因为仲裁员不需要作出一个书面的裁决，故也节省了一些额外的花销。

全美职业棒球大联盟中的仲裁对美国棒球运动的影响是巨大的，并且美国最高法院的裁决也巩固了棒球大联盟中仲裁程序的独立性。仲裁员通过作出对俱乐部老板不利以及为其曲折的谈判过程定价的裁决而阻止了他们试图通过共谋行为来控制日益增长的球员薪水，并且中立的仲裁员有权来推翻棒球委员会对球员所施加的纪律性的处罚决定。总之，仲裁的使用对全美职业棒球大联盟的影响是深远的，并且它在改变球员和球队彼此之间在球场外如何相处的过程中起了很大的作用。它仍将继续发挥其在全美棒球大联盟的重要作用，并且在未来解决贫富俱乐部之间的财政分配方面也可能会起关键性的作用。

【体育法律业务组介绍】

○ 体育法服务范围

1、为各类体育俱乐部的组成和结构提供法律咨询服务；

2、起草赞助协议、商品化协议和许可协议；

3、就传统和新兴的传播、数字和数据的商业化利用提供法律咨询服务；

4、就赛事和体育活动的组织和管理提供法律咨询服务；

5、就体育品牌特别是有关体育用品和服饰的品牌的知识产权保护提供法律服务；

6、就运动员的签约、入会和转会提供法律意见；

7、就体育场馆的建设、融资、开发和相关事项提供法律咨询服务；

8、代表职业运动员、教练员、体育俱乐部、体育经纪人、体育行业主管部门、体育用品和服装制造商参加相关的争议纠纷的解决；

9、代表体育用品和服装制作商处理产品责任纠纷和知识产权纠纷；

10、为体育运动队和体育活动的主办方、承办方和赞助商协商和起草各类相关合同。

○ 服务方式

. 1、担任专项法律顾问：就各项业务提供全过程、全面、深入的专项服务，办理相关具体事务。

. 2、担任常年法律顾问：就各项业务提供日常法律咨询，处理日常法律事务。

○ 微信平台

2013年5月，上海大成体育法业务组正式创建了“体育法”微信公众账号。

微信号：sportslaw

历经三个月的发展，“体育法”微信公众账号已经成长为一个具有广泛影响力的体育法资讯平台，我们致力于体育法律理论研究、体育热点新闻共享、体育合作信息交流三大领域，力图通过微信公共平台的影响力，为大家提供专业、高效的服务。欢迎大家支持并关注 “体育法”！

非常感谢您的阅读，

本资讯由上海大成体育法业务组编辑，仅供参考。

如有任何问题，请通过电邮 zhang.bing@dachenglaw.com 联系我们。

内部文件，仅供交流。

Sports Law Periodical

12th, 2014 Editor: Zhang Bing Jenny Wang

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Hotspot in Sports News

IOC sanctions Latvian Ice Hockey Player Ralfs Freibergs for failing anti-doping test at Sochi 2014

The International Olympic Committee (IOC) today announced that Ralfs Freibergs of Latvia has been excl

uded from the XXII Olympic Winter Games in Sochi.

Freibergs, 23, provided a urine sample on 22 February whose A and B samples indicated the presence of a prohibited substance.

The IOC Disciplinary Commission, composed for this case of Denis Oswald (Chairman), Gunilla Lindberg and Claudia Bokel, decided the following:

i. The Athlete, Mr Ralfs Freibergs, Latvia, Ice Hocke y is disqualified from the Men's Play-offs Quarterfi nals – Canada vs Latvia match.

ii. The Athlete is considered as excluded from the X XII Olympic Winter Games in Sochi in 2014.

