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【张冰律师成为国家体育总局体育经纪人培训师】

2013 年3 月22 日，本所张冰律师成为国家体育总局体育经纪人培训师。为提高体育经纪人职业资格培训质量，同时配合2013 年体育经纪人（三级）全国统考工作的开展，今年国家体育总局通过考核确定了新的体育经纪人培训师，其凭借在体育法律和经纪领域的理论和实践经验，成功获取培训师资格，将在今后的全国统考中主讲体育法律实务和体育经纪实务这两门核心课程。

本次资格的获取，源于张冰律师在过去一年中，在赛车、篮球和足球领域的体育法律和经纪实务中的出色业绩。张冰律师是著名方程式赛车手朱戴维、朱胡安等的经纪人，是中国篮球协会注册的32 位篮球经纪人之一，亦是著名足球员杜威、郑龙、顾超、沈龙元等的经纪人。张冰律师由于在2012-2013 赛季中国足球超级联赛(CSL)冬季转会期中的专业表现，成为广州恒大、山东鲁能、青岛中能、上海东亚和湖南湘涛等5 家足球俱乐部的法律和经纪事务顾问。同时，其还是中国男子篮球职业联赛(CBA)球队浙江稠州银行男篮队的经纪事务顾问、上海久事国际赛事管理有限公司（上海赛车场）的赛事顾问。

在今年的体育法律和经纪业务拓展中，在中国体育的特殊体制和背景之下，除赛车、篮球和足球三大领域之外，张冰律师还将向高尔夫、网球、拳击、美式橄榄球四大领域拓展，并将致力于协助中国足球协会解决其规则与FIFA（国际足联）法律规则间的冲突问题，协助中国篮球协会解决其规则与FIBA（国际篮联）法律规则间的冲突问题。

【热点体育动态】

○国际“体育法庭”悄然“落沪”

2012是体育大年，5月，国际体育仲裁院（CAS）上海听证中心试运行；11月，正式揭牌。这是继纽约、悉尼之后全球第三个CAS的分支机构。中国体育在稳定于金牌榜高位区的同时，矛盾亦驶于深水区。远有佟文案、凤铝案，近有李永波团队因消极比赛被逐出奥运会，申花欠薪阿内尔卡、德罗巴等等，无不在CAS的管辖权内。

CAS --- 国际体育界最重要的争端解决机构

CAS被习惯地称为“体育法庭”，实际上是一个仲裁庭。

它是国际体育界最重要的争端解决机构。在国际奥委会第7任主席萨马兰奇的提议下，1984年6月成立于瑞士洛桑。

从其与国际奥委会同处一城的地理位置，可窥见这两个组织的同根关系，最初，前者是作为后者的隶属机构而存在和运作的。

直到1994年，为了回应对其独立性的质疑，CAS在组织上、财政上从国际奥委会独立出来，并有权裁决国际奥委会的决定，CAS由新成立的国际体育仲裁理事会（ICAS）给予行政及财务管理。

1996年，从亚特兰大奥运会开始，CAS在主办地设临时仲裁庭，以快速处理奥运会期间产生的体育纠纷。2008年7月31日至8月24日，CAS在北京奥运会上也设立了临时仲裁庭，共仲裁了9个案件，包括运动员参赛资格案件6件、比赛结果案件3件，没有出现兴奋剂案件。

但是，中国人对CAS的参与之前就开始了。中国运动员利用CAS解决体育纠纷的第一案是，1998年4名上海籍游泳运动员不服国际泳联因兴奋剂违规对其禁赛两年的处罚而上诉至CAS，败诉收场给了国人不小打击。

CAS中国籍仲裁员第一人是中国外交学院法商系教授苏明忠，他于1996年被选任，并参与了几起案件的仲裁。

2008年，中国籍仲裁员刘驰、法籍华人仲裁员陶景洲入选北京奥运会临时仲裁庭12人名单。目前，CAS已有248名仲裁员，其中6名中国籍仲裁员。

中国需要针对体育领域的专业性解决机制

北京奥运会后，在中国设立CAS分支机构的讨论在学界热烈地进行着。分别有学者撰文认为在北京、上海落地的时机已经成熟。远溯至1983年，CAS尚处在酝酿期，中国就有学者对其在学术期刊上进行了介绍。1995年中国颁布《体育法》设立体育仲裁条款之后，进一步引发了对体育仲裁问题的关注。近10年来，职业化与举国体制交织下的中国体育，纠纷大量涌现，迫切需要一个针对体育领域的专业性解决机制。

1996年，CAS已在洛桑之外成立了两个常设办事处：美国的丹佛（1999年12月迁至纽约）和澳大利亚的悉尼。这其中的背景有二：一是结构性的，1996年之前，CAS的当事人还主要来自欧洲。从法理方面考虑，CAS分部的地理位置十分重要：CAS 分部必须使欧洲之外的当事人更多地参与到CAS的仲裁中来，分部拥有受理申请及启动仲裁程序的职能。

二是数量性的，根据国际体育仲裁员吴玮提供的数据，从1986年到1990年，CAS每年审理5个案例；1991年到1997年，每年接收15个案例；到了1998年，这一数字陡然增到42个；从1998年起到2003年，每年受案数量又从42个增长到109个；这个增长过程在继续，2004年到2007年，每年270个案例左右；从2008年迄今，CAS每年要处理350个案例，几乎日结一案。

而这个案件数量与结构之背景，是走向全球化的职业体育。作为职业化程度的指标，至1992年，国际单项体育运动联合会的数目剧增。这个时间点与1992年6月中国足协的“红山口会议”相吻合，这是中国足球职业化的发端，中国体育改革在足球上破题。

足球全球化的一个重要现象是球员作为“脚力劳动者”在世界范围内流动，也即是在21世纪的第一个十年，巴亚诺、加斯科因、

阿尔贝茨、佩特科维奇等国际级巨星纷纷登陆甲A或者中超，并烘托出了一个“人傻钱多速来”的烧钱年代，他们也带来了劳资纠纷，佩特科维奇即是通过上诉CAS，从申花获得了100万美元的赔偿。

足球只是中国体育全球化景观中的一隅。

另一方面，CAS在全球布点的步伐也显著加快了。在上海听证中心试运营之后两个月，开罗、阿布扎比两个分支机构的开设也已提上议事日程。

上海政法学院体育法学研究中心主任谭小勇教授向记者分析，CAS这种急遽的扩张冲动，一是开拓市场、二是全球平衡需要，使得各洲都有据点。

中国体育的全球化进程与CAS的全球化扩张就这样相遇了。

4年进程:

大趋势的必然性还需与个体努力的偶然性相遇。

广州、北京、武汉，以及韩国首尔、日本东京和马来西亚吉隆坡都有意争取CAS亚洲分部落户。

2008年奥运会前，正在申请CAS仲裁员身份的上海邦信阳律师事务所律师吴玮萌生了一个念头：有没有可能为上海争取这个名额。

2008年6月13日至15日，亚洲体育学国际研讨会暨体育法学研究会年会在西安召开，该年会由上海浦东新区社会发展局及邦信阳共同出资赞助，吴玮特地邀请了CAS的部分官员。6月16日，会议结束翌日，这部分CAS官员即被接至上海。上海市体育局首次表达了在上海设立CAS分支机构的愿望。

2010年3月，时隔将近两年，又是一次学术会议国际体育仲裁学术研讨会，吴玮终于将CAS秘书长马修邀至上海，15日上午11点，在上海体育大厦三楼宴会厅，上海市体育局领导会见了马修，正式递交了上海申办CAS分支机构的申请书。

2010年底，申请工作正式启动，进入与CAS总部频繁邮件交流的阶段，ICAS大会亦就设立上海听证中心一事进行审议。

2011年7月20日，吴玮收到马修紧急邮件，请求在世游赛期间，协助CAS在上海政法学院完成一起关于兴奋剂案的听证会。这场临时考核，是上海的过关考核，也推动了申请进程。

9月7日，上海体育局向CAS建议将上海听证中心设立于浦东源深体育中心，11月3日，将源深体育中心的情况介绍、设计平面图及照片发送给马修，同时出资聘请欧洲合作律师卢卡斯带书面文件赴瑞士向马修做当面介绍。

11月16日，上午8点45分，距离CAS瑞士洛桑年会召开还有15分钟，吴玮收到马修口头回复，ICAS已经正式批准了申请，吴玮通过手机短信向上海市体育局汇报了这个振奋人心的消息，9点10分，ICAS正式宣布了这个决定。

12月14日，上海市副市长赵雯率代表团至洛桑完成签约仪式。

从第一次提出申请愿望至此，历经4年。

成功实践为争议画上暂时的句号

在上海听证中心的申请过程中亦有异议。

最大的异议是中国的司法主权会否受到损害，目前还没有外国仲裁机构在我国设立常设性分支机构的先例，国家也没有这方面的

立法规定。

我国于1986年12月正式加入《纽约公约》，其宗旨是推进仲裁裁决在全球范围内的承认与执行。但是，我国在加入公约时作了互惠保留和商事保留声明，即我国只承认和执行在该公约对我国生效后另一缔约国领土内作成的仲裁裁决，且解决的争议依中国法律属于契约或非契约的民商事关系的仲裁裁决。

裁决程序若在上海进行，就不符合互惠保留条款；同时，鉴于商事保留声明，导致了CAS常设分支机构做出的与商事无关的体育仲裁裁决也无法通过《纽约公约》获得我国现行法律的承认。

一些学者针对这两点进行了化解，综合起来就是：根据CAS的规定，由CAS在奥运会主办国或奥运会临时仲裁机构或常设机构做出的裁决被认为是瑞士国籍，已被许多国家认可，属于“外国仲裁裁决”；大多数体育活动具有民间性和商业性，体育纠纷也被视为广义的“民商事纠纷”，这两款保留条款都不应阻止CAS仲裁裁决在中国的承认与执行。

“CAS的权威性正是通过不干涉国家的司法主权、不干涉各体育组织的内部事务而建立起来的。”吴玮表示。CAS不排斥国家的司法管辖权；在一般情况下，CAS对作为被申请人的体育组织的内部规则会给予充分的尊重，必须先用尽体育组织的内部救济程序。

