

# LAW

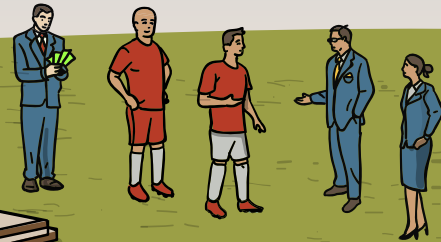
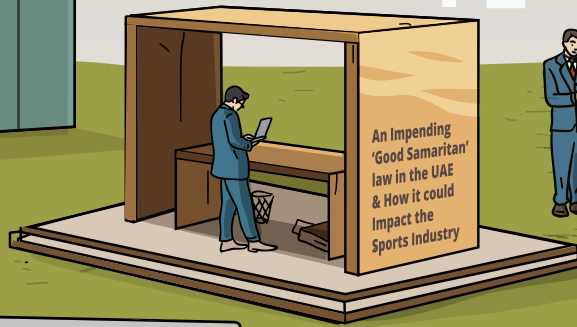
Latest Legal News and Developments from the MENA Region

# UPDATE

**Sports & Events Management:**  
Playing to win across the Middle East



A Peculiar Beast



**Ambush Marketing and the  
FIFA 2022 World Cup™**

**Registration of  
Professional and Amateur  
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**Stadium Naming Deals:**  
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# Sports & Events Management: Playing to win across the Middle East

Welcome to the Sports and Events Management focus edition of Law Update. This edition provides a colourful glimpse of some of the opportunities and challenges our clients throughout the Middle East region are working through in this rapidly growing sector. Year on year we cannot help but note how the sports and events sector has truly flourished. Whether supporting entities, individuals or institutions from the public or private sector, we feel privileged to support clients consistently leading the way. This edition of Law Update gives us a chance to share some of the insights and experiences we have been fortunate to gain in this area over the past year.

We start with a look at issues as diverse as commercial best practices in stadium naming rights, particularly poignant in the context of the recent opening of the industry-leading Coca-Cola Arena, and how statutory guidance can encourage investment and athlete development, as demonstrated by Egypt's Sports Law. Turning to football, we also consider mandatory player registration and a clarification in third party ownership under FIFA's rules as well as requirements in working with intermediaries for player transfers under the Saudi Arabian Football Federation's regulations and the implications of employment law in the sporting context. We offer a comparative look at the rapidly growing field of sports arbitration and its more established cousin commercial arbitration as dispute resolution mechanisms. As if to underscore the theme of a diversifying and multifaceted sector, we step off the pitch to grapple with the tensions between new products and advertising oversight in the context of e-cigarette advertising at sporting events

in the UAE and to see how government is taking steps to promote public safety, which could be particularly relevant to large public events, through the development of a much anticipated "Good Samaritan" law. We also take a practical and principled look at the rise of e-sports not only as a competitive sporting discipline but also as a promising economic development in the sports sector.

The media headlines properly go to the athletes, teams and varied competitors we are proud to represent as they chase their dreams across golf, tennis, motorsports, football, cricket, rugby, cycling and so many other sports. It also seems sure that the trajectory of the sports and events sector in the Middle East will ensure the commercial ecosystem of sponsors, suppliers, contractors, broadcasters, governing bodies, regulators, community stakeholders and fans will keep us busy between now and next year's sports edition, so please enjoy this snapshot as we are already working on some great projects for the next one!



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# Sports & Events Management:

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# Ambush Marketing and the FIFA 2022 World Cup™



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*N.B. The author's original longer version on which this article is based first appeared in Intellectual Property Magazine in April 2019.*

## Ambush Marketing and the FIFA 2022 World Cup™

Preparations are underway and the FIFA 2022 World Cup has all the ingredients to be a tremendous socio-cultural and sporting event. It will be the first World Cup held in the Middle East and the first to be hosted by an Arab country. In keeping with the scale and scope of the event, the business of sports will also be on showcase. This means that rights holders and organisers will need a reliable legal framework within which to market, promote and deliver the event consistent with global expectations for the showcase.

FIFA has certain expectations of a host country in relation to baseline legal requirements for rights protection and obligations necessary for its flagship tournament. These can involve certain changes to local laws in order to accommodate commercial, licensing and tax requirements, among others. While certain changes should be made to local laws to meet tournament requirements, such changes will need to be by way of agreement between the host country and FIFA, taking into account the legal traditions and current processes. Getting this balance right will result in benefits both for Qatar and for FIFA - a successful tournament as well developing an ongoing legacy for the host country.