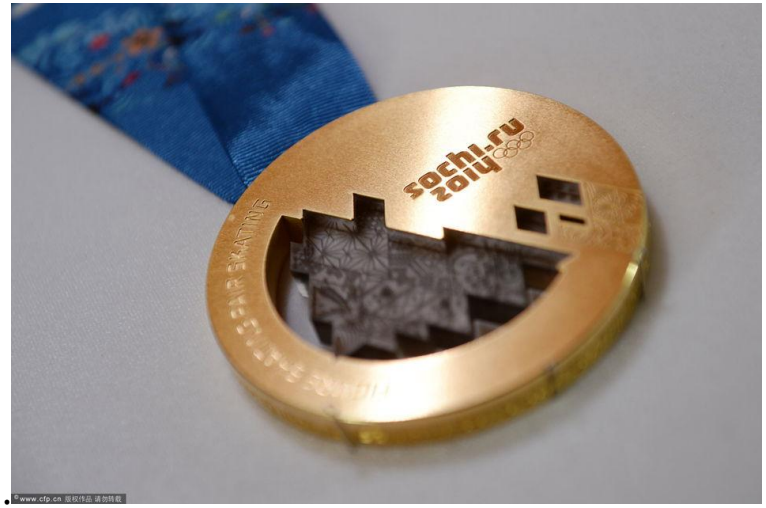
iii. The Athlete's diploma (for placing 8th) is withdraw n.

iv. The International Ice Hockey Federation is hereby r equested to make appropriate mention of the above in the record of the sports results, and to consider whether it should take any further action within its competence.

v. The Latvian Olympic Committee is hereby requested to return to the IOC, as soon as possible, the diploma awarded to the athlete in relation to the above-mentioned event.

vi. This decision shall enter into force immediately.

Under the IOC Anti-Doping Rules applicable to the Sochi 2014 Olympic Winter Games, testing took place under the IOC's auspices from 30 January (the date of the opening of the Olympic Villages) to 23 February 2014 (the date of the Closing Ceremony). Within that period, the IOC systematically performed tests before and after events. After each event, the IOC systematically carried out tests on the top five finishers plus two at random. The IOC also performed unannounced out-of-competition tests. Over the course of the Sochi Games, the IOC carried out some 2,812 tests (2,186 urine and 626 blood) – an Olympic Winter Games record



Consider players' strain in Nations League

- FIFPro press release

UEFA announced today, Thursday March 27th, that it will launch a so-called Nations League in 2018. FI FPro – the world footballers association – respects the aim to improve the quality of international football, but is also concerned about the added strain it will place on the world's elite players.

UEFA says it aims to improve the quality and standard of international football by introducing the Nations League. Though the exact format has not been finalised and is subject to further discussion, the general idea is to divide the 54 UEFA national teams into groups according to co-efficient rankings. Therefore these are matches between teams with more or less the same rankings.

One of the conditions is that there will be no increase in the amount of international matches on the International Match Calendar. Mostly friendly matches will be replaced by competitive matches for the Nations League. By doing this, UEFA and its member associations expect to improve the quality and standing of national team football.

FIFPro appreciates the efforts of UEFA and its members to schedule more competitive matches. All football fans should welcome the increase of quality matches.

FIFPro does have some concerns. More competitive matches will also increase the strain on the players. "*It should be clear that there is a difference in a friendly match and a competitive match*", explains FIFP

ro Director of Player Services, Tijs Tummers. "*As we understand, the Nations League will be another pre stigious competition. As a consequence, that implies an increase in the workload for the group of top pla yers.*"

Coaches often use friendly matches to introduce young, new players to their squads, to give them a first t aste of international football. Because of that, coaches can rest their top stars by not playing them the ful l ninety minutes or by not playing them at all. "*That will change when there is more at stake*", Tummers foresees.

In FIFPro's opinion, there is no real problem with the current friendly matches, says Tummers: "*Mostly, t he countries organise a friendly against an opponent of equal quality. What should be thought over is the amount of qualifying matches between teams that have an enormous gap in talent level. Very often you s ee a match between nations that are more than 100 places separated from each other on the FIFA ranki ngs. Even with the new Nations League, those matches will remain on the International Match Calendar.*"