对于CAS的裁决不服，仍然可以向瑞士联邦法庭提起上诉，但仅限于有限的理由，如CAS缺乏管辖权，瑞士联邦法庭像对待外国仲裁裁决一样，只对CAS裁决进行程序上的监督，而对于实体问题并不审查，这就保证了瑞士的法律不会管到中国。

北京奥运会上CAS临时仲裁庭的成功实践为争议画上了一个暂时的句号。结合着自身的发展战略及在地国的国情，CAS也在与各国的互动中调适着自己的尺度。

○“全球体育”催热国际体育法研究

当今世界，仅仅局限于一国范围内的体育活动已经越来越少，体育的国际化程度越来越高。以国际奥委会为首的国际体育组织大力推动了国际体育的发展，经济全球化也成为国际体育发展的有力推手，国际体育营销客观上要求体育能跨越国界，从而达到其营销世界、拓展全球市场的经济目的。

跨国体育关系已经成为一种非常重要的国际社会关系，国际体育法正是在这样的背景下应运而生，成为国际法体系中的一部分。

作为一门新兴学科，国际体育法学是在国际法学与体育学的交叉基础上产生的。事实上，国际法与国际体育在很多方面是内在契合的，两者都以促进世界和平与发展为理念。和平作为国际法最基本的价值，一直以来为国际法所追求；国际体育运动特别是奥林匹克运动也一直将追求世界和平作为目标之一，期望通过体育所具有的强大凝聚力将全世界不同的国家、肤色、种族和宗教信仰的人聚集到一起，抛开差异，和平共处，同场竞技。《奥林匹克宪章》明确规定，奥林匹克运动的目的是“通过体育运动在增进相互了解和促进友谊的精神方面教育青年，从而有助于建立一个美好的更加和平的世界”。奥林匹克休战的惯例，则是国际体育活动追求和平理念的具体体现。国际法与国际体育也都重视发展，发展权作为一项人权已经获得国际社会的普遍承认，国际法在保障各个国家、民族和个人的发展方面起着重要的作用，国际体育则主要利用体育这一桥梁和手段，通过推动个人的发展，来达到促进整个人类发展的目的。

2005年，胡锦涛主席提出了和谐世界的构想，即在政治上平等民主，经济上互利合作，文化上交流共进，通过国与国之间的友好合作，共同应对全球性的传统与非传统安全挑战，实现世界的持久和平与共同发展。构建和谐世界，国际法和国际体育都起着不可替代的作用。国际法对于和谐世界的构建具有基础性的保障作用，国际体育则是增强各国人民之间友谊的重要途径，是促进世界和谐的桥梁与纽带，“相互理解、友谊长久、团结一致和公平竞争”的奥林匹克精神更是和谐世界的生动写照。国际法学与体育学的交叉是现代体育发展的必然趋势，国际体育发展客观上需要国际法的调整，同时，国际法深入到国际体育领域也拓展了国际法学的范围。

国际体育法学虽然处于初创阶段，但其学科体系已经基本成形，主要包括三个部分：国际体育法学基础理论、国际体育实体法和国际体育程序法。国际体育法学基础理论探讨的是国际体育法学作为一门独立学科所具有的独特性，包括其概念、性质、范围、法律渊源等内容；国际体育实体法主要侧重于国际体育关系中的一些具有实体权利义务的法律问题；国际体育程序法的研究对象是国际体育纠纷的解决方式。目前，国际体育界已经发展了一套相对独立的纠纷解决体系，这对国际体育法的发展大有裨益。特别是国际体育仲裁院的仲裁实践，对国际体育法的发展起到了重要的推动作用。

与其他法律部门不同，国际体育法的渊源有其独特性。由于国际体育的相对自治性，国际体育组织内部规则在国际体育运动中占有非常重要的地位，甚至在某种程度上对国际体育法的发展有着决定性的影响。因此，国际体育法学将这些国际体育内部规则放在重要地位。比如《奥林匹克宪章》对于奥林匹克运动的所有参与者来说具有至高无上的权威，虽然不是法律也不是国际条约，但由于能实质性地影响到国际体育参与者的权利和义务，因此其是一种“软法”，也是国际体育法的渊源。

国际体育法学的基本原则是指能够体现国际体育法的本质和基本特征，并能贯穿其中的法律原则。我们认为，国际体育法学的基

本原则至少有以下两个：保障国际体育公平竞争秩序和促进国际体育发展。公平是体育与法律所共享的价值，也是它们的共同追求，国际体育只有在公平的竞赛环境中才能发挥其作用，法律是保障公平的重要工具之一，用强制力的手段保证公平的实现，国际体育活动的公平竞争秩序，不仅需要体育道德来维护，也需要国际体育法来进行保障。国际体育法还应该通过其保障作用促进国际体育的发展，当今国际社会正在走向国际法治，国际体育活动的发展和进步应该遵循相应的法律规则，在一定法律的框架内根据一定的规则前进。

不可否认，国际体育法学发展成为一门成熟的学科还有很长的路要走，仍然存在一些尚待克服的理论难题。首先是国际体育法的法律性问题。目前我们所说的国际体育法在传统法律意义上很难说它们是法律，更多的则是体育规则。即使我们从国际法法律性的论证路径来考虑，也很难对之证明。因此，我们采取“硬法”和“软法”结合这样一个角度对国际体育法进行定义和研究。其次是如何准确地界定国际体育法的范围。很难有一个清晰的判断标准用来区分哪些问题属于国际体育法的研究范围，哪些问题属于其他传统国际法的研究范围。也就是说，国际体育法研究是否有自己独特的研究对象和研究范围？当然，我们对此问题的回答是肯定的，但如何进行更清晰地界定，仍有待研究。最后，国际体育法目前还很难说存在一个理论内核，国际体育法体系的构建很可能就是对一些与国际体育相关法律问题研究的简单集合，表现松散。

作为一门新兴交叉学科，国际体育法学仍然处于不断发展完善过程之中。我们相信，在体育全球化进程中，国际体育法学将愈发显现出其独特的价值，作为一门崭新的学科，其前景光明。

○反赌扫黑 重树正气——论中国足球健康科学发展

中国足坛掀起最新一轮反赌扫黑浪潮，已有两年时间。随着2011年12月19日在辽宁铁岭开庭审理，广受关注的中国足球腐败案的涉案人员将接受法律的严正审判。

此次庭审是一个象征，象征着我们国家整肃足坛、依法打击足球假、赌、黑的决心，象征着体育界大力整顿赛风赛纪、重塑足坛

良好行业风气的气魄。此次庭审更带来希望，我们期待着迎来一个健康、干净、规范、兴旺的中国足球发展新阶段。

足球被称为世界第一运动，普及面广，影响力大，在世界范围内拥有深厚的社会基础和数量庞大的球迷，也深受我国广大群众喜爱。然而，长期以来，中国足球的整体水平和竞争能力得不到实质性提高，远远不能满足人民群众的期盼。足球的现状与中国体育的辉煌形成巨大反差，成为我们实现体育大国向体育强国迈进目标的一个突出短板。

尤其令人痛心的是，近些年来，假赌黑的毒瘤已经严重侵蚀了中国足球的肌体，严重阻碍了中国足球的健康发展，严重损害了中国体育的良好形象，严重伤害了人民群众的感情，教训极其深刻。这些腐败问题的产生，原因是多方面的，比如管理体制不顺、制度不完善、监督不到位等，还有一个重要原因就是足球行业正气不足，思想道德教育失衡、缺位，导致见利忘义、拜金主义、虚假比赛、徇私枉法等歪风邪气盛行。痛定思痛，中国足球必须痛下决心，重树正气，重塑形象，努力实现健康发展。

体育运动以其积极、健康、公正的内涵，代表了进步的价值观，成为大众精神寄托和道德追求的特殊载体。那些优秀的体育人物和动人的体育故事，感染、浸润着人们的道德情怀。经过几十年几代人艰苦卓绝的努力和奋斗，新中国体育在为祖国和人民赢得巨大荣誉的同时，形成了光荣的中华体育精神。“胸怀祖国，放眼世界”、“人生能有几回搏”、“冲出亚洲，走向世界”、“团结起来，振兴中华”……无不喊出时代的最强音。而以“志行风格”为杰出代表，中国足球也曾有过感动世

人的浩然正气，也曾树立起品德与技术完美结合的标杆楷模！

但是也要看到，在社会发展的过程中，体育领域并非一片净土，形形色色的社会丑恶现象和不良风气也会渗透到体育领域。而那些违背体育精神、违背社会公德甚至触犯国家法律的行为，不仅败坏了体育行业的风气，而且极大地伤害了广大体育爱好者对体育事业的满腔热情。中国足球的腐败问题再次警醒我们，务必警钟长鸣，以高度的社会责任感，抓好体育道德作风建设，构建反腐倡廉的长效机制，坚决纠正体育行业的不正之风，夯实体育事业健康发展的思想道德根基，并在净化社会风气、倡导社会主义核心价值观的过程中，承担起体育人应有的责任。

审判中国足坛蛀虫的法槌已经敲响。反腐扫黑、铲除毒瘤，让中国足球健康发展，是广大群众的热切希望，也是社会各界为之努力的共同目标。振兴中国足球，任重道远，只要我们知耻后勇，弘扬正气，坚定不移地努力下去，中国足球一定会迎来风清气正、蓬勃向上的春天！

日前，司法部门对足球腐败涉案人员进行了审理。国家体育总局局长刘鹏就此接受了中国体育报记者采访，对案件审理及足球事业发展进行了阐述。

刘鹏表示，近日，司法部门对足球腐败涉案人员进行了审理，这是在足球领域开展打赌扫黑专项行动以来取得的重大成果，体育总局对此坚决支持。

他说，足球腐败问题严重伤害了人民群众的感情，败坏了社会风气，玷污了体育形象，是影响足球事业健康发展的一颗毒瘤。刘鹏介绍，体育总局从2009年

开始大力推动司法介入，和公安部门密切合作，坚决打击和惩治足球领域的腐败犯罪行为。成立了以总局主要负责同志为组长的体育总局足球工作领导小组，加强对足球工作的领导。及时调整了足球管理中心的领导班子和中层干部，派出工作组进驻足球管理中心开展教育整顿工作，并督导建立和完善各项规章制度。

