体育法律资讯

2014年2月刊（总第十期）　　主编：张冰　王金一

Sports Law Periodical　　2th, 2014

速览

【热点体育动态】

佩兰成为国足第八任外籍主帅 目标2018世界杯

中国足协2月28日举行新闻发布会，正式宣布法国籍教练阿兰•佩兰出任中国男足国家队主教练，佩兰成为国足第八任外籍主帅。国家体育总局副局长、中国足球协会主席蔡振华，主管国家队事务的中国足协副主席魏吉祥和佩兰共同出席了发布会。发布会上，佩兰表露了自己执教中国队的目标—进军2018年世界杯。

发布会上，足协相关负责人士拒绝透露合同期限、工资水平等细节。但魏吉祥表示，合同中明确了佩兰的考核标准，且他的

工资水平远远低于卡马乔。“目标也不单单是2018年世界杯，世界杯外制定了综合性的考核体系，包括国际排名的提高、亚洲杯赛的成绩、热身赛的胜率、队员在场上技战术的进步、进球率、整体防守，这些方面都是全面考量执教水平的科学体系。”魏吉祥说。

蔡振华:中国足球缺钱需支持 佩兰执教会听取里皮建议

发布会现场，蔡振华坦言确定中国足球目前由外教来带队，必须承认中国足球在世界上是落后的，需要世界足球强国，把他们的先进理念，职业专业化能够带到中国。同时，蔡振华也强调：“从中国足球的长远来看，中国足球的提高，不只是靠外教能改变，需要足球乃至全国关心自己的足球，外教只是其中的一个部分。”

蔡振华说：“更多的我认为是我们管理团队水平的提高，同时在国家队的建设上，对中国的青训体系积极地去研究，希望国家队，不管是国足还是女足，能够努力去拼搏，通过自己的行动打好每一场比赛，抓住每一个机会，去向对手学习，同时提高自己。”最后，蔡振华直言不讳：“中国足球资金不够，缺钱，很多媒体并不理解，球迷也不理解。把足球的事业搞好，特别是现代足球，需要做的很多，需要资金的保障，更多地让社会关注足球，支持中国足球。”

此外，对于里皮续约恒大蔡振华表示：“里皮是绝对的优秀教练，他是绝对的名帅，他能够续约对于中国足球肯定是好事。”同时，他也透露里皮给了国家队很多建议。“每次国家队比赛，我们都会让里皮给一些建议，他也会和我们的教练进行交流。现在阿兰·佩兰执教国家队，以后也肯定会和里皮交流的，也会听取一下里皮的建议。

佩兰，请带给我们一支成熟的国家队

作为新一任国家队主教练，佩兰的任务与没完成使命的卡马乔一样：第一，选出能代表中国最高水平的23名球员；其次，打造出一支技战术打法在现有水平上能够成熟的国家队；第三，做好更衣室的思想工作，确保他们比赛心理成熟，精神和求胜欲望更是要从披上国家队战袍那一天起，就不能动摇。

的确，佩兰不是名帅。比起两年半前上任的卡马乔，没执教过国家队的法国人从名气和履历上都下降了一个档次。但是，他曾在上世纪80年代辅助过名帅温格，之后执教过马赛、里昂两支欧洲劲旅，并在法甲联赛摸爬滚打多年，还一度在多梅内克之前成为法国队主帅的热门人选。由此看，对于目前亚洲二流的中国队来说，他的能力已经足够。

既然57岁的法国人配得上国足帅位，那就再次呼吁足协管理层以及至今仍不离不弃的球迷，请给佩兰足够的权力和耐心。

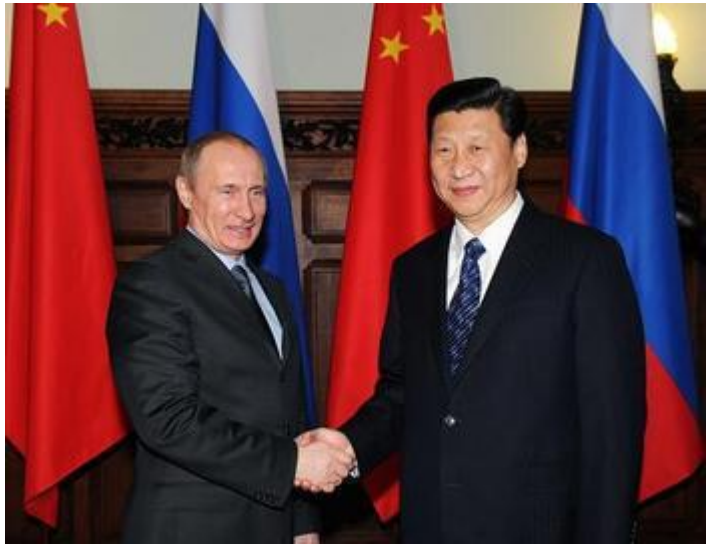
穆里尼奥曾说，“我不愿意当国家队主教练，那会让我闲得发慌”。这是因为在职业足球成为主流的今天，国家队在一个赛季大都是无事可做，只是在短暂的国际比赛日期间，备战、参加预选赛、大赛。这也再次提醒中国足球，职业联赛才是振兴一国足球之关键。

基于此，中国足协不能把佩兰当作救世主，而是应该继续艰巨的事业，打造覆盖中国各地的“足球网”，让每一个想踢球的人，特别是孩子，都能低成本、方便地走上球场。这张“大网”应该包括能让孩子们就近学球的社区俱乐部、能够接受先进足球教学的校园足球体系、培养一国精英人才的足球学院（来自职业俱乐部，也是俱乐部加入联赛的必要条件）、锻炼国家队球员的高水准职业联赛。

主教练只能干份内的事，他们要做的就是选出其中的佼佼者，以紧跟国际潮流的技战术和丰富的临场经验，打造出一个能激发出国脚们最大能量的团队，并要让这个团队特点鲜明、理念先进，保持心理成熟和斗志旺盛。这应该是我们将来评判佩兰工作的标准。

当然，成绩是硬指标。如果佩兰无法度过亚洲杯这个“中考”，那足协可能不会给他备战2018年世界杯的重任。但是，如果法国新帅能打造出一支成熟的国家队，让这支球队在现有水平上保持住稳定向上的积极面貌，且能赢得更衣室的支持和信任，也完成了切合实际的目标，那不妨给他多一点时间。毕竟，频繁地“从头再来”，对国家队建设有害无益。

足协谈习近平索契讲话：受到鞭策



新华网北京2月8日电　俄罗斯当地时间7日中午，中共中央总书记、国家主席、中央军委主席习近平在俄罗斯索契亲切看望了参加第二十二届冬季奥林匹克运动会的中国体育代表团。习近平在座谈期间的重要讲话在国内体育界人士中引起热烈反响。大家纷纷表示要为实现体育强国梦贡献自己的力量。

叱咤国际体坛的中国跳水队和其他中国竞技体育的强队一样，有着艰辛而令人振奋的奋斗历程。跳水队领队周继红说：“跳水前辈们曾经在农村水塘边的木桩上、大海边的自制木架子上、江边的大桥上翻腾跳跃，从对跳水一无所知，到逐渐摸索训练、比赛的规律和经验，一步步走向世界。这里的每一步都是几代跳水人锲而不舍的结果。这正是我们追求和倡导的跳水精神，也正是奥林匹克精神。”

