

体育法律资讯

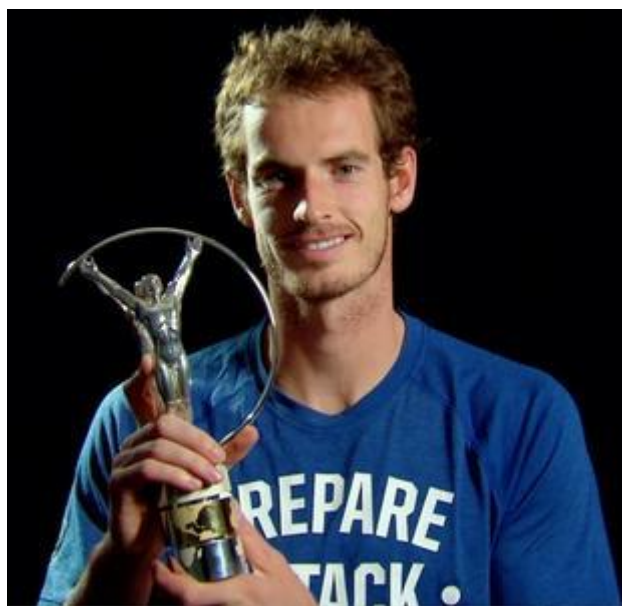
2014年3月刊（总第十一期） 主编：张冰 王金一

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【热点体育动态】

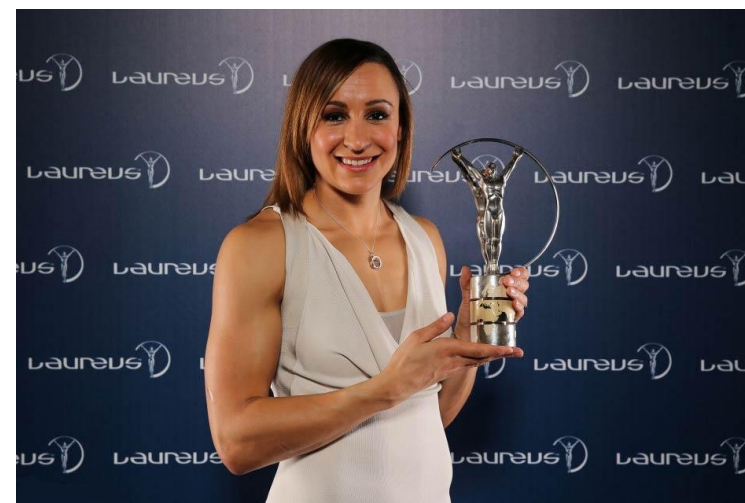
上海承办2015年劳伦斯颁奖礼 欲打造史上最成功典礼



“飞机没找到，无心庆祝。”这句话大概是许多马来西亚人的心里话。但在这当口上，吉隆坡的大型文体活动却一场接一场。3月30日即将举行F1马来西亚站，3月26日，劳伦斯世界体育奖也在马来西亚吉隆坡的Istana Budaya剧院举行颁奖礼。劳伦斯有“体育

界奥斯卡”的美名，向来是全世界文体大牌齐聚一堂的好场所。

按照原定计划，2014年的劳伦斯颁奖礼本该在巴西里约热内卢举行。不想今年1月，里约政府忽然宣布，“无法支付组织劳伦斯颁奖典礼的资金，将结束与该奖组委会间的合同”——明晃晃地放了劳伦斯一个“鸽子”。无奈之下劳伦斯把颁奖礼挪到马来西亚，这也是劳伦斯首度驾临东南亚，原以为能受到应有的重视，不想又撞上“飞机失联”事件。



好在，2015年劳伦斯奖的颁奖典礼已经确定将在上海举行。劳伦斯世界体育奖有限公司首席执行官盖·桑南去年访问上海时说：“上海体育领域发展有着先进的理念，劳伦斯公司与上海合作方拥有专业的团队、饱满的工作热情，希望双方的合作能取得互利共赢的成果，并有信心把将在上海举办的劳伦斯世界体育奖颁奖典礼打造成有史以来最成功的一次。”或许，从现在开始，我们可以考虑谁来主持上海的劳伦斯颁奖主持人了，因为今年颁奖礼主持人是人见人爱的“卷福”——本尼迪克特·康伯巴奇。还有一个更严肃的问题，劳伦斯的获奖者里，已经5年没有中国面孔了。

今年，孙杨凭借游泳世锦赛3金1铜的表现，被劳伦斯世界体育奖官方网站推荐进入“年度最佳男运动员”候选名单；林丹则以复出后斩获羽毛球世锦赛男单冠军为由，获得了“年度最佳男运动员”和“最佳复出奖”候选推荐。可惜在最终候选名单中，两人均未获提名——也就是说，颁奖礼没他俩什么事了。

中国运动员最近一次获奖要追溯到2009年，中国奥运代表团获得最佳团队奖。把回忆拉得更远一点，2003年和2005年，姚明和刘翔先后获得过“年度最佳突破奖”。



体育改革连出组合拳 上海构建“3+X”办赛模式



上海体育改革连出“组合拳”。3月27日，由上海市体育局和东浩兰生集团共同打造的上海东浩兰生赛事管理有限公司正式成立，将承办包括上海国际马拉松赛在内的一系列具有市场开发潜力及计划内的国际国内赛事。这意味着，上海体育竞赛“3+X”的办赛新模式正在形成。