为深刻吸取教训，推动足球事业走上健康发展之路，体育总局部署全国体育系统以案为鉴，在全国足球领域对从业人员进行了教育整顿，强化行业自律、廉洁从业意识和规章制度建设。为进一步完善健全工作机制，建立了由体育总局牵头，公安、教育、人力资源和社会保障、税务、工商等多个部门参加的足球联赛赛风赛纪综合治理联席会议，建立了协调机制。

中国足球必须痛定思痛，在困难和低谷中重新起步，共谋发展。两年多来，体育总局立足当前，着眼长远，采取多项措施推动足球工作健康有序进展。在全国布局定点，大力开展校园足球活动，重建青少年足球竞赛体系。改革了全运会、城运会足球竞赛制度。历经两年的反复研讨修改，于日前联合公安部等6部委，下发了《中国足球协会职业联赛俱乐部准入条件和审查办法》，进一步强化了对职业联赛的规范和监管。启动了职业足球联赛管理运行体系的改革，按照坚决稳妥、循序渐进、分步实施的原则，职业联赛管办分离的改革工作正稳妥起步。组织开展了全面系统的足球调研，为研究制定足球中长期发展规划做准备。通过向社会发表共同承诺声明、进行联赛年度表彰等，调动职业俱乐部的主人翁意识和参与管理的积极性主动性。

与此同时，体育总局还以足球腐败案件为鉴，举一反三，连续两年在全系统内深入开展了以“反腐倡廉、奋发敬业”为主题的创先争优活动，以及赛风赛纪和反兴奋剂专项治理工作，强化对重点领域和关键环节的监督，认真贯彻党风廉政建设责任制，扎实推进预防和惩治腐败体系建设。

刘鹏认为，中国足球正在艰难中恢复和重新起步，必须直面现实，下大决心，花大力气，切切实实地从青少年足球抓起，夯实中

国足球的基础，中国足球才可能走上良性发展，这决定了我国足球改革发展的长期性。足球运动的自身发展规律与社会很多方面相关联，推动其发展就必然涉及许多复杂的因素和矛盾，这决定了我国足球改革发展的复杂性。虽然打击惩治足球领域的腐败犯罪行为取得了重大成果，但要巩固成果、形成预防和惩治腐败的长效机制，还有大量的工作要作，这决定了我国足球改革发展的艰巨性。他表示，体育总局有决心和信心，在社会各界包括广大球迷、新闻媒体的理解、关心和支持下，和各有关方面紧密配合、齐抓共管，一以贯之地、锲而不舍地长期抓下去，相信中国足球一定会有光明的未来。

【国际体育法若干基本问题】

国际体育法是人类社会发展到一定阶段的产物，是一门新兴的法学分支，其调整对象就是含有国际或者跨国或者涉外因素的体育关系；其渊源应该包括国际条约、国际习惯或者国际惯例、体育组织规范、国内法以及一般法律原则；其主体包括政府间国际组织、运动员、国际和国内体育组织、国家政府和其他从事体育运动的自然人和法人；它是一个包括国际法和国内法在内的特殊法律部门。

作为一个法律部门或者分支，国际体育法是人类社会发展到一定阶段的产物，是随着国际体育运动的日益频繁而发展起来的，反过来讲世界范围内的体育运动的日益普及促进了国际体育法的发展。国际体育法规定的是管理和控制跨国体育活动的政治、经济和社会后果并具有与众不同的特点的一系列规范、原则和程序体系的总和, 或者讲其是调整、控制和解决运动员、国际体育组织以及政府之间的体育争议和相关活动的规则，是从比较普遍的私法、公法体制中汲取的规范和程序。尽管如此，但其仍然是在不断发展的，并且在既定的包括仲裁机构和国内法院在内的组织结构中起作用。至于其基本问题，与其他法律部门一样，国际体育法的基本问题也可以从其调整对象和范围、渊源、主体以及性质等几个方面加以阐述。

○国际体育法的调整对象和范围

任何法律部门都有自己的调整对象，或者说任何法律都要规定所要调整的某种社会关系。作为法律的一个分支的国际体育法当然也不能例外，也有自己的调整对象。作者认为，国际体育法的调整对象就是含有国际或者跨国或者涉外因素的体育关系。

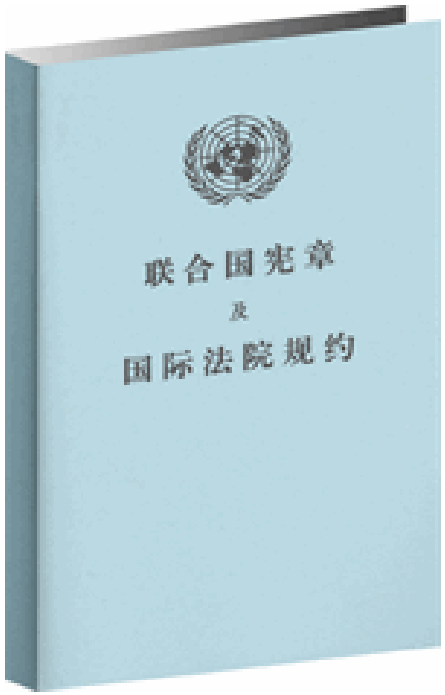
法律关系是根据法律规定而结成的各种权利和义务关系，是由主体、客体和内容这三要素组成的。而国际体育法律关系就是指其主体、客体和内容这三要素至少有一个或者一个以上的因素与国外有联系的体育法律关系，而且这种体育法律关系有可能涉及公法的范围(譬如对使用兴奋剂的国际控制、涉及运动员人权的规定、球场暴力等)，也有可能涉及私法关系(例如体育赞助、运动员跨国转会等)。在主体为涉外因素时，作为体育法律关系的主体一方或双方当事人为外国的自然人或者法人(有时也可能是外国国家、国际组织或者无国籍人)；在客体为涉外因素时，作为体育法律关系的标的(包括物、行为和知识产权等)位于国外；在内容为涉外因素时，产生、变更或者消灭体育法律关系的法律事实发生在国外。譬如，一个中国的运动员参加某国际单项体育联合会在美国主办的体育比赛，对中国来讲，在这一关系中有两个涉外因素，即该法律关系的另一主体在国外以及该体育法律关系产生在国外。

应该指出的是，国际体育法的调整对象国际体育关系既包括平等主体之间的体育关系，譬如因为体育赞助、体育知识产权的转让、体育保险等而产生的关系以及因为国家之间签订涉及体育运动的协定而发生的关系等，也包括具有管理或者服从关系的不平等主体之间的体育关系，如因体育比赛中的违规行为而得到相应处罚所引起的体育关系。而从另一个角度来讲，体育关系既有属于私法范围内的体育关系，譬如因体育赞助、体育保险等行为而产生的关系，也有应当属于公法调整的体育关系，如因种族歧视、球场暴力、体育组织的法律地位的争议等行为而引起的关系就要有公法来调整。因此可以讲国际体育法是一个包括有关法理学、公法和私法、实体法和程序法、国际法和国内法在内的复杂法律部门，在这些法律内都可以找到调整国际体育关系的法律规范。

譬如当前由于职业体育运动的全球化以及国际化的发展，在国外从事职业体育运动的球员和教练员等越来越多，由此而产生的许多法律问题是需要国际体育法来调整的。仅仅在争议的解决部分就包括以下问题：一是由于职业球员和教练员工作的跨国性而引起的法律争议应由哪一国的法院(当事人国籍所属国的法院还是工作地国家的法院)来行使管辖权？二是解决争议时应适用什么样的法律规范？三是外国法院的判决能否在本国得到承认和执行？回答这些问题需要考虑国际私法上的有关规定，尤其是集中体现在国际民事争议的解决部分。

○国际体育法的渊源

法律的渊源一般是指法律规范的创制及其表现形式，故国际体育法的渊源即指国际体育法规范的存在及其表现形式。不过国际体育法作为国际法的分支，其法律渊源也可以从《国际法院规约》第 38 条关于国际法院适用法律的规定中得到某些启示。《国际法院规约》第 38 条规定国际法的渊源主要为国际条约、国际习惯、一般法律原则等。根据该条规定，作为国际法的一个新的部门的国际体育法的渊源似乎也应该包括涉及体育运动的国际条约、国际习惯或者国际惯例以及“文明国家所承认的一般法律原则。”只是到目前为止，有关体育运动的国际条约不是太多，且主要表现在有关国际法的基本原则、兴奋剂、人权、仲裁裁决的承认与执行等有限的几个方面，这与体育运动在全球范围内的发展是不相适应的；而承认国际习惯或者国际惯例为国际体育法渊源的前提则是这些规范得到了国际社会以及体育界的认可而具有法律拘束力；至于一般法律原则，国际体育仲裁院在其裁决中则多次提到了该术语，主要是指国际社会普遍承认的一些法律原则，譬如罪刑法定原则、遇有歧义时有利于弱方当事人的原则等。



从国际法方面来讲，作为国际法的一个新的分支，一些国际法的基本原则在体育运动中也是必须遵守的，譬如各国平等、不歧视、反对种族主义等。国际体育法的渊源首先应当是国际组织尤其是联合国及其各专门机构通过的涉及体育运动的国际公约和相关文件。联合国及其专门机构通过的涉及体育运动的文件主要包括《反对在体育运动中使用兴奋剂国际公约》(2005)、《反对在体育运动中实施种族隔离的国际公约》(1985)、《保护奥林匹克标志的内罗毕公约》(1981)、《国际体育运动宪章》(1978)以及《承认与执行外国仲裁裁决公约》(1958)等。欧盟在体育运动领域也通过了《反对球场暴力的国际公约》、《反兴奋剂公约》、《欧洲体育运动宪章》以及涉及体育运动的大量决议。这些条约、公约等应当是国际体育法的主要渊源。