国家射击队总教练王义夫作为运动员参加了六届奥运会，随后又作为射击队总教练参加了最近两届奥运会，对习近平总书记勉励

运动员践行自强不息、超越自我的奥林匹克精神颇有感触。他说，我从心底里非常盼望全社会都能有不以奖牌论英雄的体育观、奥运观，这有利于为从事竞技体育的运动员和教练员创造好的氛围，这也是体育强国的重要标志。

完成单人帆船不间断环球航行的职业航海者郭川同样是体育精神的杰出代表。他表示，在风浪中忍受孤独寂寞，克服意外挫折，让人学会了坚持、坚强。不仅是帆船，所有参与运动的人都要有长期忍受艰苦、接受磨砺的准备，这应该是一种共同的价值观和人生追求。

虽然从事的项目在国内都不算热门，但周继红和王义夫都希望通过他们的努力，让自己的项目为国人熟知，让国人骄傲；而郭川则希望通过对自己的一项项挑战传递一种“有梦想就要去做”的正能量，通过实现自己的梦想助推体育强国梦的实现。

国际排联终身名誉主席、中国体育界元老魏纪中表示，实现体育强国的一个重要指标是在大家普遍关注的项目上要有较高的水平。但在三大球项目上，我们还有一些差距，尤其是关注度最高的足球。要使足球真正振兴起来，必须从娃娃抓起，从学校抓起，不只是专门的足球学校，而是从更广泛的普通学校抓起。篮球和排球同样如此。

中国足协发言人表示，习近平总书记对足球工作的高度重视和亲切关怀，是对广大足球工作者莫大的鼓舞和鞭策。足球承载着亿万群众的感情和梦想，我们要正视与国际先进水平的差距，卧薪尝胆；要抓住足球运动面临的巨大发展契机，奋发图强；要从实现中国梦的高度认识肩负的使命，脚踏实地做好工作。

国家体育总局篮球运动管理中心副主任李金生表示，习近平总书记对三大球的重视和期望让我们很受鼓舞。三大球在中国具有广泛的群众基础，篮球在球迷心目中的分量不轻。而目前中国篮球尚处于低谷时期，我们将倍加努力，做好各项工作，打好“翻身仗”，奉献更多精彩的比赛给球迷。

国家体育总局群体司司长刘国永表示，群众体育工作者要认真学习贯彻习近平总书记关于“持之以恒开展群众体育”的讲话精神。

当前，一方面要切实加强政府职能转变，努力形成政府主导、部门协同、全社会共同参与的发展全民健身事业的工作格局；另一方面要继续深入抓好全民健身条例和全民健身计划的落实，构建覆盖城乡、比较完善的全民健身公共服务体系，让体育发展的成果更多地惠及广大百姓。

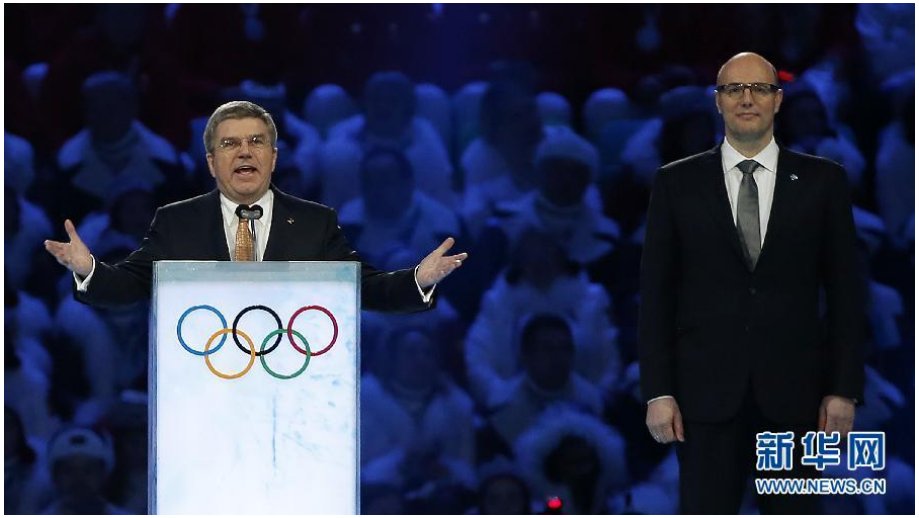
北京市东城区从北京成功申办2008年奥运会开始探索奥林匹克·体育生活化社区建设。来自那里的一线工作者吕德成表示，基层体育工作者一定要遵照习近平总书记提出的要求做好工作。他介绍说，北京市东城区将继续深化奥林匹克·体育生活化社区试点工作，在提高百姓体育健身意识、优化社会体育指导员结构、完善社区体育建设工作标准等方面实现突破。

在甘肃庆阳，山村里的体育爱好者正借着冬闲过年的机会，自发组织篮球赛，在山窝窝里办起了自己的“冬运会”。环县县委干部文璟说，实现体育强国梦，不仅要靠中国体育军团奋力拼搏，普通群众也不是旁观者。如果每个山村、每个社区都热心于草根篮球、民间世界杯，那么圆梦体育强国就为时不远。

参与了北京奥运会筹办和举办的原北京奥组委工作人员丁硕认为，从体育角度看，中国成为体育强国的标志，是夏季项目与冬季项目并进，竞技体育与群众体育并举，体育产业与城市软硬件建设实现良性互动，并且要有重大的体育标志性事件。

习近平在看望中国冬奥会体育代表团时指出，希望参加索契冬奥会的中国运动员充分展示中国的良好形象，为中国申办2022年冬奥会作出贡献。看到这一新闻后，张家口干部群众备受鼓舞。张家口市申奥办主任张春生表示，张家口将继续扎实做好申奥各项工作，与北京市一起，围绕冬奥会申办程序，按照国际奥委会规则和国际化要求，举全市之力、集全市之智，高标准高质量完成申奥的各项工作。

索契冬奥，给我们带来什么



索契冬奥和南京青奥是今年国际奥委会两大赛事，索契冬奥会后，就将进入奥运会的“南京时间”。索契冬奥给南京青奥带来什么启示？南京青奥组委执行主席杨卫泽刚从索契归来。他说，索契冬奥亮点不少，发人深思。南京青奥会将更加注重赛事和人文、教育的融合，更加注重体现青少年的活力，要办出一场人文氛围浓郁的精彩赛事。

国际奥委会主席对青奥筹备表示满意

索契，一个拥有37万人口的滨海小城，有现代化的比赛场地、崭新的公路、铁路，以及数百座整饬一新的建筑物，加上碧海、

蓝天、雪山交相辉映，还有街头耸立的著名作家奥斯特洛夫斯基的雕像，这都令在最“寒冷”冬季造访的游客感到如春的温暖。

在这之外，国际奥委会和国际体育人士对南京青奥筹办工作的肯定，更令杨卫泽一行备增暖意。当地时间2月6日中午，杨卫泽代表南京青奥组委向国际奥委会报告了筹办最新进展。与会人士对南京青奥会筹办给予高度评价。国际奥委会主席巴赫对南京青奥会筹备工作表示满意。国际奥委会委员布尔哈尼说，南京的陈述“精炼、到位，包含了委员们希望了解的几乎所有信息”；国际奥委会委员海博格、国际田径联合会秘书长加布里埃尔表示，南京的陈述“充分展示了组委会卓有成效的工作，让每个人都对南京青奥会更有信心”。