“3”，即新组建的东浩兰生赛事管理有限公司，与久事国际赛事管理有限公司、东亚集团三足鼎立，3家专业体育赛事公司将承

办由上海市体育部门主管的**70%**的赛事。

据介绍，上海东浩兰生赛事管理有限公司将以上海国际马拉松赛为核心业务，同时运营路跑等国际国内商业赛事。在**27日**的揭牌仪式上，主办方同时宣布，上海国际马拉松赛将从往年的**12月**第一个周日提前到**11月**第一个周日，**2014年**的上海国际马拉松赛将于**11月2日**起跑。提前开跑的“上马”将拥有更加宜人的天气和环境。

“X”，即体育总会、单项体育协会、各类体育社会组织，以及国际国内专业赛事公司承办的其他赛事，主要包括**3类**：一是原有品牌赛事，如田径钻石联赛、崇明自行车赛、汇丰高尔夫世锦赛、宝马高尔夫大师赛等；二是“一区一品”赛事，如浦东新区的射箭世界杯赛、静安区的花剑世界杯赛、金山区的世界沙滩排球巡回赛、黄浦区的WDSF世界体育舞蹈大奖赛、徐汇区的飞镖世界杯赛、杨浦区的世界极限运动大赛、普陀区的苏州河城市龙舟赛等；三是其他具有国际影响、市民喜闻乐见的体育赛事，如短道速滑世界杯赛、NBA季前赛等。



目前，上海每年举办**100**多次国内外重大体育赛事，市级赛事保持在**250**次左右。上海市体育局局长李毓毅坦言，体育部门被办赛牵制大量精力，有的赛事市场资金不足及观众不多，有的赛事办赛质量不高。这些是困扰体育竞赛工作发展的瓶颈和软肋。他表示，今后将规范品牌赛事的管理，培育和打造上海“十二大”精品赛事，逐步形成每月举办一项品牌赛事的格局。

迎接体操世锦赛 南宁全力在准备



3月18日，南宁市召开迎接第四十五届世界体操锦标赛动员大会，号召全市上下全力以赴、再接再厉，以临战的状态、饱满的热情、昂扬的斗志，奋战200天，全力做好体操世锦赛筹备冲刺阶段各项工作，掀起迎接体操世锦赛的新高潮，确保成功举办一届高规格、高水平的体操世锦赛。

迎接体操世锦赛，南宁准备好了吗？昨天，记者采访了解到，近期，南宁市各部门各单位积极行动，紧扣目标、倒排计划、倒推

时间，突出重点、强力推进，全力以赴开展各项筹备工作，并以此为契机努力实现我市经济社会大发展、城市面貌大改观、市民素质大提升，为国家争光、为广西争荣、为南宁争气。

项目建设攻坚

实现城市建设大提速

市委、市政府已明确今年迎接世锦赛的城市基础设施项目**476**项，计划总投资**422.76**亿元，包含比赛场馆及配套设施建设、市政基础设施建设、道路交通设施建设、城市绿化美化彩化提升等。

作为南宁城乡建设的行业管理部门之一，市城乡建委如何围绕迎接和服务第四十五届世界体操锦标赛，促进城市建设发展水平大提升？市城乡建委党组书记、主任赵红明思路清晰：“我们将紧紧围绕迎接和服务第四十五届世界体操锦标赛，促进城市建设发展水平大提升这条工作主线，以‘等不起’的责任感，‘慢不得’的紧迫感，‘坐不住’的危机感，‘误不起’的使命感，以实际行动贯彻和展现‘三步并作两步走’的干劲和韧劲，鼓足‘提头来见’的勇气和担当，全部心思‘拼力跳起来摘桃子’的智慧和拼劲，开展项目建设攻坚战役，重点推进‘六项工程’，以实现我市城市建设大提速，确保赛事顺利安全进行。”

南宁市将以服务好体操世锦赛为重点，全力实施城市“基础设施建设提升工程”。南宁火车站预计今年底竣工，凤凰岭路—凤岭北路立交桥、凤凰岭路—





高速环路立交桥等周边配套路网建设也将全速推进，确保今年年底前基本完善周边路网和基础设施，为南宁火车东站顺利投入运营创造条件；南宁吴圩国际机场新航站楼也将于年内建成，机场高速路路面改造、机场高速路延长线、站前广场绿化等配套项目将同步投入使用。

在五象新区，继首座立交五象大道—玉象路立交桥上月底开工建设后，今年还将有一批新立交“破土”，包括位于五象大道和银海大道交汇处的银象立交一期及五象大道—壮锦大道立交、五象大道—友谊路立交等。同时，南宁要推进五象大桥、英华大桥、罗文大桥等涉及世锦赛出行的大型越江桥梁建设，确保世锦赛期间交通安全；推进园湖路扩建、玉洞大道、长湖路延长线等城市主干道项目建设。

环境铁腕整治

提升市容环境品质

“面对机遇，敢于争先；面对困难，敢于担当；面对竞争，敢于创新；为国家争光、为广西争荣、为南宁争气！”3月19日上午，在南宁市民族广场举行的服务第四十五届世界体操锦标赛市容环境综合整治誓师大会上，来自我市城管系统的800余名干部职工齐声宣誓。

“我们要不折不扣地落实市委、市政府的部署，铁腕整治城市环境，继续深化开展‘美丽南宁·整洁畅通有序大行动’，加大对占道经营、城中村环境、农贸市场等影响市容市貌问题的整治力度。”市城管局局长黄海如是说。黄海认为，当前各种乱象已经影响到南宁市的形象，作为城市管理人员，有义务也有责任对这些乱象进行治理。南宁市将开展市容环境整治提升工程，全面提升市容环境