## 1. Ambush Marketing: Opportunism vs Preparedness

One of the most prominent areas of concern where local legal changes are widely anticipated to prepare for the World Cup is in respect of ambush marketing. Precisely what ambush marketing is and whether or not it is contrary to the law are two questions at the heart of the short but storied history of guerilla advertising. Broadly speaking, ambush marketing is the attempt, usually by a competitor of a licenced sponsor, to: (i) associate itself or its products with a major event in a manner misleading to consumers ('Ambush by Association'); or to (ii) interject itself or its products in close proximity to an event to gain brand exposure ('Ambush by Intrusion').

The aim, via clever marketing and the pushing of legal boundaries, is to create the perception (and obtain the related commercial value) of the ambushing entity being associated with the event in question. In a competitive market, this is not perceived as 'win-win' but rather more akin to a 'zero-sum' to the detriment and loss of the authorised event sponsor/licensee who has paid a substantial amount for such privilege. Not all ambush marketing is illegal. Legality will depend on the particular activity and applicable law in the relevant jurisdiction.

## 2. What are the Key Concerns?

The FIFA World Cup reaches a larger, more diverse audience than any other single-sport event. For the organisers of a World Cup, revenues generated from advertising make up the lion's share of budgeted income. Staging the tournament, welcoming the world in the manner that Qatar deserves and paying for the event, are partly premised on the ability to properly market: (i) corporate sponsorship packages; (ii) broadcast rights; and (iii) merchandising opportunities.

Commercial sponsors are entitled to legal protection of their vital investments. Ambush marketing can compromise the value proposition in any one or all three of those areas. For sponsors that pay millions of dollars for a share of those rights (and in a number of cases significantly more than that in the activation of those rights) ambush marketing jeopardises that investment. Unchecked, this weakens the product the organisers are offering, dilutes the value and ultimately reduces the ability of an event to attract future sponsors.

## 3. What Ambush Trends can We Anticipate?

We have seen a continuing trend for opportunistic and creative advertisers to attempt to exploit major events. There remains no broadcast market with the pull to attract viewership like live sports. For example, in the US market alone, the recent furore over the final season of the HBO series Game of Thrones reached a fever pitch with many millions tuning in for the final episode; however, it was noted that if viewership for that episode were compared to viewership for regular season NFL games, it would not have placed in the top 70!

The level of fairness required of competitors on the pitch will not necessarily be observed by advertisers off it. Some of the world's premier brands have done battle via ambush. The stakes are high and the potential for global exposure has been a temptation many advertisers, including a number of market heavyweights from the soft drinks market to sportswear manufacturers and electronics giants cannot seem to resist. There is no reason to suggest this will not continue.

## 4. What does a Solution Look Like?

Comprehensive changes based on the enactment of enabling laws in respect of government guarantees, customs requirements and taxation have not yet been fully implemented. It is expected these processes are underway and will be agreed between Qatar and FIFA and duly rolled out within an appropriate time period prior to the 2022 tournament. While the precise description of these new laws is not yet clear, it is likely that in respect of ambush marketing, the legal approach and position will be similar to that of previous World Cups. FIFA is adept at taking on ambush marketers. It has published an exhaustive and strict code of what it considers to be unacceptable marketing practices surrounding its event and the list is far-reaching. Fundamentally, any marketing practice, which draws a commercial association with the FIFA World Cup is banned unless it has FIFA's authorisation.

A rights holder's options in pursuing an ambush marketer depends on the law in the country in which the ambush takes place. While FIFA will work with Qatar's Supreme Committee for Delivery and Legacy to ensure appropriate statutory provisions are promulgated, sponsors should take proactive steps to protect their substantial investment by ensuring they are ready. Readiness should include:

- implementing full trademark protection in respect of the relevant goods and services;
- entering into a comprehensive sponsorship agreement;
- ensuring prominent trademark and copyright notices are placed on all official merchandise and hoardings;
- choosing whether or not to adopt a zero tolerance approach by being vigilant and ensuring swift and decisive action against all infringers; and
- considering adding non-legal alternative strategies (such as a publicity campaign designed to identify and endorse official sponsors) where they can be useful.

The attainment of a mutually beneficial solution will take strong coordination as well as a unified strategy and a strong understanding of existing Qatari law but can be achieved subject to the necessary research and analysis being undertaken in order to understand the laws that

“**[Ambush Marketing]’ is not perceived as ‘win-win’ but rather more akin to a ‘zero sum’ game..**”

may need to be enacted or changed to host the tournament. South Africa enacted a law to enable speedy trials in special courts in respect of crimes committed by fans; Brazil enacted legislation to accommodate FIFA requirements; and Russia, the 2018 hosts, also made changes to its laws in connection with the World Cup.