国际奥委会提出了一系列新想法，将把南京青奥会作为一块“试验田”。如，首次把高尔夫和橄榄球引入青奥会赛场；增加轮滑、滑板、攀岩、武术等表演项目；鼓励各客户群乘坐往返班车等。杨卫泽说，南京青奥组委会高度重视上述意见建议，正在进一步细化措施。南京青奥注重节俭，尽可能通过数字化沟通，减少印刷品，印刷品开支削减三分之一以上，还在考虑把兴奋剂检测仪放在青奥村以节省开支。

南京青奥更是教育和文化的盛会

索契冬奥会的主新闻中心摆放着套娃、茶炉、绘画，尽显民族风情；尽管面临安全威胁，但各场馆安检人员彬彬有礼，安检程序人性化，全城一派祥和宁静。

“这些场景令人印象深刻，深受启示。”杨卫泽说，青奥会不仅仅是体育赛事，更是一个教育的盛会、文化的盛宴。南京青奥村要精心设计各类文化、教育和休闲活动场所，让运动员在比赛之余有乐趣、有去处；其它场馆也要更加注重人文环境布置，提供人性化服务，真正让青少年感到快乐；在安保方面，工作要细到贴心，让每一个群体感受温馨宁静的安保服务。

开闭幕式要讲好中国故事

开闭幕式历来是国际大型体育赛事的“重头戏”和“闪光点”。索契冬奥的开幕式出现“五环变四环”的意外，杨卫泽说，当时就在现场，这个乌龙并没有影响整场仪式新颖与厚重兼具、欢乐与冷静并存的观感，亲临现场者有“冰火激情属于你”的激动。

杨卫泽说，“从索契冬奥会开幕式，我们领悟到，南京青奥会开闭幕式不仅要体现江苏和南京特点，更要站在国家层面，融合奥运基因、青春元素，体现中华文化、时代特征，讲好中国故事，传播好中国声音。”

国际奥委会强调，青年奥运会不是一个“迷你”版的奥运会，她以14-18岁青少年为主体。南京青奥筹备一直以年轻人为中心。国际奥委会新闻官凯瑟琳评价南京青奥的视频短片具有浓郁的青春特色，让人耳目一新。杨卫泽说，南京青奥会开幕式应该用青年人的思维、语言、方式来表达，以是否能让青少年感到高兴、惊喜、难忘为评价标准来办好开幕式。在各个环节，尽可能用年轻人自己的力量和创意，而非依赖于专业机构。

体育产业法律实务问题浅析

日益增长的体育广告、日趋成熟的运动员经济、包括软硬件的体育用品、城市对运动场馆需求的猛增、涉及金额极为庞大的大型运动会电视转播权交易，以及覆盖面极广的户外活动市场，还有体育彩票等等，这一切，都不但会成为商界不可忽视的领域，也会为国家的经济注入可观的贡献。中国体育产业已逐渐成为经济增长中的一个新亮点。伴随着 2008 年奥运会申办的成功，中国体育产业的发展将面临更多的机遇和更大的挑战。当今世界，体育产业的发展明显加快，已经成为国民经济新的增长点。作为第三产业的组成部分，加快体育产业的发展是建立社会主义市场经济体制的需要，符合我国经济结构战略性调整的要求，对于扩大内需、拉动经济增长，实现现代化建设发展目标，有着明显的推动作用。但这一产业毕竟是一个新兴产业，在立法方面还存在诸多不足，尤其是从事体育产业经营的各方主体将面临更多的市场机会和更加复杂的市场环境，产业发展面临较为复杂的法律问题。体育产业立法需要一个相当长的过程，不可能一蹴而就，但体育产业的发展日新月异，在现行法律环境下，如何解决产业发展中的法律问题具有深刻的现实意义。本文拟从法律实务的角度，对体育产业面临的法律实务问题加以探讨。

一、体育产业的概念及特征

产业是具有某些相同特征的经济活动的集合或系统。体育产业, 是指为社会提供体育产品的同一类经济活动的集合以及同类经济部门的总和。体育产品包括体育用品与体育服务两个部分。将体育产业作为一个经济部门来认识, 是基于它对国家经济发展所做贡献的特殊方式所提供的特殊产品, 即体育运动本身或与体育运动有关。

体育产业是国民经济产业体系中的组成部分。体育产业之所以与其它产业不同，就是因为根据社会分工, 体育产业生产了自身特定的体育产品和自身特定的体育服务，这种特定的产品和服务可以与其它产业的产品和服务区别开来。

二、体育产业的范围与分类

按体育产业现行管理体制进行分类，分为主体产业，相关产业和体办产业。主体产业，是指那些以体育资源为开发基础，直接进行的生产与经营活动。它是体育自身的经济功能和价值的发挥与体现。这类产业包括体育竞赛表演业、体育健身娱乐业、体育培训咨询业、体育资产经营业等。体育的相关产业, 是指那些以体育娱乐作为载体, 向消费者间接提供各种用品与服务的生产与经营活动。主要有体育用品、体育经纪与代理、体育新闻与媒介、体育广告、体育旅游、体育建筑等相关产业。体办产业是指体育行政部门或单位利用某些体育资源为弥补经费不足所进行的各种生产和经营活动。如体育场馆出租、餐饮、宾馆、航空票务代理等。

按体育产品种类进行分类，分为体育用品业，体育建筑业，体育设施业，运动饮料业，体育科研仪器业，体育服务业，体育竞赛表演业，体育健身活动业，体育空间服务业，体育培训教育业，体育信息咨询业，体育会展业，体育养殖业。

按消费者的参与动机进行分类，分为体育健身业：①健身指导业；②健美减肥业；③体育旅游业；④体育疗养业；⑤体育康复业等。休闲娱乐业：为闲暇消遣者提供运动性娱乐的服务行业。这类产业提供的是场地和器材设备以及维修和管理等服务, 包括：①运动游戏业，如各种球类游戏、车船运动等；②极限运动业, 如蹦极、攀岩、滑翔伞等；③棋牌活动业, 各种棋院、麻将馆等；④水上、冰雪活动业；⑤特殊娱乐业, 如枪械活动；⑥垂钓狩猎业。

按经营、集资方式进行分类，分为体育彩票业，体育赞助业，

体育广告业，体育节目电视转播业，体育经纪人业。

三、体育产业面临的主要法律实务问题

（一）、体育市场的主体及其类型

目前参与体育产业的主体主要包括企业、非企业组织。不同性质的组织和不同的组织形式适用不同的法律或由不同的机关登记，法律对内部的组织结构和对外的法律责任也有不同要求。体育市场主体方面的法律实务问题是如何选择主体的组织形式。

在我国，作为法律主体包括自然人、法人和其他组织。法人按其性质，可分为机关法人、事业法人、社会团体法人和企业法人。其他组织，包括非法人企业、社会团体等。

体育俱乐部自 19 世纪中叶在欧洲产生，经过 100 多年的发展，已经成为国际上普遍采用的开展体育活动的社会化组织方式。随着市场经济的发展，其中的职业俱乐部日益发展、壮大，在社会生活中扮演越来越重要的角色，成为人们参与、观赏乃至投资体育的重要方式。但在我国体育俱乐部，并不是法律上一种主体组织形式，而仅仅一是种称谓。体育俱乐部采取何种组织形式，现行法未做出规定。欧洲专业足球俱乐部创建伊始，考虑的是怎样少缴税，所以这些专业俱乐部采取的是合伙制形式。到了上个世纪 80 年代，欧洲赛场在竞赛中发生大规模骚乱，造成很多观众伤亡，竞赛的组织者被扣以巨额赔偿金，这个时候欧洲的俱乐部考虑的重点是，怎么样才能避免无限责任，把考虑的重点转到风险和责任的承担上。因此欧洲俱乐部纷纷转向有限责任公司、股份有限公司的形式。90 年代以后，职业体育俱乐部进一步发展，部分实力雄厚的俱乐部成为上市公司，完全按