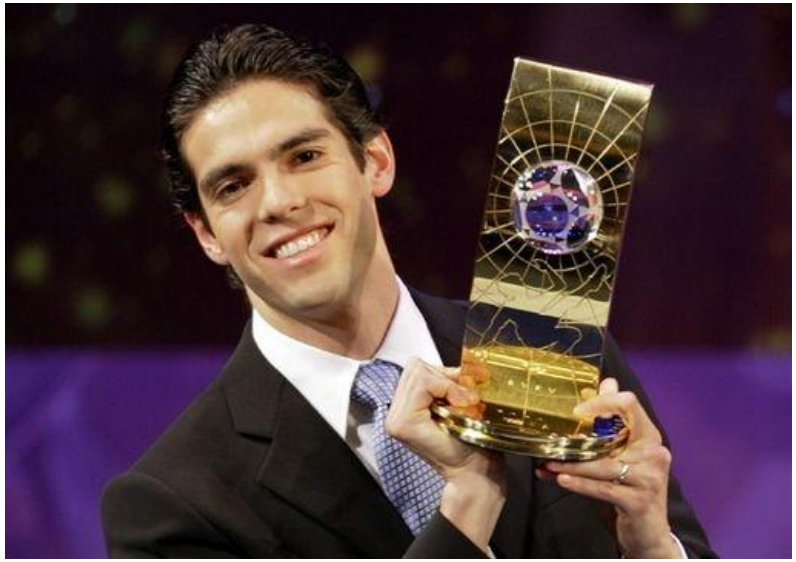
International Sportslaw Practice

Image rights companies in football – where are we now?

The FA Premier League was formed in 1992, in part to capitalise on the perceived commercial value of English football both domestically and through global television markets.

Over the next few years a number of the top footballers from around the world moved to England to play in the Premier League. As these players started to move to the UK, the standard of football increased, as did the global appeal of the English game. Broadcasting rights both in the UK and across the world increased exponentially. This virtuous circle meant more money for the member clubs, with the increase in their share of central broadcasting revenues, and more money to spend on players. This further increased the quality of the product for broadcasters and fans to enjoy, and consequently the broadcast rights became even more valuable.

As the new millennium came and went it became clear that the value of high-profile talent employed by the clubs went far beyond the registration rights that attach to their on-field ability. In almost all cases, players were still acquired for their on-field ability, but the commercial value of a player was not to be underestimated. Real Madrid estimated that David Beckham's total contract value over his four year deal was recouped in the first six months he spent in Madrid on shirt sales alone. During his four years in Madrid, merchandising profits increased by a staggering 137%.



Delivering on commercial agreements is a key factor for Premier League clubs to be able to deliver to their commercial partners and increase revenues. Now we are in an era of Financial Fair Play (FFP) the ability to grow commercial revenues will be vital in order to increase funds available to spend on the playing squad to satisfy the 'break even requirement'. In order to do this, it is absolutely vital to secure commitment from key talent (both players and managers) to contribute regularly to the clubs commercial programmes.

The start of image rights structures in the UK

As top international players started to move to the Premier League in the 1990's, the use of image-rights contracts became increasingly popular. High profile players moving to England from a top European club might have an image rights structure in place already. Others didn't, but wanted one to put them on an equal footing with their overseas colleagues, and English players and agents also started to recognise the importance and value of the structures.

In the summer of 1995, Arsenal Football Club bought the Dutch International Denis Bergkamp and then England captain David Platt from Inter Milan and Sampdoria respectively. Both players had existing image rights companies and contracts. Arsenal entered into playing contracts with both players and image-rights contracts with the two

players' image rights companies in order to secure the players' commitment to the clubs commercial projects.

The UK tax authorities (first HMIT and then HMRC) later enquired into the image rights arrangements, and ultimately took the case to a Tribunal hearing. At the hearing in the case of "Sports Club vs HMIT", heard in 2000, it was ultimately held that:

"*On the facts, the promotional and consultancy agreements had an independent value. The players had had similar agreements with other clubs and it was clear that organisations were willing to pay for the right to use the players' images in association with their products, as provided for under the agreements. Other players of a similar calibre also had such arrangements. Moreover, it was not right to describe the payments as a 'smokescreen' for additional remuneration...payments were to be made under them [the image rights contracts] and they could have been sued upon them*"

It is clear therefore that in this case (to date still the

only case taken by HMRC in relation to image rights structures) the courts found in favour of the taxpayers, Platt and Bergkamp.