## 5. Tips to Achieve Robust Preparedness

**Tried & Tested.** Event-specific local legislation protecting sponsors is now commonplace – even mandatory in the case of any Olympic host nation. FIFA is amongst the best and most effective bodies at protecting sponsors' rights. Incremental improvements in such laws are made before each new mega-competition and consideration should be given to preparing the best possible statutory solution for Qatar, accounting not only for the event but also for Qatar's unique cultural and legal environment. Lessons learned from experiences in South Africa, Brazil and Russia should be adopted; and, an eye should be kept on opportunities to incorporate effective developments in law and to account for market trends.

**Home-field advantage.** Qatar has a useful existing framework of legal and regulatory traditions that can provide an additional opportunity for protection. Advertising regulations typically require approval and permit protocols, such that Ministerial and/or municipal approval in advance of displayed promotional signage. This administrative approach establishes an **‘ask-first’** rather than an **‘apologize-later’** dynamic, which imposes a positive obligation on potential infringers to secure prior approval. The 2022 bid process

capitalised on the compact World Cup (the close proximity of playing venues will make Qatar 2022 one of the most geographically compact FIFA World Cups ever). This means exclusion zones could be policed very effectively to combat Ambush by Intrusion. In respect of Ambush by Association, elements of laws concerning Intellectual Property including new event-specific legislation, consumer protection and the Civil Code (for tort and contract-based remedies) can all be used to defend against guerilla tactics.

## 6. Beyond 2022: Parallel Developments, Building a Coherent Legal Strategy

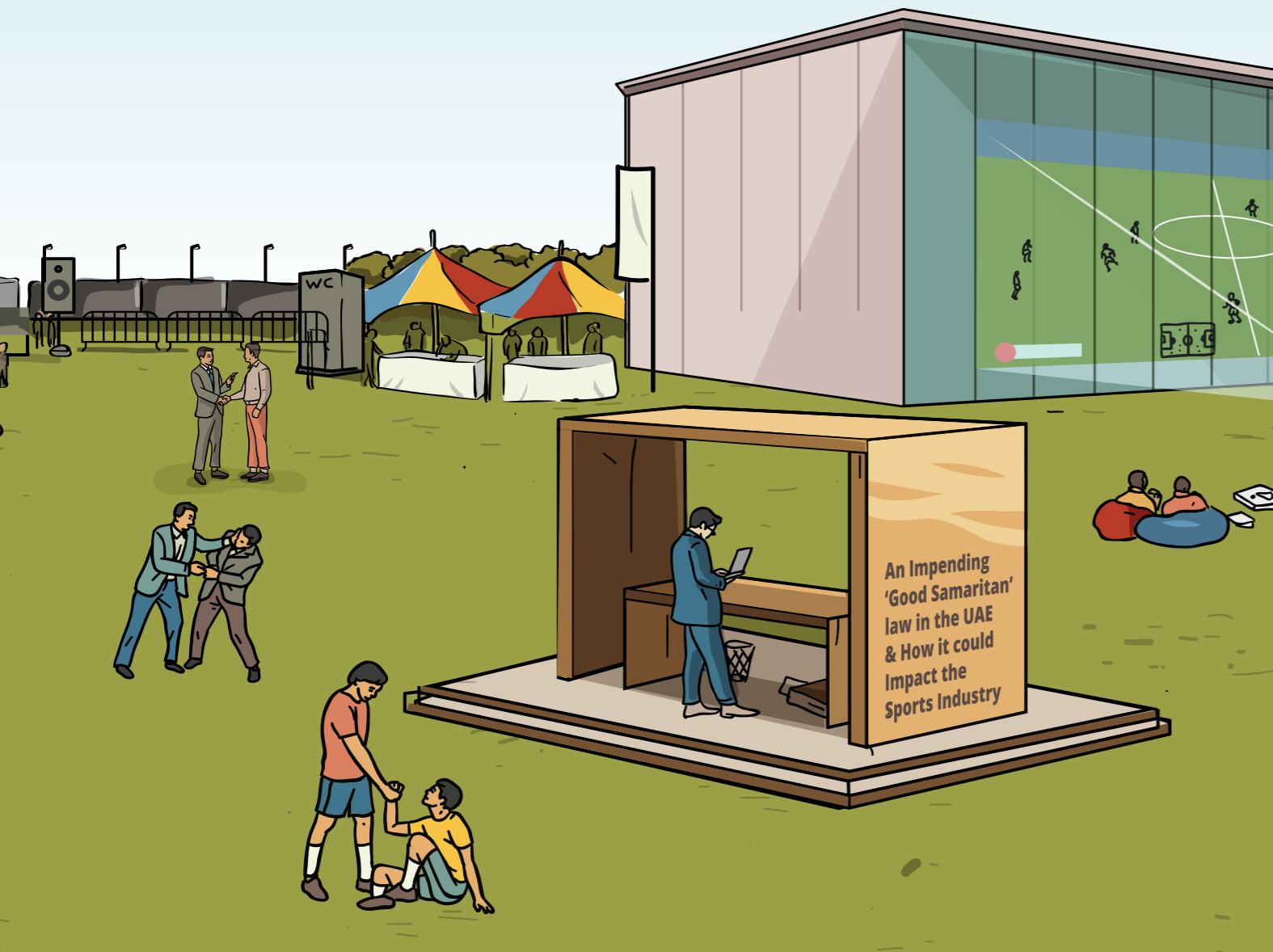
Qatar has historically held a positive outlook and recognition of intellectual property rights and has recently invested significant resources in promoting the development of a knowledge economy. Such steps notably include Qatar's reinforcement of its IP protection regime through the provision of a stronger legal basis for protection and enforcement, in addition to improving and organising IP administrative filing systems and amending the Consumer Protection law to combat counterfeit goods.