不过需要注意的是，由于国际体育法也调整一部分私法范围内的体育关系，譬如前述的奥运转播权合同，故除了上述国际公法方面的渊源外，有关国家国内制定的调整体育关系的法律和国家之间协议制定的国际条约也是国际体育法的渊源，包括国内的有关调整体育关系的仲裁法、民商法、诉讼法等以及国际性的涉及合同、仲裁等的条约。

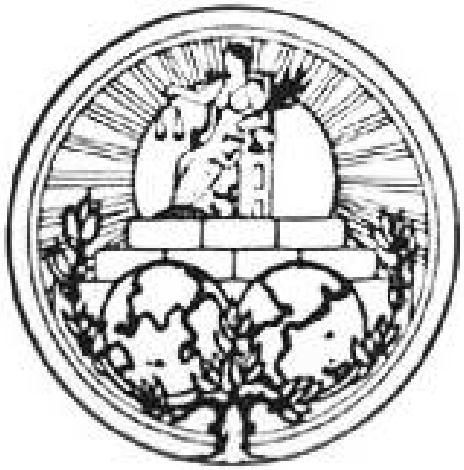
除了上述之外，国际体育组织也制定了大量的规范性文件，尤其是国际奥委会。作为一个国际性的法人团体，国际奥委会的活动必须以不违背国际法基本原则为前提，否则就将遭到国际社会的谴责与制裁。 国际法中效力最广泛、最有影响的法律渊源为《联合国宪章》，国际法的基本原则比较集中地体现在该宪章条文之中。另外，联合国还曾先后通过一系列直接规定国际法基本原则的重要决议和宣言，如 1970 年 10 月 24 日《关于各国依联合国宪章建立友好关系及合作之国际法原则宣言》，规定了“各国主权平等”，“使用和平方法解决国际争端”，“各国人民享有平等权利及自决权”等原则。此外，“和平共处五项原则”也被公认为是处理当代国际关系的基本原则，也是国际法的基本准则。《奥林匹克宪章》中规定的奥林匹克运动的基本原则，同国际法的基本原则相一致，如第六条规定奥林匹克运动的宗旨是通过开展没有任何形式的歧视并按照互相理解、友谊、团结和公平比赛的奥林匹克精神的体育活动来教育青年，从而为建立一个和平而更美好的世界作出贡献。在实践当中，国家奥委会也一直致力于国际和平运动，以利于促进民族平等，消除种族歧视，并且作出了相当的成绩。譬如 1993 年国家奥委会倡议“奥林匹克休战”即得到了许多国家的拥护和响应，而且国际奥委会还曾禁止南非参加奥运会以反对其种族隔离政策。在国际交往中，除以上所述，还有关于国际商务、

国际刑事、国籍问题等的国际法规定及原则。国际奥委会和其他国际体育组织在从事有关活动或遇到有关情况时也受这些规定及原则的约束。如国际奥委会同美国广播公司因电视转播发生合同纠纷，就必须按照国际私法中的有关合同纠纷管辖原则，接受某一国法律的管辖。

一个值得关注的问题是国际和国内体育组织的规范在国际体育法渊源中的地位。国际或者国内体育组织是属于民间的非政府组织，其规范不具有法律的性质，其规范的实施不以国家强制力为后盾，但是对有些体育争议的裁决所适用的则主要是这些体育组织的规范，尤其是国际体育仲裁院上诉仲裁分院和奥运会特别仲裁分院仲裁争议时更是如此。更主要的是这些规范尤其是国际体育组织的规范在国际体育界已得到广泛的认可，对于从事体育运动的人员和体育组织来讲，不遵守这些规范有时就不可能参加有关的比赛，故这种强制性的规定又使这些规范具有与法律类似的拘束力。作者认为，体育组织的规范类似于商事领域的商事惯例，理应也属于国际体育法的渊源，只不过因其制定者不同而在适用范围上有国际和国内之分罢了。尽管如此，但有一点是肯定的，即体育组织

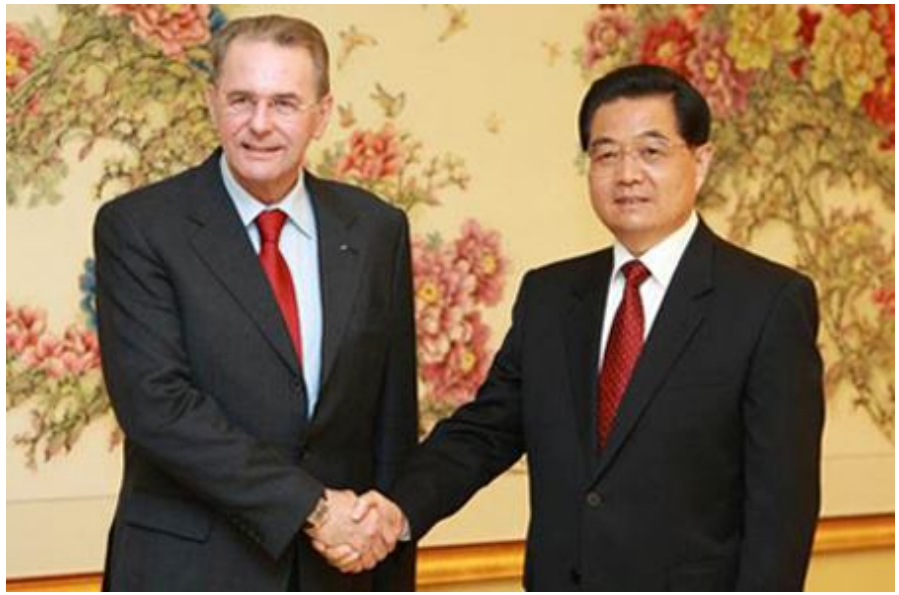
制定的有关体育运动的规范是国际体育法的重要渊源，尽管其或许不是占有主要作用的渊源。也许我们可以讲，奥林匹克运动，尽管是非政府的，仍处于这个法律程序的核心。它的章程和其管理机构尤其是国际奥委会的决议，阐明了一个范围很广的对业余和职业运动都适用的习惯做法。该法律集中在影响体育运动的政治问题、运动员的参赛资格、运动员之间基于种族和性别的歧视、体育运动的商业化和职业特性等。在训练和比赛中误解奥林匹克运动的中心作用的将会导致混淆控制单项体育运动的国际单项体育联合会的决议以及其他国内和当地体育组织的决定的法律意义。

这种奥林匹克运动组织体系制定的有关规范和条例主要包括四个组成部分。其一是奥林匹克运动的基本规章即《奥林匹克宪章》，其在奥林匹克运动体系中的地位类似于国家法律体系中的宪法，起总揽全局性的作用。其二是奥运会大家庭中的其他组织的章程。这些组织主要包括国家(地区)奥委会、洲或世界性的国家奥委会协会、各国际单项体育联合会以及国际单项体育联合会总会。这些组织的章程必须符合《奥林匹克宪章》的规定，它们的实践和活动也必须和奥林匹克宗旨一致。这些组织的章程是某一国家(地区)或项目范围内奥林匹克运动的纲领性文件，所以也是国际体育法规范的一部分。其三是国际奥委会各专门机构的有关规范或章程。设立一些常设的或者临时性的专门机构，体育仲裁院、奥运会团结委员会、资格委员会、



医务委员会等。这些专门机构分别负责处理奥林匹克运动中各有关方面的重要问题，制定了自己的规则和章程，国际奥委会医务规则、体育仲裁规则等。这些规则和章程规范着奥林匹克运动内某种专门性的问题，也是奥林匹克法律的重要组成部分。最后是由各个单项体育联合会制定并掌握的规范着某一特定运动项目的技术问题的运动技术或者竞赛规范，这是对体育竞赛活动进行控制的专用法。在奥委会和其他国际奥委会赞助的运动会中，运动项目的技术规范和技术指导工作也由各单项体育联合会自己掌握。以上这四个属于奥林匹克运动体系内的有关规范当然也是国际体育法体系的组成部分。

另外，由于国际体育争议的日益增多，也应当注意司法判例或者仲裁裁决在国际体育法渊源中的作用。遵循先例是英美法系中的一个主要原则，而一些主要的体育发达国家譬如美国、英国、澳大利亚和加拿大等国内的绝大多数法域都属于英美法系，更何况该原则在大陆法国家也得到越来越广的适用，故有关法院在体育争议问题上的判决和有些仲裁组织特别是国际体育仲裁院以及美国仲裁协会对体育争议的裁决也应当属于国际体育法的渊源。



○ 国际体育法的主体

国际体育运动主要是由运动员参加比赛来实现的，运动员当然是国际体育关系的主体。除此之外，在国际体育活动的发展过程中，参与管理国际体育活动的政府和非政府间国际组织也是国际体育关系的主体。这些组织主要有联合国及其相关专门机构、欧盟、国际奥委会、国际单项体育联合会、国家奥委会、奥林匹克运动会组织委员会、全国单项体

育协会、体育俱乐部以及包括属于这些组织机构的人员等。上述这些组织和人员当然是国际体育关系的主体。

目前，奥运会已经升级为一个对各级行政部门都有要求的运动会，因为一些非奥林匹克组织也参与到了国际体育运动中来，譬如联合国、类似于欧盟的地区性国际组织、国家和地方政府以及一些民间的非政府组织等。国际体育法作为国际法的新分支，联合国所制定的一些基本原则当然也适用于国际体育活动。譬如在反对兴奋剂、反对前南非政府的种族隔离政策在体育运动中的适用以及奥林匹克休战方面，联合国分别制定了一些文件，而且在包括体育仲裁在内的仲裁领域得到广泛承认的《承认和执行外国仲裁裁决的纽约公约》也是由联合国国际贸易法委员会负责制定的；欧盟法院对博斯曼以及其他体育争议的裁决以及欧盟制定的反对球场暴力的国际公约等显示了地区性的国际组织在国际体育运动中的地位；包括法院在内的国家和地方政府机关则对本国家和地区内的体育活动负有主要的责任；在奥林匹克运动与环境问题上一些民间的非政府组织则起了不可忽视的作用等。因此可以讲这些不属于奥林匹克运动范围的民间和非民间组织有时也可以成为国际体育法律关系的主体。