Subsequently HMRC argued, through correspondence, with various football clubs and image rights companies that the Premier League playing contract (clause 4) covers the services provided by players – that clubs already hold the right to utilise a players' image under this clause. This is clearly not the case, as clause 4.11 states:

4.11 Nothing in this clause 4 shall prevent the Club from entering into other arrangements additional or supplemental hereto or in variance hereof in relation to advertising marketing and/or promotional services with the Player or with or for all or some of the Club's players (including the Player) from time to time.

Therefore, where a players image rights have separately been transferred into a company, the services provided to clubs under an image rights contract would typically go way beyond what is expected of a player under the standard Premier League contract. Clause 4.11 gives the club and the player the right to enter into a separate deal in relation to the use of the player's image outside the standard playing contract, a right that is clearly a valuable one for club to contract with.

Image rights contracts have been and continue to give clubs the vital ability to require a player or manager to carry out activities over and above their contractual obligations. This in turn drives the continued success, increased brand

identification and crucially, the increased revenues of both the football clubs.

Key considerations in establishing the image rights structure

In order to set up an image rights company it must be clear that the individual has an image that has an independent value to sponsors. If the image has a value, and the player or manager wants to hold this in a separate entity in order to protect and separately manage those rights, the image should be valued and the rights transferred to a company. Capitals gains tax (CGT) will typically be due on the transfer of rights based on the market value of those rights (as it is unlikely that reliefs such as incorporation relief, which might allow any gain to be deferred, will be available). A tax charge will arise as the individual will dispose of the image rights held by them personally, so that it becomes an asset of a new company set up for that purpose.

Once the company is established and the rights transferred, then on any future transfer a club will need to negotiate a

deal between the player or manager for their performance duties. In addition, if they want access to the individual's image for commercial activities, the club will separately need to negotiate a deal with the image rights company.

It is now commonplace for players and managers to have existing image rights companies in place when they move to a new club. The initial valuation work is therefore unnecessary, and it is simply a matter of commercial negotiation between the club and the image rights company to agree a fair market rate for the image rights contract. This is often agreed at the same time as the individual's employment contract, which is why HMRC often seek to challenge such agreements as effectively "*disguised remuneration*". Consequently, ensuring that separate discussions take place and are clearly documented between a) a players advisors and the club in relation to an individual's employment contract, and b) between the image rights company and the club in relation to the image rights contract is crucial.

Often, the individual will not be UK domiciled for tax purposes and will have worked in a number of other countries before coming to the UK. Consequently, the individual's image rights may be more popular outside the UK than in the UK. In that scenario, the individual might establish two image rights companies; a UK resident company to manage UK rights, and a non-UK resident company to manage non-UK rights. There is often clearly a tax benefit for doing so, as it ensures that non-UK source income from personal commercial deals are not brought

into the UK tax net for non-domiciled individuals. However there are often also significant commercial benefits; the non-UK resident company often has access to or knowledge of non-UK markets and can therefore maximise the value of such rights. There is no reason why non-UK rights of a player or manager currently working in the UK would need to be managed in the UK.

Clubs which acquire the rights should monitor the benefit they receive from the image rights arrangements as they would any other commercial contract they enter into. Assessing the benefit of a player or manager on the clubs commercial activities can be difficult, but clubs should record the number of appearances the individuals make under the various commercial partnerships that the club has entered into. Prior to the renewal of such an agreement, a review of activities carried out and perceived commercial worth to the club should be undertaken to ensure that any new contracts reflect the benefit the club has obtained during the initial deal.

Out of control?

Over the ten years from the first image-rights arrangements, a significant number of image-rights contracts were entered into, and HMRC commenced numerous enquiries into the contracts entered into by many clubs. In some cases, such enquiries were justified as the amounts paid to image rights companies were excessive in the context of the players overall package and to the value to the clubs' commercial partners. Equally however, in many cases careful consideration had been given to such arrangements, and a prudent view had been taken of the value of the individual's image.

As set out above, there are clearly a number of factors to consider in entering into image rights agreements. From an individual perspective, the rights must be identified, valued (split between UK and non-UK if necessary) and transferred into an image rights company (or companies). From the clubs perspective, the benefit of using the players' image should continually be assessed and evaluated.

HMRC on the attack

As the use of image-rights structures became more widespread following the Sports Club case, it became clear that best practice was not being followed in many cases with image rights contracts being used as a tax efficient method of delivering part of an overall "*package*" to players.