整体品质，全面提高重点区域和线路标准，全面整治脏乱差现象，使城市面貌真正达到“让来过南宁的人耳目一新，让没来过南宁的人大吃一惊”的效果”。

“违章高杆广告是近期市容整治的重点。”黄海表示，在整治户外高杆广告行动中，先对市区内17杆高杆广告牌进行拆除；人行道车辆静态停放也是市容整治的重点内容。据初步统计，全市共申报市管道路人行道停车泊位766个。从2013年12月至今，全市累计清理违法设置的人行道停车泊位89个。

黄海表示，下一步将通过加强协作，形成合力，各部门之间，各部门与城区、开发区之间要互相支持，全面配合，协调一致，要做到全市一盘棋，分工不分家，不推诿扯皮，形成推进市容环境整治工作有序开展合力。同时，加强宣传和教育，营造良好氛围，要将查处违法行为与宣传曝光相结合，将严管重罚和教育引导相结合，达到处罚一个、教育一片的目的。抓好考评问责，建立监督考核制度、奖惩制度，完善检查评比制度，实行严格问责制，对工作不重视、不得力、不作为的单位和干部，要严格追究责任。

九大领域行动

构建和谐稳定的市场环境

为做好体操世锦赛期间的市场监管和行政执法工作，维护公平有序的市场秩序，构建和谐稳定的市场环境，3月起至10月底，南宁市工商系统将分阶段对农贸市场、违法“三车”、合同格式条款、体育用品市场不正当竞争行为等九大领域开展专项整治行动，服务好世锦赛。

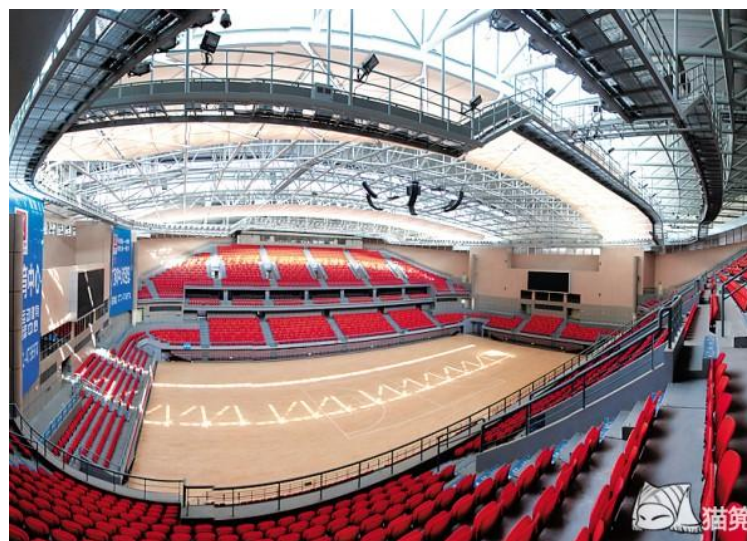
据了解，第四十五届世界体操锦标赛将于10月3日至12日在南宁举



行。为了展现南宁文明新形象，南宁市工商局将负责组织开展“诚信南宁迎嘉宾，千店万铺无假货”活动，严厉打击非法兜售假冒世锦赛纪念品等行为。活动主要对第四十五届世界体操锦标赛赛会标志、吉祥物及相关商品商标、商品质量以及广告等开展专项执法活动，严禁假冒商标、伪劣商品、违法广告出现在南宁，一旦发现将进行处罚。

此外，专项整治还将对侵犯世锦赛赞助商合法权益行为进行查处，及时对未经世锦赛组委会许可擅自使用世锦赛相关知识产权行为进行查处。为树立南宁市保护知识产权的良好形象，对注册商标专用权、商品质量等领域也将分别开展专项整治行动。

为了给世锦赛的举办提供一个文明有序的环境，从4月1日起至4月30日，南宁市工商局将开展违法销售电动自行车和拼装“三车”专项整治行动。对现有的经营主体将加强日常监管，严格核查经营者的进货台账，落实消费者退货制度，加强商标管理，规范广告宣传，建立健全工商、公安、质监等多部门联动执法机制，加大对违法行为的查处力度。



【体育法律实务】

国际体育比赛权益争端救济办法



几乎每一次大型国际比赛，都会出现因参赛资格、兴奋剂处罚等引起的权益争端。而随着现代民主与法治进程的逐步发展，人们对伸张、保护和救济合法体育权益的要求也日益强烈。于是，如何公正有效地解决好这些体育纠纷，越来越成为影响体育健康发展的热点问题。

运用一般的法律规则处理某些特殊体育专业性纠纷时，总有些不够得心应手之处，特别是某些纠纷具有竞赛的时效要求，往往等不及严格复杂的诉讼程序。为建立一种更为理想的体育纠纷解决机制，国际体育界从全球普遍采用的商贸经济仲裁方式中获得启发。

所谓仲裁（Arbitration），是指发生争议的双方当事人，根据所达成的协议，自愿将争议事项交由有一定社会威望、无直接利害



关系的非官方机构的第三方进行裁决，并对各方具有拘束力，各方自动履行裁决义务的一种解决争议的方式和制度。其程序相对诉讼

活动又更为灵活、快捷、经济。因而，仲裁能够较好地满足解决专业性较强的体育纠纷的需要，国际体育仲裁应运而生。1983年，在召开国际奥林匹克大会期间，国际奥委会主席萨马兰奇充分估计并预见了体育纠纷日益增多的状况，提议成立一个国际体育的仲裁机构。经过一段时间的筹备，1984年6月，体育仲裁院（Court of Arbitration for Sport, CAS）正式成立，并同时制定了《体育仲裁院章程》、《体育仲裁院条例》等规范文件，受理解决了大量的体育纠纷案件。1994年6月，31个国际体育联合会签署巴黎公约，决定在体育仲裁院上面成立国际体育仲裁理事会（International Council of Arbitration of Sport, ICAS），于同年颁布了包括章程和程序规则两部分内容的《体育仲裁法》，并采取多种措施使国际体育仲裁机构的独立性得以加强，形成了较为完整的国际体育仲裁制度体系。这一仲裁机构和仲裁制度，已正式纳入国际奥委会《奥林匹克宪章》的内容条款。