大多数的国际体育关系都涉及到运动员，因此可以讲运动员是最主要的主体。国际体育关系之所以能够产生，最主要的原因是该社会关系或者是因某运动员的参与而产生的，或者是因为对运动员以及其所属的体育组织的管理以及处罚行为而引起的。不从事体育运动但是与运动员以及与体育运动有关的组织发生体育关系的自然人在某些情况下也可以成为国际体育法的主体，只不过这种法律关系应当限制在与体育运动有关的关系范围内。所以应当承认的是作为自然人，无论是运动员还是非运动员，只有在其所从事的社会关系是涉及国际体育运动的时候才有可能成为国际体育法律关系的主体。

奥林匹克运动的最高权力机构国际奥委会是从事国际体育运动的主要组织，它和其他奥林匹克运动的成员也是国际体育法律关系的重要主体。自从 1896 年现代奥运会恢复之后，奥林匹克运动已经扩大和发展成为一个对每隔两年举行一次的国际比赛负责任的涉及数以亿计美元的行业。夏季和冬季奥运会合在一起共涉及约 340 项目的体育比赛和 35 个国际单项体育联合会。因此可以讲国际奥委会是一个具有强大的政治和经济影响的国际体育组织，国际奥委会已经不再是奥林匹克运动的一部分，而是奥林匹克运动本身。如今的国际奥委会和奥林匹克运动是一回事。

奥林匹克运动成员包括国际奥委会、国际单项体育联合会、国家奥委会、奥林匹克运动会组织委员会、各国单项体育协会、俱乐部，以及属于这些组织机构的人员，特别是其利益构成奥林匹克活动基本因素的运动员，还有裁判/裁判长、教练员和其他体育运动技术人员。奥林匹克运动还包括国际奥委会承认的其他组织。这些组织和各国的国家和地方政府一起管理和控制着国际体育比赛，并且其职能的行使应遵守包括联合国宪章在内的国际法律体系。

国际奥委会是创建国际体育法框架的重要组织之一，它主要有两方面的作用，即组织运动员之间的体育协会和体育比赛，并且通过在全球范围内制定许多国际奥委会的规范和惯常做法而在国际体育法的发展过程中起核心或者促进的作用。 这些作用可以在奥林匹克宪章中找到相应的根据。《奥林匹克宪章》第一条相应的部分规定，国际奥委会是奥林匹克运动的最高权力；不论以何种身份属于奥林匹克运动的人员或组织，都须受《奥林匹克宪章》条款的约束，并应遵守国际奥委会的决定。《奥林匹克宪章》第二条则对国际奥委会的职能作了规定，包括：鼓励体育运动和体育竞赛的协调、组织和发

展；确保奥林匹克运动会定期举行；参与促进和平的行动，积极保护奥林匹克运动成员的权利，反对损害奥林匹克运动的任何形式的歧视；反对将体育运动和运动员滥用于任何政治或商业目的；等。另外，《奥林匹克宪章》第十九条指出，国际奥委会是一个国际性、非政府、非营利、无限期的组织，以协会的形式具有法人资格，得到瑞士联邦议会的承认；国际奥委会的使命是按照奥林匹克宪章领导奥林匹克运动；国际奥委会根据《奥林匹克宪章》的条款作出的决定是最终决定。

需要明确的是，根据《奥林匹克宪章》的规定，国际奥委会是一个非政府组织。与其他非政府组织譬如国际红十字会和国际法学会一样，国际奥委会仅仅具有“有限的法律人格。”因此，一般认为它不能制定国际法规范。[5]但为了约束奥林匹克运动的当事人，国家可以自愿承认国际奥委会的规范、决定和行为。尽管有这些限制，但是有些国际奥委会的重要规范具有和习惯国际法同样的约束力。譬如《奥林匹克宪章》第二条规定国际奥委会的职能是“参与促进和平的行动，积极保护奥林匹克运动成员的权利，反对损害奥林匹克运动的任何形式的歧视；以及通过适当手段推动妇女在一切级别、一切机构中参与体育运动，特别是加入国家和国际体育组织的执行机构，以实行男女平等的原则。”违反该条的规定将会得到相应的处罚。除了《奥林匹克宪章》规定的这些自动执行的条款外，国际奥委会对处理问题的法律程序所具有的不同寻常的影响力也可以归因于奥林匹克运动会的超凡魅力和声望。事实上，各国政府通常尊重奥林匹克宪章的规范并且经常把其纳入到国内立法和政策中去。

○ 国际体育法的性质

国际体育法的性质，主要就是要解决国际体育法是国际法还是国内法，或者是介于两者之间的特殊法律部门的问题。前已述及，国际体育法的调整对象是具有国际因素的体育关系；其渊源即包括国内法也包括国际法，既有实体法也有程序法；其主体即有国内法上的自然人和法人，也包括国际法上的国际组织。单独地把它划归为国内法或者国际法已显不妥，它是一个包括国际法和国内法在内的特殊法律部门。

鉴于国际法律的发展，国际法已不是传统的国际公法，而是反映国家意志的协调、调整一切国际关系(不仅限于国家之间的政治、经济和外交关系)的具有法律拘束力的行为规范的总和。国际法调整的社会关系是超越国界的一切国际社会关系，国家与国家之间的关系只是其中的一部分。国际法是一个体系，而不是一个部门法。在国际法体系中大致包括以下法律部门，即国际公法、国际私法、国际经济法、国际刑法等。我们知道，国际法和国内法的划分主要是以它们适用的范围和调整的社会关系为标准的。而国际体育法调整的社会关系为国际体育关系，或者是跨国的体育关系，或者是涉外的体育关系，这种关系是从国际生活中产生出来的，它的适用范围跨越了国界。因此，国际体育法也就是我们所说的国际法，即广义的国际法，它是国际法体系中的一个独立部门或者分支。

【我国体育法发展历程简介】

1995年8月29日，第八届全国人民代表大会常务委员会第十五次会议全票通过了《中华人民共和国体育法》。《中华人民共和国体育法》的诞生，在新中国体育发展史上具有里程碑式的重要意义，它标志着中国体育事业的发展开始纳入法制化轨道，进入了依法治体的新阶段。

作为新中国的第一部体育法律，《中华人民共和国体育法》以《宪法》为依据，以发展体育事业、增强人民体质、提高体育运动水平、促进社会主义物质文明和精神文明建设为立法目的，坚持党的基本路线，适应建立社会主义市场经济体制的基本要求，在全面总结我国体育事业发展成功经验和存在问题的基础上，阐述了国家发展体育事业的基本态度；提出了体育工作的方针、任务、基本原则和重大措施；明确了各级人民政府、体育行政部门、各行业系统、企业事业组织、体育社会团体和公民个人在参与体育活动和发展体育事业中的责任、权利和义务，对中国体育事业发展有着重大的现实影响和深远的历史意义。

《中华人民共和国体育法》颁布实施促进了中国体育事业持续、健康、快速发展。在党中央、国务院的正确领导下，在全社会的广泛参与、积极支持下，伴随着我国经济社会的不断发展进步，我国的体育工作取得了令人瞩目的成就。全民健身体系不断完善，人民体质普遍增强；竞技运动水平稳步提高，成为世界体育舞台上一支越来越重要的力量；体育产业、体育科技、教育、宣传、对外交往、人才培养和队伍建设都有了长足的进步，取得了显著的成绩。各

项体育事业不断发展的过程，也是体育法制不断发展、不断完善的过程。同时，体育法制的进步也为保障、促进体育事业的健康、有序发展发挥了重要作用。

《中华人民共和国体育法》颁布实施以来，随着“依法治国、建设社会主义法治国家”基本方略的实施，体育法制工作更加得到重视，取得了重要进展。体育法制工作机构和队伍陆续建立，体育立法步伐明显加快，体育执法逐步推进，体育法治研究日益深入，全社会和体育界的体育法律意识不断增强。但是也要看到，相对于体育事业迅速发展和体育改革不断深化的形势，体育法制建设仍然相对滞后，仍然是一个相对薄弱的环节。一些重要领域的体育立法还有待完善，有法不依、执法不严的现象还在一定范围内存在，在个别领域、某些阶段还比较突出，体育法制工作仍然任重而道远。

加强体育法制建设，要求我们始终把人民群众的利益放在第一位。一位著名法学家说过：“人民的福祉乃是最高的法律”。在新的历史时期，我们要按照宪法和法律对体育工作的要求，坚持体育发展为经济建设和社会发展服务，为社会主义物质文明和精神文明建设服务；按照普及与提高相结合的方针，坚持不懈、坚定不移地实施全民健身计划和奥运争光计划，不断提高全民族的身体素质，不断提高我国竞技体育水平，不断满足人民群众日益增长的体育需求。

在新的历史时期，体育发展面临着千载难逢的历史机遇，也面临着艰巨的任务和严峻的挑战。我们既面对前所未有的社会需求和推动力，也面对更加错综复杂的矛盾和问题。在这样的历史条件下，提高执政能力是我们必须认真思考的一个重要课题。不断提高执政能力要求我们做到科学执政、民主执政、依法执政，要求我们面对新形势、新任务、新环境，面对体育社会化、利益多元化、关系

复杂化的现实状况，努力转变观念，注重制度创新，学会运用法律手段，从容应对挑战，化解矛盾，深化改革，促进发展。我们要适应新形势、新任务的要求，增强服务意识、大局意识、责任意识，切实加强对体育法制工作的领导，加强体育法制机构和队伍建设，继续深入持久地开展体育法制宣传教育，不断加强体育法规体系建设，健全体育执法机制，全面加快体育法制建设的进程。

中国体育代表团团长、中国奥委会主席刘鹏在2008年8月24日的新闻发布会上首次透露国家每年对体育的投资为8亿元。如果以此平均，本届奥运会中国共获51金，每枚金牌的投入不到1570万元；以100枚奖牌计算，每枚投入为800万元。