照现代企业的形式进行运作和管理。仅英国目前就有 15 家上市体育俱乐部，包括曼彻斯特联队、纽卡斯尔、利兹、切尔西、阿斯顿维拉、南安普敦等。英国上市体育俱乐部已经通过股市筹集到 10 亿英镑的资金。

在我国，除中国足球协会在其《中国职业足球俱乐部的基本条件》中要求职业足球俱乐部必须是具有企业法人资格的公司外，其他各类各项目的体育俱乐部应以何种方式取得何种法律资格，我国现行的法律法规并无规定。这些俱乐部采取何种组织形式，应该由俱乐部的发起者或投资者根据设立目的自主选择。从事营利活动，应成立企业。原则上，个体经营、合伙组织、有限责任公司、股份有限公司等组织形式都可以选择。如果俱乐部仅仅考虑有限责任，可以设立有限责任公司；但是如果考虑投资规模，要想从证券市场上筹集资金、发行股票，就应该采取股份公司的形式。企业的设立应按相应的法律法规向工商机关进行登记。从事非营利活动，可以成立非企业单位。其名称可以是院、所、俱乐部、协会等。民办非企业单位应向民政机关进行登记。2000 年 11 月 10 日国家体育总局和国家民政部联合颁布《体育类民办非企业单位登记审查与管理暂行办法》，办法第六条规定，体育民办非企业单位可以从事以下业务：优育娱乐与休闲的技术指导、组织、服务；体育娱乐与休闲的技术指导、组织、服务；体育竞赛的表演、组织、服务；体育人才的培养与技术培训；其他体育活动。

（二）、体育市场准入问题

1996 年 7 月 1 日国家体委发布了“关于进一步加强体育经营活动管理的通知”（下称“通知”）。通知对开展体育经营活动的范围、开展方式、所需技术要求、活动场地技术标准、安全措施等方面都做出了规定。另外在中国开展体育经营活动还必须事先经过相应的地方各级体育行政部门同意；在中国境内举办全国性、国际性的体育经营活动，应当经国务院体育行政部门同意。因此从事体育经营活动涉及到从业条件、从业标准以及一系列的审批程序。1998 年 11 月 12 日北京市人民政府第 17 号令发布《北京市体育运动项目经营活动管理办法》。规定了从事体育运动项目经营活动应具备的条件，并设立了审批制度。将体育经营纳入了行政许可的范围。关于外资进入体育产业投资的限制与法律问题，我国 2004 年修订的“外商投资产业指导目录”对外资进入体育产业进行了不同的规定，大致可以分为两类：一类是不作限制的产业，外资经审批可以进入；另一类是必须采取合资或合作方式才能进入的，同时也需要进行审批。因此外资进入中国体育产业之前必须首先了解中国对具体投资项目的法律规定，然后再了解相关的投资审批程序。

（三）、体育产业经营管理中的法律问题

体育产业是靠市场化运作，产业主体应遵循市场经营的行为规则。市场经营中各主体的经营管理主要通过各种交易来实现，交易大体可分为两大类，一类是资本性质的交易，即以从事体育产业的公司等企业本身为交易对象的公司并购和重组交易；另一类是为经营需要所进行的各种交易。交易在法律上的实现形式是合同。合同是每一个市场主体都面临的法律问题，但体育产业，尤其是体育主体产业，由于其提供产品和服务的特殊性，存在一些特殊的合同，如运动员转会合同、赞助合同、赛事转播合同等。此外，体育产品的经营者给第三人造成损害的问题，是另一个重要的法律问题。下面分别就实务当中体育产业的经营管理中的特殊合同问题、体育产业中合同的特殊性和侵权责任问题加以讨论。

1、体育产业经营管理中的几个特殊合同问题

企业通常都可能涉及的合同，如买卖合同、租赁合同、劳动合同等，一般企业都可能会涉及，在此不作探讨。有一些合同属于体育产业特有的合同，如体育赞助合同、冠名合同、广告合同、中介合同、运动员转会合同、转播合同等，这些合同的法律关系较为复杂，又无法律法规明文规定，合同的性质如何、各方当事人的权利义务如何安排等均有必要详加研究。

（1）运动员转会合同。随着各种联赛职业化程度的不断加深，运动员的流动性也相应增加。比如足球、篮球和排球三大球的运动员转会市场就非常活跃。在这个过程中，尽管国家有关法律法规对运动员转会的资格和程序不断规范，但还是经常会出现俱乐部违反有关规定，弄虚作假，以虚假运动员签名和虚报运动员年收入的方法，抬高运动员转会费数额，影响运动员转会，从而谋取不正当利

益的情形。因此，为了保障运动员在转会过程中的合法权益，有必要在进行转会前做好相关的准备工作，确认转会的合法性和转会运动员的转会资格，厘清运动员在转会中享有的权利和承担的义务，依法保护运动员的利益，在法律规定的范围内合理安排各方收益。

（2）赛事推广相关合同。体育赛事商业化运作是体育产业市场化的具体表现。体育赛事潜在的巨大商业利益使得这种商业推广模式非常受欢迎。但是在赛事推广的过程中，各方主体的权利义务如果不能明确，必将影响整个赛事推广的效果，还可能损坏赛事主办方的利益。有关赛事转播权的出让、冠名权的出让、媒体资源的开发、赞助商的选择、观众座位的有偿使用，比赛场地周边的广告摊位的有偿使用等都涉及到复杂的多方法律关系。赛事推广中牵涉到的各种问题和可能出现的争议只有通过订立完善的合同明确各方的责任、权利和义务，通过专业的法律设计和商业角度的风险预估，才能使参与赛事推广的各方主体更好地维护自身利益，避免成本浪费，实现各自的商业目的。下面就赞助合同和转播权出让合同作简要分析。

赞助合同。赞助合同不属于合同法规定的有名合同，其他法律中也未见规定，属于无名合同。赞助合同虽然与赠与合同、买卖合同有些相似之处，但毕竟是不同性质的合同。赞助者并非无偿赠与，而要求有所回报。赞助者要求的回报又非直接的财物权利，或要求冠名或要求广告或媒体宣传或作为指定产品的供应商等。而赞助商所要求的权利有时不是被赞助者可以直接满足，需要有第三方参与，这需要主办方与第三方做出适当安排，这种安排在市场经营条件下，又需要以合同方式解决。因此围绕赞助合同，可能是一系列的合同关系。因此理顺各相关合同关系，明析各当事人的权利义务对于各方利益就显得十分重要。另外，赞助合同不是法律规定的典型合同，一旦合同约定有疏漏、模糊或矛盾，在法律适用方面，除适用合同法总则的原则规定外，没有具体规定可供遵循。故，合同当事人的权利义务更加依赖由当事人在合同中订明。