国际体育仲裁的受案范围比较宽泛，所有在体育运动过程中发生的争端，只要属于非官方性质，都可以向体育仲裁院请求仲裁，比如围绕参加竞赛资格引起的各种纠纷、竞赛纪律处分的纠纷、竞赛组织工作的纠纷以及各种体育商业纠纷。各国国际体育组织甚至国际奥委会，都可以成为争议的一方主体适用仲裁解决。根据各类体育纠纷适用程序的不同，可分为两类纠纷：一类是普通纠纷，指发生在当事人之间的原始纠纷；另一类为上诉纠纷，指当事人根据有关体育组织章程、规则或有关协议，已经用尽适用的手段后，对体育组织的决定或处罚仍然



不服而产生的纠纷。

无论适用普通程序还是上诉程序的出、组成仲裁组、被申请人的答辩、必要内容。根据多数仲裁员意见作出的裁决是终局。根据 1958 年《承认及执行外国仲裁裁决公约》,所有缔约国对国际体育仲裁裁决应予以承认和执行。适用普通程序组成。如果仲裁协议未明确仲裁人数,由当事人确定。上诉仲裁组一般由 3 名仲裁员组成。如果当事人选择的法律解决纠纷;如果当事人未决,上诉仲裁依据体育协会、联合会或其



体育纠纷,都要历经仲裁申请的提出、调查、听证、质证、裁决等程序最终裁决,对当事人具有法律约束力。根据《纽约公约》,所有缔约国对国际体育仲裁程序的仲裁组由 1 名或 3 名仲裁员组成。根据纠纷的复杂程度和工作量。一般情况下,仲裁组应根据当事人选择,普通仲裁适用瑞士法律或其他体育组织所在国的法律进行。

从 1984 年到现在,体育仲裁院共处理了 200 多起仲裁案件,其中 70% 发生在 1994 年以后。这些纠纷主要包括两类:一类是体育商业纠纷,主要是运动员与商家、运动员与电视台商业赞助、电视转播、广告宣传等发生的纠纷;一类是围绕竞赛纪律发生的纠纷,其中因兴奋剂使用、处分发生的纠纷占了这类纠纷的 60%。通过多年的仲裁实践,国际体育仲裁机构的独立性和公正性得到普遍认可,获得了良好的声誉,在有效处理国际体育纠纷中扮演了十分重要的角色。在 1996 年亚特兰大奥运会和 1998 年长野冬奥会上,体育仲裁庭成功地处理了布罗曼坦案和罗斯案,推翻了国际奥委会医学委员会的处罚决定,维护了运动员的权益,进一步确立了体育仲裁的权威地位,产生了较大的反响。

【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”！



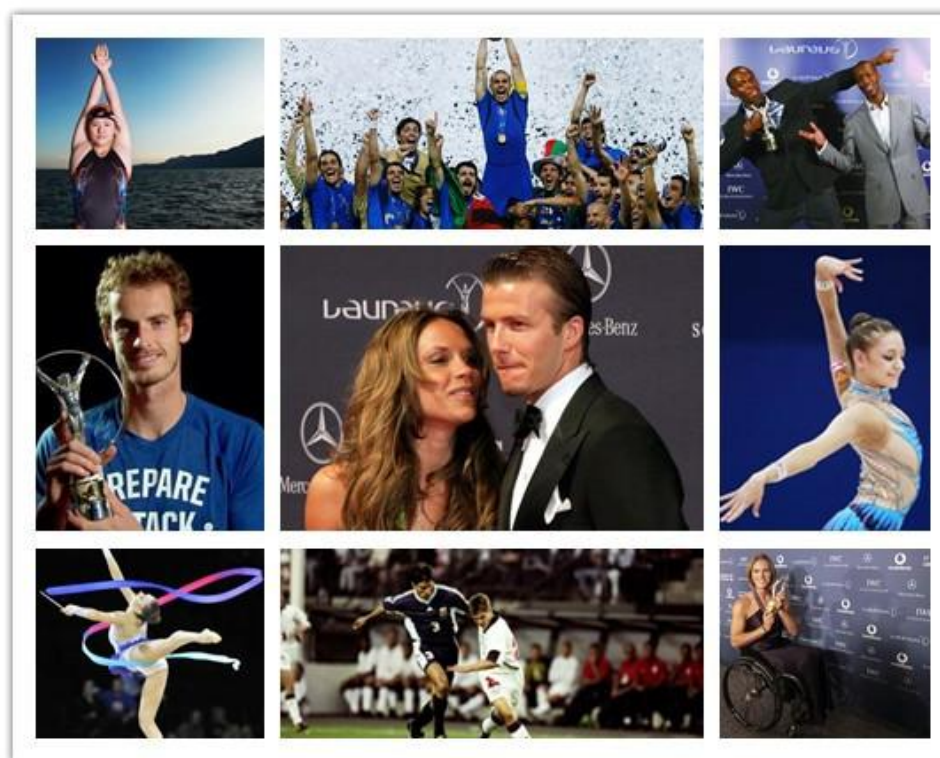


非常感谢您的阅读,

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

11th, 2014

Editor: Zhang Bing Jenny Wang

Previe

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Hotspot in Sports News

2014: What a great year for sport!