说到国家对体育的投资，就不能不说中国体育事业的根本保障，即1995年10月1日起颁布施行的《中华人民共和国体育法》。不可否认，这部法律对推动我国体育事业的发展发挥了积极的作用，但《体育法》颁布10多年来，我国的经济社会都发生了很大变化，体育事业也取得了很大发展，体育管理体制和体育市场环境也都发生了很大变化。如果不根据现在的发展实际，面向未来的发展方向作出相应的修改，恐怕就难以适应新的情况，跟上时代前进的步伐。

总体说来，1995年颁布的《体育法》，最大不足就是内容相对宽泛，缺乏具体要求和实施细则等。如没有对公民及其体育权利进行明确的界定和表述，权利保障机制严重缺失；体育纠纷越来越多，但是纠纷解决机制明显缺位；目前，体育事业正逐步走向市场化，而体育市场却是无法可依、管理混乱；竞技体育和群众体

育难有一个准确定位和协调机制；体育事业特别是全民体育事业缺乏充足的资金保障等。对于在体育事业发展过程中出现的这 些问题，都亟需通过修改、完善现行的《体育法》来加以解决。

北京奥运会的成功举办，已经对中国经济社会文化等各方面的进一步发展繁荣产生了积极影响，特别是对我国的体育事业的发展更是起到巨大的推动作用。在这个背景之下，借奥运东风，尽快修改、完善现行的《体育法》，与时俱进，自当时不我待。中国现行《体育法》应该逐步进行相应的修改和完善，明确界定竞技体育运动员的法律身份，明确运动员的权利和义务，保障运动员的运动安全和其他合法权益，规范运动员的选拔、训练和退出机制，规范体育无形资产的商业性使用行为，使“刘翔们”及“足球”的类似问题，有规范的法律操作标准和处理依据。

【体育业务组介绍】

○ 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。

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

DACHENG LAW OFFICES
大成律师事务所

Sports Law Periodical

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Editor: Zhang Bing

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【LAWYER ZHANG BING BECAME TRAINER OF SPORTS AGENTS IN THE STATE SPORTS GENERAL ADMINISTRATION】

Lawyer Zhang Bing became trainer of sports agents in the State Sports General Administration on March 22, 2013.

In order to improve the quality of sports agents' vocational qualification training, and in conjunction with the sports agent (Grade 3) national examination work carried out this year, the State Sports General Administration determine the new sports agent trainer by examination. Lawyer Zhang Bing passed this examination by virtue of his practical experience of sports law , and successfully obtained the trainer qualification. He will be the trainer of two core courses in the national examination: The Sports Legal Practice and The Sports Agency Practice.

Lawyer Zhang Bing obtained this qualification because of his excellent work in the field of racing, basketball and football during the past year. He is one of the 32 basketball agents registered by the Chinese Basketball Association , the agent of famous Formula One racing driver David Zhu and Juan Zhu , and he is also the agent of famous football player Du Wei, Zheng Long, Gu Chao, Shen Long Yuan and other players. Due to his professional performance in the winter transfer period of the Chinese Super League (CSL), season 2012-2013. Lawyer Zhang Bing became legal and brokerage services consultant of five football clubs : Guangzhou Hengda, Shandong Luneng, Qingdao Zhongneng, Shanghai Dongya and Hunan Xiang Tao. He is also the brokerage services consultant of Zhejiang Chouzhou Bank basketball team, which belongs to Chinese Basketball Association league (CBA), and events consultant of Shanghai Jiushi Event Management Co. Ltd (Shanghai Speedway).

Under the special institutional and background of sports industry in China, lawyer Zhang Bing's plan in sports law and brokerage business of this year is as followed:

- In addition to the three main areas like racing, basketball and football, lawyer Zhang Bing will also expand

his field to golf, tennis, boxing and American football.

- Assist to resolve the conflict in laws and regulations between the Chinese Football Association(CFA) and the Federation Internationale De Football Association(FIFA).
- Assist to resolve the conflict in laws and regulations between the Chinese Basketball Association(CBA) and the Federation Internationale De Basketball Association(FIBA).

HOTSPOT IN SPORTS NEWS

FOOTBALL & THE LAW REVIEW

On Friday 30th March 2012 , the inaugural Football & the Law Conference opened at the Radisson Hotel, Manchester, UK hosted by Edge Hill University in co-operation with Brabners Chaffe Street solicitors. The event was designed to respond to the professional needs of those whose work brings them into contact with legal issues relevant to football.

The first panel of the day looked at third party ownership ('TPO') and agent

regulation chaired by leading sports lawyer Maurice Watkins CBE of Brabners. Nick Craig (in-house counsel, The Football League) explained the difference between the FIFA Regulations and those of the Football League/FA, particularly as regards the concept of 'influence', with the latter regulations being far starker and restrictive. Roberto Branco Martins (General Manager, European Football Agents Association ('EFFA')) then spoke to the delegates on the proposed reforms by FIFA in the field of agent regulation, or as EFFA sees it 'deregulation'. Interestingly EFFA are not in favour of deregulation for various reasons including conflict of laws if any disputes arose and the ability of agents to represent minors (although initially without remuneration until they were no longer minors but they could still exercise undue influence).

The final speaker of this session was Daniel Rodrigues (Legal Director, FC Porto) who extolled the virtues of the Portuguese system where third party investment is commonplace and indeed welcomed. He said that the 'pure sharing of risk' policy at Porto in relation to third party investment helped to even out the various structural imbalances in the game (for example the UEFA TV pool being distributed on the

basis of viewer numbers rather than equally). Daniel's presentation was entertaining and informative, especially for the English delegates to whom this approach is alien.

The next panel session, chaired by the Portuguese Secretary of State for Sport and Youth Alexandre Mestre, had a European focus looking at Social Dialogue in Professional Football from the perspective of three of the stakeholders closely involved in its development. The EU perspective came from Pedro Velazquez (Deputy Head of the Sport Unit, European Commission) who highlighted the three main strands of Social Dialogue: Autonomy, Governance and Specificity, and how the three interact. He stressed that football is mostly self-regulated but there is the challenge of multi-level governance. Indeed I would venture to question how much added value the increasing presence of the EU provides to professional football given it is a further level of governance? Essentially he stressed that the notion of 'Social Dialogue' is a governance tool for football stakeholders to come together. Which led nicely onto two of those stakeholders to elaborate further. Emanuel Macedo de Medeiros (CEO, European Professional Football Leagues) introduced the 'Autonomous Agreement' which will be entered into in Brussels on 19th April that seeks to promote and develop conditions of employment for footballers' by formalizing minimum requirements for players' standard contracts. Legally he stressed the importance of the

principle of subsidiarity to reflect national laws, existing collective bargaining arrangements and current player contracts.

Theo van Segglen (Secretary General, FIFPro) then said that the Social Dialogue can be extended into other areas of sport, not just contractual relations, but this is an important first step as currently half of players in the UEFA associations do not have a transparent formal contract.

After lunch players contracts were once again on the agenda but this time in relation to the troubled history of Article 17 of the FIFA Regulations on the Status and Transfer of Players and its impact on contractual stability. Chair of the session Carol Couse (Partner, Brabners) set the scene with a useful and informative overview of the background and rationale to Article 17 and then a more detailed analysis of its text. Of particular note is that the breach of contract under Article 17 is a strict liability offence and carries with it joint and several liability for the offending player and club, which as seen in the recent attempt to enforce in the Matuzalem case is not always as useful as it seems. Following on Mark Hovell (Partner, George Davies Solicitors & CAS Arbitrator) gave

a fascinating analysis of the Court of Arbitration for Sport's ('CAS') jurisprudence on Article 17 opining on numerous interesting legal and practical issues from the (often criticised) series of cases including: who is the breaching party, the phrase "with just cause" in the text and it taking almost 3 years for a case to be heard by CAS. It seems the current position following the infamous De Sanctis ruling (upon which Mr Hovell sat as head of the panel) is that damages for breach of Article 17 should be based on actual losses suffered, which surely has to be right. A lively panel discussion followed also involving Wouter Lambrecht (Legal Counsel, European Club Association) and Wil van Megen (Manager of the Legal Department, FIFPro). One aspect of much debate was the 'positive interest' criteria which has evolved in the CAS jurisprudence with Mr Lambrecht unsurprisingly being in favour for the clubs with Mr van Megen arguing that it is not an objective criteria and the interest of the clubs are already sufficiently protected by the contractual 'stability period' contained in Article 17. Mr Hovell also cited a complete lack of argument on an EU law basis in the De Sanctis case and that he expects a case to go the European Court of Justice on the topic in the future. Further he questioned

whether, partly due to the elapse of time in these cases coming to a conclusion, whether a player should be allowed to claim damages for his career being ruined where he is the wronged party?

The final session of the day looked at various 'organisational issues' in football and the law. As one would expect from a senior barrister Paul Harris QC (Monckton Chambers) gave an eloquent, engaging and entertaining review of the series cases brought (unsuccessfully) by the Premier League on broadcasting rights in the EU, which he described as of parallel importance to Bosman. Interestingly he highlighted the fact that section 72 of the UK Copyright, Designs and Patents Act gives a specific defence with regard to the main part of Premier League broadcasts that is not in the EU Directive on the issue. Further, regarding the criminal case brought against publican Karen Murphy, he noted the veiled criticism in the judgment that she had been pursued through the criminal law at all and as a result she was awarded huge costs on a civil basis but in a criminal case. Nick Fitzpatrick (Partner, DLA Piper solicitors) then talked more on the sale of broadcasting rights in light of the recent case law. In doing so he said that practically not a great deal had changed particularly as it is no more legitimate now to use a domestic decoder in a commercial

setting than it was before, and that only decoders have been affected by the rulings and not other methods of geo-blocking. Stephen Weatherill (Jacques Delors Professor of European Law, Oxford University) gave an impassioned and enigmatic speech on the conditional autonomy of sport under EU law through the 'specificity of sport' concept, which although now stated explicitly in the Lisbon Treaty in his opinion is nothing new at all. Finally, Paul Rawnsley (Director, Deloitte LLP) provided a clear financial analysis and explanation of the UEFA Financial Fair Play Regulations from a fresh angle including some fascinating statistics on how many clubs would currently be in breach.