转播权出让合同。电视转播权是指体育组织或赛会主办单位举办体育比赛表演时，许可他人进行电视现场直播、转播、录像并从中获取报酬的权利。电视转播权的性质，目前尚无定论。但依电视转播的操作模式分析，其一、电视转播权不同于我国《著作权法》规定的广播电视组织权，后者是指电台、电视台对自己编辑、加工的广播电视节目所拥有的专有权利。而电视转播权是体育比赛或体育竞技表演的表演者和组织者由于向社会提供体育比赛这种服务所带来的专有权利。其二，电视转播权不同于一般文艺作品的表演者权，后者是由于对享有著作权的作品进行表演而产生的一种邻接权，而体育比赛并没有表演已有的作品，或者说运动员经过赛事组织者的安排，其本身就是在创作“作品”，但这种作品又与著作权法所规定的作品有本质区别，它具有过程不可复制（没有任何一场比赛的内容是完全相同的）、结果不可预料、体力与智力结合而成。其三，电视台并不能自动获得转播权，而必须经过体育比赛主办者的许可，经过一定方式才能取得。其四，电视转播权仅仅是赛事组织者所拥有的财产权当中的一项权利，赛事组织者还有其他权利，如在赛场内发布广告、出售门票等。由此可见，1、电视转播权不是电视转播者所拥有的权利，而是其相对人所拥有的权利。2、电视转播权既不属于著作权法的邻接权，又不同于专利权和商标权，是一种特殊的知识产权。目前我国法律尚未对电视转播权做出规定，因此对该项权利的保护只能依靠合同。合同是当事人意思自治的产物，只要合同不违反法律的禁止性或强制性规定，法律即对合同予以保护。以合同保护电视转播权的前提是体育比赛的主办者与转播人签订转播合同，通过签订转播合同，明确当事人的权利和义务。

（3）运动员广告合同。主要涉及运动员（指在役运动员）广告活动的法律限制与权利保护问题。国家体育委员会在 1996 年发布了《加强在役运动员从事广告等经营活动管理的通知》（下称“通知”）。通知对在役运动员的广告经营活动做出了规定，规范了在役运动员利用自身名义和声誉参与广告活动并获取一定报酬的有关事项。该通知对在役运动员开展广告或商业推广活动进行了比较严格的限制，比如必须得到批准，必须不影响训练和比赛，必须由合法的中介机构代理，所得必须纳税等等。此外，在役运动员的无形资产的归属问题也在通知中做了规定：在役运动员的无形资产属国家所有。因此，运动员进行自身知名度和形象的商业开发必须符合法律法规的规定，其开发形式应是经体育委员会认可的经营形式。所以，运动员从事以上活动或与运动员签订广告合同进行必要法律审查。

（4）特许经营合同。特许经营就是指通过签订合同，特许人将有权授予他人使用的商标、商号、经营模式等经营资源，授予被特许人使用；被特许人按照合同约定在统一经营体系下从事经营活动，并向特许人支付特许经营费的一种商业模式。这是一种较为复杂的合同。商务部令 2004 第 25 号颁布了商业特许经营管理办法，办法对特许人应具备的条件以及特许人和被特许人的权利、义务做出了规范。北京市体育局在《北京体育奥运行动规划体育产业专项规划》中提出，“推广北京市保龄球协会成功的运作经验，组织成立北京市航空、游泳、滑雪、健身等项目协会，促进各项目协会实体化，引进美国 Gold’s Gym （健身俱乐部连锁经营）的经营方式和理念，促进我市已成规模的青鸟、浩沙、中体倍力等健身俱乐部的连锁化经营，并逐步在滑雪、保龄球、网球、游泳等项目推广。”特许经营是连锁经营的一种常用模式，是一种拓展业务、销售产品和服务的营业方法。特许经营作为现代商业营销形式，不论是发达国家还是发展中国家的实践都充分证明，特许经营是特许人利用知名品牌运作公司、分销商品与服务的一种行之有效的方法。从法律角度观察，特特经营实质上是一种权利的许可，这些权利包括与经营有关的商标权、专利权、商业秘密等。通过特许经营，组建一个以特许人为中心、以加盟店为网络的营销体系。通过特许网络，特许人获得一个稳定的营销通道。特许人和受许人之间是一种既相互

独立、又貌似一体的紧密合作关系，从权利的许可到合作的每一个环节，都必须建立起严密的保障机制。而这一机制又区别于企业内部的管理制度，必须以合同的形式将特许人和受许人的权利确定下来，并加以严格执行，才能保障特许网的稳定、健康发展，实现特许人和受许人获得长期获利的目的。特许经营的特点，决定了它在具体运用法律方面的综合性和复杂性。

2、与体育产业有关的侵权责任问题

考虑到参加体育竞赛都有风险，因此，体育竞赛当中，运动员相互之间所发生的损害，原则上是免责的，其法律依据就是，自甘冒险。但运动员的伤害应该由竞赛组织者承担责任。竞赛组织者转嫁风险的手段是为运动员投保，把损害赔偿转嫁给保险公司。对观众造成的损害，如果说轻微损害，比如说足球一下飞到观众席，把观众的眼镜砸掉了，也可以用“自甘冒险”来解决。但是严重损害，如欧洲曾经发生过的看台坍塌，导致很多观众严重伤害，以及赛场中发生骚乱造成的伤害，这些伤害应该由竞赛组织者承担，无论竞赛组织者有没有过错。竞赛组织者均应承担责任，再通过参加保险把它转嫁给保险公司。

总之，体育产业的法律实务问题相当复杂，本文仅仅讨论了一些常见的、主要的问题。当前体育产业主体并无法律限制，市场准入存在行证许可。基于体育主导产业提供服务和产品的特殊性，存在一些特殊法律问题，如运动员转会、体育赞助、比赛电视转播等，实践中的以合同方式解决。体育进行产业化经营，引入连锁经营的商业模式，在国内尚属新的尝试，但应遵循这种商业模式的基本规律，在连锁参与人之间架构完善的合同关系。

【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

2th, 2014 Editor: Zhang Bing Jenny Wang

Preview

Hotspot in Sports News

Barcelona pay €13.5M in Neymar tax case

Barcelona have paid 13.5 million euros (11.1 million pounds) to the Spanish treasury after they were charged last week with tax fraud in the signing of Brazil forward Neymar.

The Spanish champions reiterated that they did not consider they had committed any offence and said they had made the payment due to a "possible difference of interpretation" about how much they owed after signing Neymar in the close season.

Club president Josep Bartomeu said Barca would fight to defend themselves "because we are in the right" and expressed surprise that the case had blown up so quickly.

Barca members, or "socios", who own the Catalan club, had no reason to be concerned, he told a news conference

after a board meeting on Monday.

"It is very strange," he said. *"Everything is going very fast and we do not know why. The Barca members should be satisfied with what we have explained, it is the truth."*

The exact amount transferred to the public coffers was 13,550,830.56 euros, Barca said on their website (www.fcbarcelona.es), meaning the club have now paid just short of 100 million euros to secure the player's services.

The aim of the payment was *"to cover any potential interpretation made concerning the contracts signed in the transfer process for Neymar, although we remain convinced that the original tax payment was in line with our fiscal obligations,"* Barca said.

"As we have done so far, the club will continue to give maximum collaboration to the law courts in order to clarify

the facts of the case," they added.

"The board again insists that in relation to this signing, the club has scrupulously fulfilled its fiscal obligations in line with its awareness at the time of the contracts and agreements signed in good faith."