The year began with the 22nd Winter Olympic games in Sochi, but that is not the only exciting sporting event this calendar year. In June the FIFA football World Cup is being hosted in Brazil, arguably the home of beautiful football. Then Scotland will host the athletics Commonwealth Games and the golf Ryder Cup later in 2014. Despite there being an anticipation of great sporting occasions there will also be an interesting relationship between these sports and the law.

Russia



For Russia, the 2014 Winter Olympics was an opportunity to show the world what that country can do in terms of hosting top level sporting events, and the Russian Government spent £32billion to try and make the Olympics as memorable as possible. One particular issue which attracted significant media attention is the anti-gay crackdown in Russia. Earlier this year a law was passed allowing police officers to arrest tourists and foreign nationals suspected of promoting homosexuality and to detain them for up to 14 days. Vladimir Putin had assured the International Olympic Committee that gay athletes would be welcome in Sochi, and one can thankfully conclude the games went ahead without any problems. (Minus the couple of teething problems there were at the start of the games with certain accommodation not being completed).

Brazil



As far as the Brazil World Cup is concerned, there is continued concern over infrastructure, with many of the twelve stadiums being used for the football matches remaining incomplete and there being concern over hotel accommodation in many host cities. With the recent deaths of workers at the stadium collapse in Sao Paulo which will host the opening match of the tournament, there will be a concern for FIFA that those companies who have invested significant sums in sponsoring the event, may not wish to back futur

e tournaments if the World Cup is not a major success. With forthcoming World Cup Finals being scheduled for Russia in 2018 (with Sochi being a test as to the capability of that country to host such a large event) and of course Qatar in 2022, FIFA cannot afford for Brazil to be anything short of a major success, particularly with the sense of excitement that there is throughout the world about the event taking place in South America.



Political protests have been ongoing in Brazil throughout 2013 with the Confederations Cup being marred by street protests and political rallies. The difficulty faced by the event organizers is that, as with Sochi, considerable public money has been spent trying to ensure the Finals are the best ever. With Rio hosting the Olympics in 2016, there is a one in a lifetime

opportunity for Brazil to show off all it has to offer to the world, yet many locals are unhappy that public transport, health and education are being sacrificed in order for sporting events to be held in the country. The success of the host nation next June and Brazil winning the tournament may be needed to ensure that violent protests do not undermine the celebration of football.

Scotland



In Scotland, the Commonwealth Games and Ryder Cup are centre stage in 2014, and the arrangements for both tournaments seem to be on track, with over 90% of the tickets for the Commonwealth Games having already been sold. As with the London Olympics, the United Kingdom government has legislated for the Games in the form of the Glasgow Commonwealth Games Act 2008. The Act covers ticket touting and ambush marketing, both of which are now at the forefront of minds for the organising committees of a

ny major sporting events.

One major issue to be considered for Glasgow 2014 may be political campaigning which may take place in or around the event, as later in 2014, Scotland will have a referendum on whether they should become independent from the United Kingdom. It certainly will be intriguing to see how any success or failure at either the Commonwealth Games or the Ryder Cup will be used by both the supporters and detractors of independence, to portray their side of the argument.



The Anelka saga is set to run



Nicholas Anelka's career with West Bromwich Albion ended in disputed circumstances on the 14 March 2014 after both parties claimed to have terminated Anelka's contract of employment.

In addition to the five match ban handed down by The FA's Independent Regulatory Commission following Anelka's controversial quenelle gesture, Anelka was suspended by West Brom and forced to train alone while the club carried out its own internal inquiry, which was due to be concluded this week. However,

Anelka issued a statement via Twitter on the 14 March 2014 confirming that:

"Following discussions between the club and myself, proposals have been made to me that I rejoined the group under certain conditions that I cannot accept. Wishing to preserve my integrity, I decided to free myself and to terminate the contract binding me with West Bromwich Albion until 2014, and now."

The conditions referred to in Anelka's statement were to apologise to the club, supporters, sponsors and wider community as well as to accept a substantial fine.



West Brom later issued two statements firstly denying receiving any formal notice of termination from Anelka and later confirming that "The club considers the conduct of Nicolas Anelka on 28 December, coupled with his purported termination on Social Media, to be gross misconduct. As a result the Club has tonight written to Nicolas Anelka giving him 14 days' notice of termination as required under his contract."

Options

West Brom have the option of seeking compensation from Anelka under Article 17 of FIFA's Regulations on the Status and Transfer of Players ("RSTP") on the basis that Anelka's gross misconduct amounted to a unilateral breach of his employment contract without just cause that entitled the club to treat the contract as at an end. Article 17 of the RSTP confirms that any party who terminates a contract without just cause must pay compensation to the innocent party.

The Anelka case has similarities with the case involving Adrian Mutu and Chelsea. Mutu tested positive for cocaine in 2004 and Chelsea considered Mutu's actions to amount to gross misconduct. Chelsea, therefore, terminated Mutu's contract and sought compensation from the player under Article 17 of the RSTP (previously Article 22) on the basis that Mutu breached his contract without just cause. CAS initially held in December 2005 that Mutu had breached his contract with Chelsea without just cause and that compensation was payable even though the player did not actually terminate the contract.



CAS eventually ordered Mutu to pay Chelsea £14.5m in compensation in 2009 and FIFA's Dispute Resolution Chamber has recently held that Mutu's subsequent clubs, Juventus and Livorno, were jointly and severally liable to pay Chelsea that compensation under Article 17.2 of the RSTP.