HMRC therefore changed their angle of enquiry in this area and began opening enquiries into the overall tax affairs of many FA Premier League and Championship clubs, focusing primarily on the use of image rights contracts. During these enquiries HMRC demanded a huge amount of documentation and further information relating to the image rights arrangements that clubs had entered into. The enquiries required extensive time on behalf of both HMRC and the clubs in order to collate and process the information requested.

Ultimately, after a considerable amount of time, effort and commitment on both sides, HMRC offered the clubs a deal to settle historic image rights enquiries up to 31 December 2010. The deal was based on the clubs turnover, and required a partial settlement of income tax and National Insurance Contributions (NICs) which would have fallen due had the payments to image rights companies been treated as salary payments.

It is understood that almost all Premier League clubs settled with HMRC on this basis, while a number of Championship clubs reached similar agreements.

Settlement offers from HMRC accepted that a proportion of the payments to image-rights companies were bona fide payments to companies for the use of the image, but that a smaller proportion should be treated as salary, with outstanding Pay As You Earn (PAYE) and NICs paid to HMRC. In many cases, players had long since left the clubs, and the clubs were held liable for making good the shortfall to HMRC. In the majority of cases penalties were not charged.

Where are we now

HMRC's settlement offer was not binding on any club or future deal. From 1 January 2011 therefore any new contracts negotiated could still be subject to enquiry. However that on the basis of:

1. the Sports Club case;
2. HMRC agreeing the tax position of a number of players with image rights companies with no adjustment to the players tax returns;

3. the settlement agreement entered into between HMRC and clubs; and,
4. HMRC's negotiations with Premier Rugby to agree acceptable parameters for image rights payments for professional rugby union players as a proportion of an overall remuneration package;

HMRC recognise that, where structured properly, an image rights structure is an effective mechanism for a club to contract with a company to access an individual's image rights. If HMRC were certain that in general the agreements had no underlying commercial value, they would not have agreed to a settlement with the clubs.

If HMRC were able to successfully challenge an image-rights arrangement, they would seek to treat payments to the image rights company as salary payments. PAYE and NICs (employers and employees) would fall due as well as interest and penalties.

Conclusion

Where structured properly, with clear guidance followed by the player on setting up the structure, and the clubs on contracting with the image rights companies, that image-rights companies are an effective way of holding and monetising such rights. The verdict in the Sports Club case itself made clear that "*Moreover, it was not right to*

describe the payments as a "smokescreen" for additional remuneration...payments were to be made under them [the image rights contracts] and they [the image rights companies] could have been sued upon them".

Therefore despite HMRC's clear dissatisfaction with the abuse of such structures in the past, where it is appropriate to implement such an arrangement for a high-profile player going forward, such structures are still effective. However it is clear that they remain open to close scrutiny from HMRC, and therefore care should be taken to implement them correctly

Introduction of Sports Law Group

Sports Law Service Scope

1, Provide legal consulting service about the composition and structure of various sporting clubs;

2, Draft sponsorship agreements, commercial agreements and the license agreements;

3, Provide legal consulting service about traditional and emerging commercial cases;

4, Provide legal consulting service about events, sports organizations and management;

5, Provide legal advice of intellectual property protection in sports brands, especially for those that are related to sporting goods and clothing brands;

6, Provide legal opinions in signing contracts with athletes, their initiation and transfers;

7, Provide legal consulting service in the construction of sports venues, financing, development, and other related matters;

8, Solve disputes in the name of professional athletes, coaches and sports clubs, sports brokers, departments in charge of sporting industries and sports goods, and apparel manufacturers;

9, Deal with product liability disputes and intellectual property disputes on behalf of sporting goods and apparel makers;

10, Draft various and inter-connected contracts for sports teams, sports organizers and sponsors.

Service mode

1, Served as special counsel: each business will provide the whole process, comprehensive, in-depth special services, and related specific issues.

2, Served as perennial legal counsel: each business will provide daily legal consultation dealing with daily legal affairs.

Thank you very much for your reading,

Edited by Shanghai dacheng sports business group, the information is for reference only.

If you have any question, please contact us via email at zhang.bing@dachenglaw.com.

Internal documents, only for communication.