The inaugural Football & the Law Conference was a well-attended event that provided a thought provoking and enlightening day on many current issues facing practitioners whilst also catering to the academic debate. It benefitted from a more diverse range of delegates being based outside of London and attracted a high calibre of speaker. It would have been nice to have had more networking time through the day to discuss the panels more informally with fellow delegates and less speakers from what are essentially trade bodies. However, congratulations should go to both Richard Parrish of Edge Hill and Brabners and I certainly hope the event will become a regular fixture on the conference circuit.

SPORT, GAMBLING AND SPONSORSHIP CONFERENCE

From invitation of World Sports Law Report (WSLR), Alfonso Valero, Co-Editor of Lawinsport.com attended this year's 'Sport, Gambling and Sponsorship', organised by World Online Gambling Law Report. The conference, in its 3rd Edition, was hosted by Berwin Leighton Paisner and conducted by Andy Brown, of WSLR.

In the current climate of courses and events related to sports law, this Conference is a 'must do' for various reasons: first, it's the only one which provides a general update of the regulations affecting the gambling and betting sector; sec

ond the speakers are first class; and third, it puts together operators of the industry, practitioners and other commercial interests giving an excellent networking opportunity.

The seminar started with an introduction by Andy Brown, who gave a general presentation of the situation with an update of recent deals of betting companies sponsoring sport. Andy

also mentioned corruption and how its exposure is helping sport.

The first speaker was Gareth Moore, of Sport+Mark, explaining the financial relationship between sport and gambling across Europe; opportunities for sponsorship, money into gambling coming from sport bets. It was of great interest, and clearly shows the need of a more homogeneous regulation across the EU.

It was followed by Stephen Ketteley, partner of Berwin Leighton Paisner. It was a very well presented talk about sponsorship and advertising for gambling and betting companies. Opening with ECJ case of 'Santa Casa v. Bwin / La Liga' – which implied that betting companies could have a vested interest in the results when it accepts bets on the teams that it sponsors, covering the recent changes in regulation and the possible future.

Next speaker was Jim Tabilio of Secured American Games, who gave an insight about the best strategy for a change in legislation to allow betting in the US. For those gambling companies aiming to expand in America, and there are quite a few operating 'under the radar' already, it was probably an eye opener. America, Tabilio said, won't be persuaded by what happens in Europe: they need American faces.

The mid morning brought a change of topic and moved to corruption in sport in relation to gambling.

David O'Reilly, of Betfair, and Simon Taylor, of the Professionals Players Association spoke about the need for education of players and how the betting industry is helping to tackle corruption in sport. Simon Tayor called for a 'WADA' to deal with corruption, as there is a need for unified approach in prevention and sanctions.

Nick Tofiluk, of the Gambling Commission, made the most of a talk with obvious limitations, as he couldn't go in details on any cases or the methods of investigation. He covered the work of the Sports Betting Intelligence Unit, which collects information and develops intelligence about potentially corrupt betting activity involving sport.

Speaking about integrity, Matthew Johnson, of the FA and Simon Barker, of the Professional Players' Federation, were put together to present both sides of the conflict. Matthew Johnson, presented the approach of the Football Association with regards to player gambling. One of the best presentations of the day, it covered a number of resources for their integrity proceedings. Simon Barker, insisted in the need of education of the player and the existence of gambling addiction amongst players.

All of the above, just before lunch. And, at all times, the time keeping was spot on. The lunch was excellent. You couldn't sit down, but that probably kept people talking to each other more easily.

The first slot of the afternoon was to cover IP rights by the betting industry.

The first two speakers were Gavin Llewellyn and Ania Ochmanska of Berwin Leighton Paisner. They looked at the very topical issue of the intellectual property in the fixtures list and other exploitation of information by the betting industry. Whilst a very interesting presentation, I got the impression that they were presenting for non lawyers, as it was perhaps a bit academic. Having said that, Llewellyn and Ochmanska fought the 'after lunch syndrome' with a very dynamic delivery.

Gianluca Monte, of the European Commission, dealt with the current framework of the EU on protection and use of IP. Autumn of 2010 and 2011 will see the production of reports and studies on the impact of the current regulations (i.e. Lisbon Treaty and others), the Green Paper on online gambling, and the next European Sport Forum.

Finally, the last two sessions of the afternoon were about specific cases of the industry: horseracing, by Nic Coward, of British Horseracing Authority, and Luca Ferrari, of CBA Studio Legale e Tributario. In reality, Luca Ferrari had been scheduled for the morning, with the section about sponsorship, but it was placed in the afternoon, but it also gave the opportunity of ending the day looking at two different situations: football in Italy and horseracing in Britain.

Nic Coward made his case about the need of financing horseracing with the Horserace Betting Levy or any other system which contributes financially to the sport by those who benefit from most of it, the betting industry. Nic Coward has been lobbying on behalf of BHA for many years now. His points are fairly clear and, whether one agrees or disagrees with him, no one is left indifferent. It was shown when, in the questions, the representative of William Hill begged to differ with Coward's points. Like in the good matches, a very interesting debate had place in 'injury time'.

Luca Ferrari explained the regulation of Italian Law about gambling and betting and, most importantly, the sponsorship by Bwin, of the second division of the Italian League.

The materials provided were very complete and I left the day looking forward to next year's event.

PELLEGRINI SET TO REPLACE MANCINI AT MANCHESTER CITY

Manuel Pel legrini will take over as manager of Manchester City next season, according to reports from Spain. Photograph: Ina Fassbender/Reuters

Roberto Mancini is facing fresh doubts over his future at Manchester City after reports in Spain stated on Friday evening last night that Manuel Pellegrini, the Málaga manager,had agreed to replace him at the start of next season.

It is claimed that City will pay Pellegrini's €4m (£3.4m) release clause to secure his services, with Isco, the Málaga midfielder, also interesting the club as they consider

whether to makea formal bid for him. While it is understood that City were privately claiming no knowledge of any deal, Pellegrini has told his players that he will leave Málaga at the end of this season.

The timing of the claims threatens to undermine City's quest to win Saturday's FA Cup final against Wigan Athletic at Wembley, with one bookmaker slashing the odds to 10-1 on that Pellegrini will take over from Mancini.

As reported by the Guardian last month, Txiki Begiristain, the City director of football, met with Jesus Martínez, Pellegrini's agent in Madrid. When the meeting was put to Mancini, the Italian attempted to laugh it off but did admit that he did not know why Begiristain was seen with Martínez.

On Friday Mancini suggested he is fully aware of how ruthless management can be. "I won seven trophies in Inter in four years and they sack me after four years [in 2008]. This is football. I know football enough to understand this situation."

Mancini's long-term future at City is certainly in the balance. Yet victory on Saturday would mean a third major trophy in his three full seasons at City, to follow last season's Premier League title and the FA Cup triumph in 2011, which may strengthen Mancini's hand.

Although Mancini still holds considerable power at the club, it is Begiristain and Ferran Soriano, the chief executive, who have begun driving the long-term strategy, with the pair behind the potential introduction of a new 4-3-3 playing formation for next season, and they are also working closely together on bolstering the squad this summer.

INTERNATIONAL SPORTSLAW PRACTICE

FINANCIAL FAIR PLAY AND THE ABILITY OF EUROPEAN FOOTBALL CLUBS TO RAISE FINANCE – PART 1

. BACKGROUND

With UEFA's Club Licensing and Financial Fair Play Regulations (the "Regulations") on the horizon, Samantha Yardley (Partner) and Michael Savva

(Associate) of Watson, Farley & Williams LLP, discuss the potential impact of the Regulations on the ability of European football clubs to raise finance.[1]

Background to the Regulationssco

Despite operating against a background of increasing commercial interest and investment in the sport (including increased broadcasting revenues), many European football clubs still find themselves in poor financial health, battling to meet their financial obligations and reporting repeated (and often extravagant) financial losses. As clubs struggle financially on a day-to-day basis, they may turn to commercial financiers to provide an injection of much needed cash.

Deloitte, in its Annual Review of Football Finance 2012, noted the following financial developments in relation to Premier League and Football League clubs as at the end of the 2010/11 season: [2]

- Of the "big five" leagues in Europe (i.e. the English Premier League, La Liga in Spain, the Bundesliga in Germany, Serie A in Italy and Ligue 1 in France), the Premier League and the Bundesliga were the only leagues to achieve operating profits in 2010/11;
- The "big five" leagues' wages increased by over €104m (2%) to exceed €5.6 billion in 2010/11;
- Operating margins of Premier League clubs, which stood at 16% in the inaugural Premier League season (1992/93), narrowed to just 3% at the end of the 2010/11 season;

- Operating expenditure of Football League clubs stands 30% above revenues, delivering near-record losses (with around a third of clubs in the Championship having wage bills greater than their revenues and hence being heavily reliant on owner funding);
- In the five seasons to 2009/10, the surge in wage costs accounted for 87% of the increase in Premier League club revenue and, despite new broadcasting deals coming into effect from 2010/11 (leading to a 12% increase in clubs' revenues), over 80% of this additional revenue was required to meet increased wage costs. The Premier League's wages/revenue ratio has now reached an all-time high of 70%.

Figures such as those noted above led Deloitte to conclude that: "control of player wages, in order to deliver robust and sustainable businesses, continues to be football's greatest commercial challenge". [3]

The Regulations were approved by UEFA's Executive Committee on 27 May 2010 with the aim of, amongst other things:

- improving the economic and financial capability of clubs;
- placing the necessary importance on the protection of creditors, by ensuring that clubs settle their liabilities with players, social/tax authorities (as a result of contractual or legal obligations towards employees) and other clubs punctually;

- introducing more discipline and rationality in club football finances;
- encouraging clubs to operate on the basis of their own revenues; and
- encouraging responsible spendingIn essence, the Regulations are aimed at protecting the long-term viability and sustainability of European club football.

. THE REGULATIONS EXPLAINED

Some of the key articles in the Regulations (as set out in UEFA's media information release dated 25 January 2012) are summarised below.