There are, however, some critical differences between the two cases. Under Article 17 of the RSTP, compensation for any breach of contract without just cause is calculated by taking into account the following factors: the national law applicable; the specificity of sport; other objective criteria, which include the remuneration and other benefits due to the player under the existing contract and/or the new contract; the length



h of time remaining on the existing contract; the fees and expenses paid or incurred by the former club, amortised over the length of the contract, and whether the breach occurred in the Protected Period.

Chelsea spent £15.8m in acquiring Mutu from Parma in 2003 and he signed a 5 year contract that was due to expire on 30 June 2008. There was, therefore, over 3 years (44 months in total) remaining on the contract when Mutu committed

his breach and the contract was terminated. When calculating the compensation payable, FIFA's Dispute Resolution Chamber assessed compensation based on the unamortised costs that Chelsea incurred in purchasing the player from Parma i.e. the amount of the transfer fee, signing on fee and agent's fee that Chelsea were unable to amortise during the remaining 44 months of the contract. This approach was subsequently endorsed by the CAS. In contrast, however, West Brom have incurred no acquisition costs because Anelka was signed on a free transfer last summer and Anelka's contract only



had a few months remaining so compensation based on the objective criteria listed under Article 17 of the RSTP will be minimal. It is, therefore, unlikely to be worthwhile for West Brom to pursue a claim against Anelka for compensation.

As for Anelka's options, he is unlikely to take any action against West Brom in order to challenge his dismissal as it seems pretty clear that he is happy to leave the club. He will probably struggle to find a new club until next season though given that his five match ban may be extended to have worldwide effect by FIFA's Disciplinary Committee under Article 12.2 of the RSTP and whilst any action by West Brom to recover compensation is unlikely, other clubs may still be put off signing Anelka in case they are jointly and severally liable for any compensation payable under Article 17.2 of the RSTP.

UEFA confirms creation of 'League of Nations'



UEFA's 54 member associations have unanimously voted to create a new competition, the UEFA Nations League. The proposal is for this new tournament to replace the traditional European Championship qualifying campaign and reduce the number of increasingly unpopular international friendlies. The competition will help UEFA realise its stated goal of improving the quality and standing of national team football while maintaining the balance between club and international football. It will establish the UEFA Nations League champions every odd year while also allowing all nations to play competitively at their level.

Whilst the exact format of the tournament has yet to be finalised, it is apparent that there will be four divisions each divided into four smaller pools. Teams will be placed into their divisions according to UEFA's coefficient ranking system. Pool matches will take place between September and November 2018 (each team playing the other twice) with the four winners from each division playing each other the following summer. Teams will compete to be promoted to a higher group, with the winners having the opportunity to qualify for the 2020 European Championship play-offs. Twenty teams will advance from the Nations League to the 2020 Euros.



The four-point resolution that carried the new tournament was created after member associations requested that UEFA investigate the future of national team football within the framework of the approved international match calendar. Furthermore, players, coaches and supporters increasingly felt that international friendly matches were not competitive enough.

Despite widespread support for this new competition, Fifpro, the world footballers' association, is concerned about the added strain it will place on players.

"It should be clear that there is a difference in a friendly match and a competitive match," said director of player services Tijs Tummers.

"The Nations League will be another prestigious competition. As a consequence, that implies an increase in the workload for the group of top players. Fifpro, the world footballers' association, is concerned about the added strain it will place on players."



International Sportslaw Practice

Doping at the Sochi Winter Olympics: A Swedish case study

Under the IOC Anti-Doping Rules applicable to the 2014 Sochi Olympic Winter Games, testing took place under the IOC's auspices from when the Olympic Villages opened on the January 30th, right up until the day of the closing ceremony, on 23 February 2014. Within that period, the IOC systematically performed tests before and after events and oversaw the most stringent anti-doping programme in Olympic Winter Games history. The IOC tested the top five finishers after each competition, in addition to two of the other athletes at random. They also performed unannounced tests during the olympics, when the individual athletes weren't competing. In total, 2,667 tests were conducted, surpassing the previous record set at Vancouver 2010 by 518 tests. Of the 2,667 tests, 477 were blood tests and 2,190 were urine tests.

Sweden's Nicklas Backstrom was banned shortly before the Sochi 2014 Winter Olympics ice-hockey final

between Canada and Sweden, after taking Zyrtec-D, an allergy medicine he had been taking for the last seven years. Backstrom plays in the US National Hockey League, which is not a signatory to the World Anti-Doping Code, so has different anti-doping regulations. This article examines the duties of the doctors administering the medicine to Backstrom and assesses the culpability of the NHL for not putting in place programmes to assist athletes travelling to the Olympics.

Twenty minutes before the puck dropped in the gold medal hockey game at the 2014 Sochi Winter Olympics, Swedish centre Nicklas Backstrom was informed he had failed a doping test and was forced to withdraw. The test was performed after Sweden's 5-0 quarter final win over Slovenia four days earlier. The banned substance was in an allergy medication Backstrom has taken for the past seven years.



'Confusion'

Based on comments made to the media, it is clear that the International Ice Hockey Federation (IIHF) an

d the NHL Players Association (NHLPA) fundamentally misunderstand the nature of doping. The IIHF's chief medical officer Dr. Mark Aubry said, "There certainly is no doping in this instance. He is an innocent victim. Doping is certainly not allowed, but this is not a case of doping." NHL Players Association Special Assistant to the Executive Director, Mathieu Schneider, said, "The process was flawed. I think it's clear that he wasn't intending to cheat, that he wasn't doping. Doping's a very serious allegation, and at some point common sense should have prevailed, and it clearly did not."