It was not immediately clear whether the payment would mean the fraud charges laid by a Madrid court would be dropped.

Barcelona were forced on to the defensive over the deal after a member filed a complaint against Bartomeu's predecessor, Sandro Rosell, alleging misappropriation of funds.

Rosell, who denied any wrongdoing, stepped down saying he wanted to protect the club's image. But when details of Neymar's signing came to light the judge overseeing the case granted the public prosecutor's request to lay charges for tax fraud.

After Rosell's exit, Barca admitted Neymar had cost 86.2 million euros, including payments to the player and his family, and not 57.1 million as they originally said.

Together with Monday's payment to the treasury, Neymar has cost the club almost as much as the record 100 million euros arch-rivals Real Madrid paid for Wales winger, Gareth Bale, last year.

Bernie Ecclestone acquitted but called a non “reliable or truthful witness” by Judge

Despite a ruling damaging to his already tarnished image, Formula One boss Bernie Ecclestone won a multimillion-dollar case at London's High Court on Thursday relating to the sale of F1 in 2005.

The case was dismissed but the judge said it had nevertheless been a corrupt deal and questioned Ecclestone's honesty.

"Even ... making allowances for the lapse of time and Mr. Ecclestone's age, I am afraid that I find it impossible to regard him as a reliable or truthful witness," Judge Guy Newey said.

A former F1 shareholder, German media company Constantin Medien, sued Ecclestone and other defendants for up to $144 million, claiming F1 was undervalued at the time of the sale to investment group CVC Capital Partners.

The 83-year-old Ecclestone was accused of entering into a "corrupt agreement" with German banker Gerhard Gribkowsky to facilitate the sale of Formula One Group to a buyer chosen by him.

The High Court said the deal was corrupt, but ruled that Constantin Medien did not lose out as a result.

"No loss to Constantin has been shown to have been caused by the corrupt arrangement with Dr. Gribkowsky," the judge said in his conclusions. *"That fact is fatal to the claim."*

Ecclestone's camp played down the judge's decision, arguing that his ruling was made after hearing only partial evidence.

"The judge has expressed his opinion that on the balance of probabilities there was an unlawful agreement made with Dr. Gribkowsky and that payments that Mr. Ecclestone made for Dr. Gribkowsky's benefit were a bribe, but this view is not underpinned by reliable evidence," read a statement on behalf of Ecclestone.

"The source of these allegations is Dr. Gribkowsky himself, who did not give evidence in this case. The judge expressly recognised there was clearly considerable force in the point that there had been no opportunity for Mr. Ecclestone's (and the other defendants') legal team to cross examine important witnesses, including Dr. Gribkowsky."

During the trial, which ran from October to December last year, Constantin Medien's lawyers said that payments totaling about 27 million pounds ($45 million) were made to Gribkowsky at the instigation of Ecclestone.

Gribkowsky, who was in charge of selling German bank BayernLB's 47 percent stake in F1 to CVC, has already been found guilty of corruption, tax evasion and breach of trust and is serving an 8 -year prison sentence. Ecclestone acknowledged during Gribkowsky's trial that he made the payment to avoid being reported by the

banker to authorities over his tax affairs.

"The payments were a bribe," the judge said. *"They were made because Mr. Ecclestone had entered into a corrupt agreement with Dr. Gribkowsky in May 2005 under which Dr. Gribkowsky was to be rewarded for facilitating the sale of BLB's shares in the Formula One Group to a buyer acceptable to Mr. Ecclestone."*

Constantin said it would appeal the decision.

"The judge ruled against Constantin essentially on technical grounds including extremely complicated questions of German law which is the governing law in the case and Constantin will be appealing those findings," said lawyer Keith Oliver, head of commercial fraud litigation at Peters and Peters Solicitors.

Ecclestone is also facing trial in Germany. He is charged with bribery and incitement to breach of trust connected with the payment to Gribkowsky. The trial will begin on April 24 and is set to run until Sept. 16.

"Mr. Ecclestone welcomes that he will have the opportunity to defend these bribery allegations properly in

proceedings due to begin in Munich in April, when the relevant witnesses can be compelled to attend and be cross-examined by his lawyers. He is confident that he will be acquitted," Ecclestone's camp added.

Bribery convictions can result in prison sentences ranging from three months to 10 years in Germany.

Ecclestone has stepped down as a member of F1's holding company board of directors pending the outcome of the trial but continues to run the series.

Sochi 2014: From a predicted disaster to an unpredicted success

Russia’s President and government have played an important role in the preparations for and also in the successful hosting of the Sochi 2014 Winter Olympics, IOC President Thomas Bach said.

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"Mr. Putin has played a very important role in the preparations for the Sochi Olympics – and not only President Putin but also the Russian government. Had it not been this way, we would have not been sitting here now. Mr. Putin has always had great respect for the Olympic Charter, and I can't say that he has ever overstepped the borders during the Olympic Games period or made any illegitimate steps," Bach told a press conference.

IOC President Thomas Bach said it is necessary to ask all those who criticized the Olympic Games in Sochi whether they are ready to change their opinion on that score.

"I remember my first conference, and I said then: "Let's wait and see."

"Now we can see that everything was good and that everybody is satisfied with the results and with Russia's hosting the Sochi Olympics, and I'm sure that after the participants and guests return home, they will spread the

message that these were excellent Games and bring their criticism to a halt," Bach told newsmen.

"The Sochi 2014 Winter Olympics will be an example for the future. You must always go to the new regions of your country to new cities, and thus, give a boost to sports – among other things, to the winter sport. The secret of success is not the amount of investments and not the construction of new sports facilities. The Games must show you and your country, and if this attempt proves a success, the Olympic Games will be successful as well," Bach added.

The Olympic Games in Sochi have been held at the highest level, Head of the International Olympic Committee (IOC) Thomas Bach said, adding that athletes had filed in no complaints at all. The Sochi 2014 Winter Olympic Games will be completed on February 23.

"Athletes have filed in no complaints. They liked the sports venues and were impressed by the fact that the Olympic

villages were situated in close vicinity of the sports facilities were the competitions were held," Thomas Bach told newsmen. "And as regards the logistics factor, these Games were excellent and to a certain extent, unique because athletes could walk to the cafeterias, where they had their breakfast and needed only several minutes to get to the place where they underwent their training sessions," Bach added.

IOC President Thomas Bach also said that he had been impressed by Russia's successes and by the progress the Russian athlete had made over the past four years, after the Vancouver Olympics. "It is not a surprise. We have seen such a thing earlier – two years ago in London. However, what has really impressed me is not the fact that Russia has won so many medals but the fact that it has allowed others to have something too," Thomas Bach joked.

International Sportslaw Practice

How effective will the laws be at preventing 2014 FIFA World Cup tickets scams?

Since Brazil was confirmed as hosts for the 2014 FIFA World Cup on 1 October 2007, there have been a wide variety of issues that have faced the nation, the organisers and FIFA.

Those that have grabbed the most headlines in the past 12 months or so, particularly following the hosting of the Confederations Cup in Brazil in the summer of 2013 (a trial run for the main event), have been the anti-government protests and whether or not the stadiums will be safely completed on time for this years' tournament. However, as with all major global sporting events, ticketing is another issue that FIFA has sought to address well in advance of the tournament. There are a variety of "*ticket crimes*" or "*ticket scams*" that are associated with major events. Indeed,

there is a significant portion of the official website for the 2014 World Cup dedicated to ticketing. Despite a number of good and important measures having been put in place by FIFA, and other parties such as the government in Brazil, scams have been uncovered recently in both the British and Australian press. Last week one UK newspaper claimed that the ticketing fraud surrounding the World Cup could run to £15 million in Britain alone.