- MONITORING PERIOD (ARTICLE 59)

Clubs with annual income or expenses over €5m are required to break even over three reporting periods (i.e. over these three periods, they must not have spent more than they earned, subject to acceptable deviation in certain specified circumstances, as further set out below). The three reporting periods consist of: the reporting period ending in the calendar year that the UEFA club competitions commence (T), the reporting period ending in the calendar year before commencement of the UEFA club competitions (T-1) and the preceding reporting period (T-2).

For example, the monitoring period assessed in the season 2015/16 will cover the reporting period ending in 2015 (T), 2014 (T-1) and 2013 (T-2). By way of exception, the very first monitoring period (assessed in the 2013/14 season) covers only two reporting periods (i.e. those ending in 2013 and 2012).

- BREAK EVEN/ACCEPTABLE DEVIATION (ARTICLE 60 AND ANNEX X)

All clubs with relevant annual income or expenses over €5m must prove that the aggregated break-even result of the three reporting periods is positive. "Relevant income" is defined as including revenue from gate receipts, broadcasting rights, sponsorship and advertising, commercial activities and other operating income, as well as profit on player transfers (Article 58 and Annex X). "Relevant expenses" is defined as including either amortisation or costs of acquiring player registrations, as well as wages, finance costs, dividends and other operating expenses. Neither concept, however, includes any non-monetary items or certain income/expenses from 'non-football operations' (a concept which is itself defined in paragraph C of Annex X of the Regulations).

- EQUITY CONTRIBUTIONS (ARTICLE 61(2) AND ANNEX X(D))

The maximum aggregate break-even deficit for three reporting periods which is acceptable for a club is €5m. A club can exceed this level up to a maximum aggregate break-even deficit (shown below), but only if such excess is entirely covered by contributions from equity participants (including by means of payments for shares by shareholders) and/or related parties (including by means of waiver of inter-company or related party debt). The maximum aggregate break-even deficits (if covered by equity contributions) are as follows:

- €45m for the monitoring periods assessed in the seasons 2013/14 and 2014/15;
- €30m for the monitoring periods assessed in the seasons 2015/16, 2016/17 and 2017/18; and
- a lower amount as decided in due course by the UEFA Executive Committee for the monitoring periods assessed in the following years.

Therefore, if the shareholders are not willing or able to inject equity, the club will only be able to make a maximum aggregate loss of €5m in each monitoring period.

The table below summarises the operation of the Regulations:

Acceptable Deviation Levels

Monitoring Period	Football seasons (to be taken into account)			Acceptable Deviation (€m)	
	T-2	T-1	T	If Covered by equity	If Not covered by equity
2013/14	N/A	2011/12*	2012/13*	45	5
2014/15	2012/13	2013/14	2014/15	45	5
2015/16	2013/14	2014/15	2015/16	40	5
2016/17	2014/15	2015/16	2016/17	30	5
2017/18	2015/16	2016/17	2017/18	30	5
2018/19	2016/17	2017/18	2018/19	<30	5

Excluded expenditure (Article 58 and Annex X)

Certain expenditure is excluded for the purpose of the break-even calculations, for instance:

- stadium development;
- youth team programmes;
- amortisation/impairment of intangible fixed assets (other than player registrations);
- expenditure on community development activities.

Such expenditure is considered to be beneficial to the long-term sustainability and revenue-generation abilities of the clubs and clubs are therefore to be encouraged to direct their expenditure to programmes of these types.

- TRANSITIONAL PERIOD (ANNEX XI(2))

As an initial "loophole" to the break even requirements, clubs that report an aggregate break-even deficit that exceeds the acceptable deviation in the first two monitoring periods will not be sanctioned where:

(a) the club "reports a positive trend in the annual break-even results"; and

(b) the aggregate break-even deficit only arises because of a deficit in the reporting period ending in 2012 and then only because of player contracts undertaken prior to 1 June 2010.

In addition, the wages of any player signed before 1 June 2010 are not included in the break even calculations for 2011/2012. This exception does not, however, apply to the underlying cost of acquiring the player's contract, which will need to be amortised over the course of the contract.

- AMORTISATION (ANNEX VII(2))

An important part of the Regulations relates to how a club values its players in its accounts. In essence, the cost of purchasing a player's contract is capitalised on the club's balance sheet and amortised (written-down), on a straight-line basis, over the duration of the contract. For example, a player at the end of contract will have a "book value" of zero.

However, if a player is sold before the end of his contract, the Regulations require that the difference between his book value at that time and the sale price be accounted for immediately in the club's accounts. Where a club

extends a player's contract, the book value at the time the contract was renewed/extended will need to be amortised over the duration of the new contract.

- SANCTIONS

The first sanctions for clubs not fulfilling the break-even requirement will apply during the 2013/14 season and the first possible exclusions relating to break-even breaches are likely to arise for UEFA competitions in season 2014/15.

Sanctions for breach of the Regulations include:

- reprimands or warnings;
- fines;
- deduction of points;
- withholding of revenue from UEFA-sanctioned competitions (i.e. the Champions League and the Europa League);
- prohibitions/restrictions on the registration of new players for UEFA competitions;

- disqualification from a competition in progress or exclusion from future competitions.

Whilst clubs must apply for a UEFA Club Licence to compete in UEFA-sanctioned competitions prior to the start of the preceding season (i.e. the season prior to the season in which a club may qualify to participate in UEFA-sanctioned competitions), if a club exceeds the acceptable deviation threshold, it will not be granted this licence, as one of the conditions to being granted a licence is compliance with the Regulations.

– DOMESTIC FFP REGULATIONS

It should be noted that the English Football League and its clubs have agreed a financial fair play framework that will operate in all three of its divisions from the beginning of the current (2012/2013) season, though each division has been given the flexibility to determine its own regulations.

In the Championship, clubs have agreed to introduce a break-even approach based on the UEFA Regulations, so a "Fair Play Result" will be determined for each club that equates to the club's profit or loss for the year, excluding investments in specific areas of club infrastructure or losses in certain extraordinary circumstances. The Championship regulations do contain the following nuances:

- the framework will be phased in between the 2011/12 and 2015/16 seasons, with the permitted level of acceptable deviation from the Fair Play Result (i.e. nil or greater) and contributions from equity participants reducing over time from £4m and £8m respectively in 2011/12 to £2m and £3m by 2015/16;
- items excluded from the Fair Play Result calculations include investment in youth development, stadium development, a club's community scheme and promotion-related bonus payments. In addition, a club can apply to the Football League's Financial Fair Play Panel to exclude exceptional items such as career-ending injury costs, bad debts from other clubs and losses sustained from a major sponsor defaulting (e.g. ITV Digital);

- sanctions will differ depending on whether:
  - the offending club remained in the Championship - in which case a transfer embargo will be put in place until the club subsequently complies with the regulations;
  - the offending club is promoted to the Premier League - in which case a "Fair Play Tax" will be charged to the offending club on the excess by which the club failed to fulfil the fair play requirement (ranging

between 1% on the first £100,000 to 100% on anything over £10m) and distributed between the compliant clubs (although one could query whether or not the Premier League will help actively to enforce the Football League's regulations with respect to the promoted club); or

- the offending club is relegated to League 1 (in which case that club will not be entitled to any pay-out from the Fair Play Tax).

In League 1 and League 2, clubs will implement the Salary Cost Management Protocol (which broadly limits spending on total player wages to a proportion of each club's turnover) that has already been in use in the latter division for eight years. Any club that is deemed to have breached the permitted spending threshold (currently 55% of turnover for League 2 clubs and 75% of turnover for League 1 clubs) will be subject to a transfer embargo. Wherever possible, the Football League will seek to deal with the issue "at source" by refusing player registrations that take clubs beyond the threshold.

The Premier League has recently announced that its clubs have agreed in principle to a set of spending constraints designed to further improve the sustainability of its member clubs (the "PL Regulations"). The new PL Regulations

include a "long-term sustainability regulation" that will require Premier League clubs to work towards becoming break-even, while allowing a degree of owner equity investment. The PL Regulations also include a "short-term cost control measure", to limit the ability for clubs to increase players' wages as a result of the increased centrally-distributed revenue (i.e. the broadcasting revenues known as "Central Funds" in the Premier League Rules) above an agreed floor. The severest punishment for breaking these new PL Regulations will be a points deduction though, at this stage, it is unclear what other sanctions would be applied by the Premier League for more minor breaches.

To summarise the key principles of the PL Regulations:

From the 2013/14 season, Premier League clubs will not be able to make a total loss of more than £105m across a three-year period (this limit is significantly higher than the €45m (£38m) figure in the UEFA Regulations);

In the same period, Premier League clubs will be restricted from using increased Central Fund revenues to increase current player salaries by an accumulative £4m per season (i.e. £4m in season 2013/14, £8m in season 2014.15 and £12m in season 2015/16). This restriction will only apply to clubs with a total wage bill in excess of £52m in season 2013/14, £56m in season 2014/15 and £60m in season 2015/16. In addition, this restriction can be circumvented if a team is able to

demonstrate that the increased salaries have been accounted for using commercial revenues other than Central Funds; and

- Any club making a loss of above £5m a year will have to guarantee those losses against the owner's assets.

Therefore, clubs that are not competing in UEFA sanctioned competitions are likely to face the possibility of sanctions (including, possibly, the withholding of revenue) from the relevant domestic governing body.

Part 2 will be looking at common methods by which football clubs raise finance and the effect of the Regulations on financing documents.

INTRODUCTION

OF SPORTS LAW GROUP

Sports Law Service Scope

1, Provide legal consulting service about the composition and structure of all kinds of sports clubs;

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

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

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

5, Provide legal services of intellectual property protection in sport brands, especially related to sporting goods and clothing brands;

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

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

8, Solve disputes in the name of the professional athletes, coaches and sports clubs, sports brokers, departments in charge of sports industry 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, Event promoters and sponsorship negotiations and drafting all kinds of related contracts for sports teams and sports activities of the organizers.

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,

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

Internal documents, only for communication.