This position is way offside. Ice hockey's international federation and the NHLPA should know better. Olympic athletes must conform to the World Anti-Doping Code ('the Code') and it is well-established that intent is not necessary to establish that there is a doping infraction. 'Article 2: Anti-Doping Rule Violations of the Code' is clear in defining what constitutes an anti-doping rule violation. Article 2.1 is straightforward in saying:

'It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping violation under Article 2.1.'

'Strict-liability principle'

The Comment to Article 2.1.1 in the Code states that, ‘Under the strict liability principle, an Athlete is responsible, and an anti-doping rule violation occurs, whenever a Prohibited Substance is found in an Athlete’s Sample. The violation occurs whether or not the Athlete intentionally or unintentionally Used a Prohibited Substance or was negligent or otherwise at fault.’

The Court of Arbitration for Sport (CAS) and national courts have upheld this view. In *Quigley v. UIT*, CAS held that:

‘It is true that a strict liability test is likely in some sense to be unfair in an individual case...The vicissitudes of competition, like those of life generally, may create many types of unfairness, whether by accident or the negligence of unaccountable persons, which the law cannot repair. Furthermore, it appears to be a laudable policy objective not to repair an accidental unfairness to an individual by creating an intentional unfairness to the whole body of other competitors. This is what would happen if banned performance-enhancing substances were tolerated when absorbed inadvertently. Moreover, it is likely that even intentional abuse would in many cases escape sanction for lack of proof of guilty intent.’

Further still, the English High Court in *Gasser v. Stinson* said that if a defence of moral innocence were to open, the floodgates would be opened and any international federation's attempts to prevent drug-taking by athletes would be rendered futile. It is against this backdrop and regulatory regime that all Olympic athletes must conform.

'Help athletes understand'

National Governing Bodies (in this case, the Swedish Ice Hockey Association) and National Olympic Committees ought to have support mechanisms in place to help athletes understand and adhere to the Code. Backstrom took the allergy medication Zyrtec-D (with the prohibited substance pseudoephedrine) with the approval of Dr. Björn Waldebäck, the team doctor. Responsibility here falls squarely on the shoulders of Dr. Waldebäck for ensuring that it did not contain any prohibited substances in sufficient doses to trigger a positive test result.

Dr. Waldebäck is quoted as saying he regretted authorizing Backstrom taking the medication, thinking that it ought to have been administered as far in advance as possible before



ore the game for the levels to have dropped below the legal threshold level. Pseudoephedrine is on the World Anti-Doping Code's Prohibited List and is prohibited when its concentration in urine is greater than 150 micrograms per milliliter. Backstrom's level was allegedly 190 mcg/ml. He subsequently resigned as head physician for the Swedish Olympic Committee.

This is not an instance of an athlete ingesting a performance-enhancing drug as a result of a contaminated food supplement. This happened because a doctor, whose duty extends to approving medicine which will not lead to an athlete getting kicked out of the Olympics, failed in exercising that duty.

'Assist players with conforming'

With so much riding on the line with NHL players participating in the Olympics, what also bears mentioning is the extent to which, if at all, the NHL proactively put in place programs or measures to assist players with conforming to the Code. The league's approach to doping is not the same as that of signatories to the Code. For example, the Olympics requires athletes to be tested for human growth hormone and pseudoephedrine (found in Zyrtec-D, Backstrom's allergy medication, and the popular over-the-counter head cold drug Sudafed, for example) while the NHL does not, and also takes a hard line on marijuana (even though its threshold was recently raised from 15 ng/ml to 150 ng/ml), whereas the NHL doesn't consider

'pot' a performance enhancing substance. Given these not-so-little differences, it would be interesting to know the extent to which the NHL and the NHL Players Association forewarned players of these differences, or whether it was simply left to the National Olympic Committees and National Governing Bodies to deal with this issue.

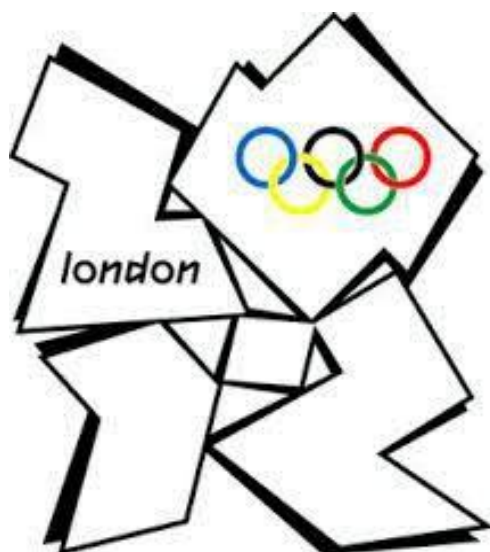
'Not the first time'

Despite Backstrom being declared ineligible to play in the men's gold medal hockey game at the Olympics, NHL Deputy Commissioner Bill Daly has said that he does not anticipate there being any consequences relative to Backstrom's ability to play for the Washington Capitals in the NHL. This is not the first time a high profile athlete has got pinched for a doping offence involving a doctor's authorized use of a banned drug. In the 1995 Pan Am Games in Argentina, Silken Laumann, one of Canada's greatest-ever rowers, was fighting a cold and took an over-the-counter drug which was evidently approved by the team doctor (that approval is disputed by the doctor). Laumann unfortunately took Benadryl Decongestant which contains pseudoephedrine instead of Benadryl, which does not. She tested positive after her quadruple skulls boat won gold and both she and her team mates were stripped of their medals.