Before taking a brief look at the Brazilian State laws in place to deal with ticketing issues, it is perhaps worth looking at the recent past, to the London 2012 Olympic Games, and how ticketing fraud was dealt with there. The Metropolitan Police Service in London set up a dedicated team called 'Operation Podium' to deal with serious and organised crime affecting the Olympic and Paralympic Games economy. A large part of that team's work was targeting those engaged in "*ticket crime*". At the conclusion of their three-year mandate they produced a "*Problem Profile*" document in February 2013. They broke ticket crime down into three distinct areas:

- Ticket fraud ('TF');
- Unauthorised ticket resellers (i.e. unauthorised secondary sales) ('UTR'); and

- Counterfeit tickets.

At the time the Olympics were awarded to the UK, there was no specific legislation preventing "*ticket crime*". However the International Olympic Committee ('IOC') insisted the UK government pass both civil and criminal legislation for "*ticket crimes*" relating to the Games. This was to be found in section 31 of the London Olympic and Paralympic Games Act 2006. There was some controversy as to whether it was appropriate to criminalise "*ticket crimes*". Similar laws have been put in place for the upcoming Glasgow 2014 Commonwealth Games.

The Problem Paper outlined a number of key findings, including:

- A lack of legislation and regulation for "*ticket crimes*";
- "*Ticket crime*" having links to other serious and organised crime;
- Difficulty in suspending fraudulent and unauthorised ticket websites due to a lack of cooperation from many website hosts and registrars, who are somewhat legally ambiguous;
- The public being unable to distinguish between authorised and fraudulent ticket websites.

What seems to have caught the attention of the British media in relation to 2014 World Cup tickets has been what the Problem Paper calls "*ticket fraud*", whereby organised criminal networks create legitimate looking websites, take payment for tickets and then fail to supply them.

So what do the sports and State laws in place for World Cup 2014 seek to do to tackle "*ticket fraud*"? Under the section of the 2014 FIFA World Cup official website, "*Unauthorised Ticket Sales*", it helpfully sets out the legal framework in Brazil relating to all "*ticket crimes*". Where we are talking about TF rather than UTR, it is Article 16 of the "*FIFA World Cup General Law*" that applies (the passing of which was a requirement upon being awarded the event), as anyone who sells, offers, exposes for sale, negotiates, deviates or transfers tickets to the World Cup is subject to civil sanctions and criminal penalties.

UTR and secondary resale markets for World Cup tickets are covered firstly by Article 41-F of the so-called

"*Brazilian Fan Statute*" (Law No. 10,671/2003) which states that the resale of a sporting ticket, at a price superior to the face value on the ticket, is prohibited and subject to civil sanctions and possible criminal penalties. Secondly FIFA has a specific "*Transfer & Resale Policy*". Now "*unauthorised*" is very much different to "*illegal*". In FIFA terms, there is only one "*authorised*" ticket resale platform, and that is run through their officially appointed agent MATCH Services via the FIFA website. There are of course a number of other ticket resale businesses operating worldwide such as Viagogo, eBay's StubHub etc. However, although undoubtedly the FIFA policy is aimed more at the traditional illegal ticket touts/UTRs, they have sought to keep a very tight control on resale and have thereby also excluded legal resellers.

Although most consumers, and sports rights holders, would view this as a positive, despite somewhat distorting the market in its restrictive nature, there are a couple of elements of this policy which may limit its effectiveness in lessening the consumer harm caused by "*ticket crimes*". These two issues are stated in the 2014 FIFA World Cup Brazil Ticketing Fan Guide. Under the section headed "*Can I re-sell my tickets?*" it says:

"*You can either choose to re-sell all or part of your order. If you only choose to sell part of your order, please bear in mind that you will not be able to sell the main applicant's ticket. But be aware that a ticket returned for resale will only be made available for resale if the category for the match is sold out at the time when the ticket is returned or at a later stage. There is no guarantee that a ticket submitted for resale will actually be resold.*"

Here are the problems:

1. The main applicant cannot re-sell their ticket(s); and
2. The resale will only be made if the pricing category for the particular match is sold out.

These two potentially significant caveats to FIFA's aforementioned strict ticket policies (if the empty seats at the 2010 World Cup in South Africa are anything to go by) undoubtedly will lead people to try and find other "*unauthorised*" ways to resell legitimately purchased tickets if they can't attend for an exceptional personal

circumstance for example.

Ultimately, the success of any ticket policy will come down to the policing and regulation at the actual World Cup venues, and whether, as is stated in the "*General Terms and Conditions for the Use of Tickets*" on the FIFA website, the personalisation of each ticket with the identification of the Ticket Applicant is actually checked. I can say from personal experience that this certainly was not the case in South Africa. The seriousness and success of enforcement requires FIFA's close cooperation with the Brazilian national law enforcement and local authorities for each stadium.

FIFA and MATCH have made it clear in a recent press release that they have already sought to bring numerous claims against either TFs or UTRs in both Brazil and in the country where the alleged ticket scammers are operating from. However, as the Metropolitan Police said in their Problem Paper, not only in the UK but also in other jurisdictions, there is likely to be problems in prosecuting scammers due to the Key Findings stated earlier.

Therefore, it would be better for supporters who are looking to attend the tournament to, of course, buy tickets only through the official channels listed on the FIFA website; but secondly, to heed advice to be found both on the UK government website (for instance) and in the Appendix to the Problem Paper.

Despite FIFA's best (although somewhat flawed) efforts there are likely to be a number of issues with ticketing for the 2014 World Cup that may lead to some interesting and practically difficult cases being brought for prosecution both before, during and after the tournament.

Bullying in professional sports: Adapting to an evolving legal landscape and mitgating risk

In this article Michael Gregg, evaluates the legal risks of bullying in professional sports using the recent Miami Dolphins scandal. Michael suggests some key points that employers in professional sports should take to mitigate

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the risk.

In light of recent well-publicized events involving Miami Dolphins football players, bullying in the workplace, including professional sports, has become a hot button topic. Such events have caused many to reevaluate the need for proactive measures to address bullying in the workplace.

Hazing and/or bullying in professional sports is not a new phenomenon. In a recent Associated Press article, former National Football League (NFL) quarterback Joe Montana said bullying in the NFL was common when he played. Hazing or bullying in professional sports typically involves activities such as rookies carrying the equipment of veteran players, being duct-taped to goalposts, paying for expensive team dinners, getting unflattering haircuts, wearing silly costumes, singing and entertaining senior players on demand, or being dumped in a cold tub. As bullying is not expressly prohibited by the collective bargaining agreements (CBA) of the major sports leagues, professional sports teams may be well served to adopt rules prohibiting hazing and bullying and to implement a complaint mechanism to address such conduct.