The Code makes allowances for athletes to take prohibited substances under its Therapeutic Use Exemption (TUE) programme. A TUE is considered when an athlete would experience significant health impairment if the substance were withheld in the course of treating an acute or chronic medical condition, when the substance would produce no additional performance enhancement and when there are no reasonable alternatives available. Given that Backstrom had taken Zyrtec-D for the past seven years, it is astounding that he (and his entourage, including Dr. Waldebäck) neglected to check the ingredients in the medication and - had they done so - apply for a therapeutic use exemption.

'Delay'



Why it took the lab four days to test the sample and return the results to Backstrom is another question. In November 2013, the Sochi drug-testing lab was provisionally suspended by WADA for failing to ensure a comprehensive quality management program grounded in accurate and reliable results. Further still, the Sochi lab had produced false-positive tests during a routine evaluation. The provisional suspension was subsequently lifted and the lab was fully accredited in time for the Olympics.

It is interesting to note that suspect samples at the London 2012 Olympics were identified within 24 hours. It is not yet known whether Backstrom was informed of a positive ‘A’ test or a ‘B’ test. Either way, the delay does seem unreasonable and the Swedish Ice Hockey Association is deservedly angry that Backstrom and the team were informed only twenty minutes before the start of the gold medal game.

In the end, it’s uncertain if Backstrom’s presence would have made any difference to the outcome of the game, but that’s not the point. The issue here is this was a player at the prime of his career released by his professional league and representing his country at the pinnacle of athletic achievement only to be denied and let down by what appears to be several easily correctable mistakes made by people who benefited from his participation and who were there to protect him. It is interesting to note that suspect samples at the London 2012 Olympics were identified within 24 hours. It is not yet known whether Backstrom was informed of a positive ‘A’ test or a ‘B’ test. Either way, the delay does seem unreasonable and the Swedish Ice Hockey Association is deservedly angry that Backstrom and the team were informed only twenty minutes before the start of the gold medal game.

Silver lining?

The International Olympic Committee (IOC) later announced a decision in the case of Swedish ice hockey



player Nicklas Backstrom who participated in the XXII Olympic Winter Games in Sochi.

Backstrom, 26, had tested positive on 19 February for the presence of pseudoephedrine (PSE) in excess of the applicable decision limit and he was provisionally suspended from competing in the final of the men's ice hockey competition between Sweden and Canada.

The IOC Disciplinary Commission (DC), composed of Anita L. DeFrantz (Chairperson), Nawal El Moutawakel and Claudia Bokel, found that the provisional suspension was fully justified, not only due to the presence in excess of the applicable decision limit of PSE in his urine sample, but also due to the fact that the athlete conceded at the hearing, which took place shortly before the final match, that he had also taken medication containing PSE earlier that day.

The IOC DC took into account in particular that the athlete had been cooperative, had disclosed the medication in question in the doping control form and had relied on the specific advice of his team doctor that the intake of the medication would not give rise to an adverse analytical finding. There was also no ind

ication of any intent of the athlete to improve his performance by taking a prohibited substance. Based upon these mitigating circumstances, the IOC DC considered that the athlete should be entitled to receive the silver medal and diploma awarded for men's ice hockey.

Others not so fortunate

There were other athletes at the Sochi Winter Olympics who did fall foul of the anti-doping legislation. Biathlete Evi Sachenbacher-Stehle of Germany was excluded from the 22nd Olympic Winter Games in Sochi.

Sachenbacher-Stehle, 33, tested positive on 17 February for methylhexanamine (dimethylpentylamine). The IOC Disciplinary Commission decided that she was to be disqualified from the following events:

Women's 12.5km Mass Start Biathlon event, where she placed 4th;

2x6km Women + 2x7.5km Men Mixed Relay Biathlon event, where she placed 4th

Furthermore, the IOC ruled that she:

1. shall have her diploma in the above-mentioned events withdrawn;
2. is excluded from the Olympic Winter Games in Sochi in 2014;
3. shall have her Olympic identity and accreditation card cancelled immediately.

On February 19th the IOC announced that men's ice hockey player Vitalijs Pavlovs of Latvia had been excluded from the 22nd Olympic Winter Games in Sochi. The IOC Disciplinary Commission, decided the following:



1. The Athlete, Mr Vitalijs Pavlovs, Latvia, Ice Hockey, is disqualified from the Men's Play-offs Quarterfinals – Canada vs Latvia match.
2. The Athlete shall be excluded from the XXII Olympic Winter Games in Sochi in 2014, and shall have his Olympic identity and accreditation card immediately cancelled.

d.

3. The Athlete's diploma (for placing 8th) be withdrawn.
4. The International Ice Hockey Federation is hereby requested to make appropriate mention of the above in the record of the sports results, and to consider whether it should take any further action within its competence.

These are not the only cases of athletes being discovered to be doping, the other athletes who tested positive against Anti-Doping Rule Violations, are;

Bobsleigh

William Frullani, Italy,
Daniela Zalewskiego, Poland,
Cross Country
Marina Lisogor, Ukraine.
Johannes Dürr, Austria.

Before the games three athletes tested positive for prohibited substances:

Karolis Zlatkaukas, Lithuania,
Ekaterina Iourieva, Russia,
Irina Starykh, Lithuania.

In conclusion, this information poses an important question that must be considered; is doping still an extremely prevalent activity amongst athletes and sportsmen, or is it that because we now have such stringent

Anti-Doping testing, those minority of athletes who still decide to do it are being caught? The Swedish case study also asks one to consider that maybe more still needs to be done to educate the athletes on what they can and cannot use and whether this can in turn reduce the over-reliance on members of the backroom staff such as club-doctors, which may help prevent a similar case occurring again.

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.