The collective bargaining agreements

The CBA of the major sports leagues do not expressly prohibit bullying or hazing. Article 42 of the NFL's CBA allows teams to suspend players for a maximum of four weeks without pay for "*conduct detrimental to [the] club.*" While the term "*conduct detrimental to [the] club" is not defined in the CBA, it arguably includes bullying or hazing. In addition, the mandated player contracts that must be used for all players under the CBA provides that the NFL Commissioner may fine, suspend, or terminate a player's contract if such player is guilty of* "conduct reasonably judged by the League Commissioner to be detrimental to the League or professional football. "*It is unclear whether hazing or bullying would be considered detrimental to the "integrity of the game.*"

Similarly, Article XII Major League Baseball's CBA provides that players "*may be disciplined for just cause for conduct that is materially detrimental or materially prejudicial to the best interests of Baseball including, but not*

limited to, engaging in conduct in violation of federal, state or local law."

Article VI of the National Basketball Association's CBA gives teams the right to terminate a player's contract if the player fails to "*conform his personal conduct to standards of good citizenship, good moral character (defined here to mean not engaging in acts of moral turpitude, whether or not such acts would constitute a crime), and good sportsmanship...*" While the bases for terminating a player's contract under this provision appear broad, it does not provide a strong incentive for teams to terminate a player's contract for hazing or bullying because, before terminating a player's contract under this provision, any other team may claim assignment of the player's contract.

Finally, Article 18 of the National Hockey League's CBA provides that the Commissioner may suspend, fine, or cancel a player's contract if the player is guilty of conduct that is "*detrimental to or against the welfare of the League or the game of hockey...*"

These broadly defined provisions arguably provide the leagues and teams vast discretion with respect to prohibited player conduct.

Federal state and the law

Although the CBAs discussed above do not expressly prohibit bullying, teams and players may be legally liable for such conduct. Title VII of the Civil Rights Act of 1964 makes it unlawful to "*discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.*" If mistreated employees who have been subject to abusive treatment at work can show that the behavior was motivated by a protected category such as race or gender, such behavior may be unlawful under Title VII and similar state laws. Even if the hazing or bullying does not involve a protected category, tort claims such as intentional infliction of emotional distress or negligent supervision may be available to an aggrieved employee. For example, in 2008, the Indiana Supreme Court recognized that workplace bullying could

be considered a form of intentional infliction of emotional distress. **Raess v. Doescher**, 883 N.E.2d 790 (Ind. 2008). What conduct can give rise to a tort claim will depend on the factual circumstances and the legal standard in the relevant jurisdiction. A federal district court recently noted, for example, that "*a work environment in which coworkers or supervisors criticize, taunt, or harass another employee, does not present the egregious conduct required for an [intentional infliction of emotional distress] claim.*" **Murdock v. L.A. Fitness International**, LLC, 2012 U.S. Dist. LEXIS 154478 (D. Minn. 2012).

Since 2003, twenty five states have introduced bills to prohibit bullying in the workplace irrespective of whether the bullying involves a legally protected category. To date, none of the bills have passed. In 2013, the following eleven states introduced workplace anti-bullying statutes: New York, Massachusetts, Florida, Hawaii, New Mexico, Wisconsin, West Virginia, Pennsylvania, New Jersey, Vermont, and New Hampshire.

If passed, the workplace anti-bullying bills would generally make it unlawful to subject an employee to "*abusive*

conduct" or an "*abusive work environment*" and provide for a range of damages including reinstatement, medical expenses, front pay, back pay, emotional distress, and punitive damages, among other forms of relief. The bills also allow for "*removal of the offending party from the complainant's work environment.*"

Under the proposed statutes, abusive conduct generally includes "*acts or omissions that a reasonable person would find hostile*" such as making derogatory remarks, engaging in conduct that is "*threatening, intimidating or humiliating,*" and undermining an employee's work performance, among other things. Because abusive conduct includes *"omissions,*" shunning or ignoring another employee may constitute abusive conduct under the proposed bills. In fact, the Hawaii bill references "*social isolation*" as a form of bullying. The New Mexico bill would make bullying a crime.

Passage of workplace bullying legislation could have a significant impact on employer responsibility for employee behavior. Employers could also face challenges policing such behavior as some states have recently passed laws restricting employer access to social media. For example, as of January 1, 2013, California law prohibits employers

from requiring that employees disclose their social media password or ID, access personal social media in the employer's presence, or divulge personal social media content. Workplace anti-bullying legislation may also infringe on federal and state constitutional rights of free speech. For example, certain news and entertainment positions enjoy First Amendment protection and the anti-bullying statutes may violate the free speech rights of such employees. Of the eleven states that introduced workplace bullying bills in 2013, only West Virginia provides that expression protected by the First Amendment, including freedom of speech or religion, may not be considered abusive conduct.

Should the same legal standard apply to professional sports?

While the dynamics of a professional sports locker room are undeniably different from a corporate office setting, it is not clear whether the proposed anti-bullying bills would apply different standards in different workplace settings. A 2006 decision by the California Supreme Court suggests that otherwise inappropriate conduct may be acceptable

depending on the workplace setting. In **Lyle v. Warner Brothers Television Productions**, 38 Cal.4th 264 (2006), the plaintiff worked as a writers' assistant on the television show Friends and claimed that the writers' use of sexually coarse and vulgar language, including recounting their own sexual experiences, constituted sexual harassment. In ruling that the comments and conduct did not constitute sexual harassment, the California Supreme Court said the nature of the writers' work to generate scripts for an adult-oriented comedy show featuring sexual themes was relevant to that determination. The United States Supreme Court has also said different standards apply to different settings. In **Oncale v. Sundowner Offshore Services**, Inc., 523 U.S. 75, 81-82 (1998), the Supreme Court noted that whether conduct constitutes harassment "*requires careful consideration of the social context in which particular behavior occurs and is experienced by its target. A professional football player's working environment is not severely or pervasively abusive, for example, if the coach smacks him on the buttocks as he heads onto the field-even if the same behavior would reasonably be experienced as abusive by the coach's secretary (male or female) back at the office. The real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of*

the words used or the physical acts performed."

As these cases illustrate, determining what conduct would be sufficiently abusive to constitute unlawful bullying in professional sports may depend on a "*constellation of surrounding circumstances*" and thus will not always be clear. For example, it is not unreasonable to question whether or not trash talking, taunting, or belittling another player during a game or at practice could constitute abusive conduct under the proposed anti-bullying bills. Would superfluous "*in your face slam dunks*" be considered abusive conduct? How about belittling another player's ability on national television? Because part of sports involves intimidating the opponent, the line between bullying and fierce competition is not always easy to define.

Actions teams can take to mitigate risk

While the CBAs of the four major sports leagues do not expressly prohibit hazing or bullying, they do allow teams

to discipline players for conduct that is detrimental to the team or the sport. Accordingly, teams may mitigate risk by adopting a code of conduct outside of the CBAs that expressly prohibits hazing or bullying and warns players that such conduct may result in disciplinary action. While many may view hazing in sports as a rite of passage, professional sports teams may have a hard time justifying hazing when the United States military prohibits hazing and the stakes in the military are much higher than losing a game. The Marines' anti-hazing policy provides that "*no Marine ... may engage in hazing or consent to acts of hazing being committed upon them.*" See Marine Corps Order 1700.28. Teams may also mitigate risk by implementing a complaint procedure for reporting hazing or bullying and providing training to players and coaches on their bullying and hazing policies. While practical jokes will always be a part of any work environment, professional sports or otherwise, communicating and enforcing a policy of professionalism and respect may also facilitate team building. Prohibiting hazing and bullying may also help foster a workplace of inclusiveness at a time when many view the culture of professional sports leagues as outmoded and in need of change.

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.