The process of facilitating and promulgating enabling legislation should be well under way in Qatar to effect changes to laws and standards for the World Cup. Qatar, in conjunction with FIFA, should ensure the best possible legal framework to deter ambush marketing is in place well before 2022. Effectiveness suggests this needs to be complemented by a flexible and dynamic ability to enforce that framework of legal rights and restrictions to maximise sponsor value as well as protecting the short- and long-term value of the event, whilst taking into account the requirements of internal and external stakeholders to set the table for a successful tournament for FIFA and the host nation as well leaving a meaningful legacy for improved intellectual property protection.

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# An Impending 'Good Samaritan' law in the UAE and how it could Impact the Sports Industry



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**N.B.** The original long form of this article was written for and first published on *LawInSport.com* (3 June 2019).

Recently, iconic Spanish World Cup winning goalkeeper Iker Casillas, during practice for his current club side, Porto, suffered a heart attack. Fortunately, in his case, trained medical professionals employed by the club (and subject to obligations to assist) were at hand and administered appropriate emergency care before he was safely transported to hospital. But what if it had happened to a fan, high in the stands during a match, or travelling to or from a sporting event with no trained professionals on duty? For many people, helping a stranger who requires assistance seems like the natural thing to do, especially in an emergency. This human instinct has been a source of many life-saving interventions and heroic bystander 'Good Samaritan' rescues over the years.

Like a number of other jurisdictions the UAE, with its expanding sports and events market, recognises the need to encourage this type of assistance by alleviating the fear of prosecution or civil liability. This article examines the dynamics relating to the impending enactment in the UAE of a specific 'Good Samaritan' law, which has been anticipated for some time. In particular, it looks at what a 'Good Samaritan' law might entail and the prevailing international standards, as well as the current position in the UAE.

## Background

### 1. What is a Good Samaritan Law?

Good Samaritan laws are statutory provisions that offer legal protection to people who give reasonable assistance to those who are, or whom they reasonably believe to be, injured, ill, in peril, or otherwise incapacitated. The protection is intended to reduce bystanders' (including, in the sporting context, volunteers') hesitation to assist, for fear of being sued or prosecuted for unintentional injury or wrongful death. The principle of the Good Samaritan has developed over time to include first aiders and rescuers providing assistance in the aftermath of an emergency.

The Good Samaritan doctrine, which has developed in common law jurisdictions is a legal principle that protects a responding rescuer, who has voluntarily helped a victim in distress, from being successfully sued for wrongdoing. Effectively, the responder will not be held legally liable for any harm to the person assisted, as long as the responder acted rationally, in good faith, and in accordance with their level of training. The purpose is to keep people from being reluctant to help a stranger in need for fear of legal repercussions should they make some mistake in treatment.

This Good Samaritan scenario applies in all walks of life and can be of particular relevance in the sports and events context, where tens of thousands of participants and spectators travel and gather to enjoy a broad range of active and sometimes risk-involved pursuits.

## 2. What is the International Position?

Good Samaritan laws naturally tend to vary as specific measures are tailored and implemented to fit specific jurisdictions and account for cultural and historic practices. However, in determining optimal features for a new law in the UAE, it may be instructive to consider what common features appear in similar laws in other jurisdictions. Amongst these common features are the following points:

**Imminent Peril** - Good Samaritan provisions are intended for specific circumstances rather than minor incidents. In some jurisdictions this is termed 'imminent peril'. In the absence of imminent, serious danger to life, the actions of a rescuer may be perceived to be reckless and not worthy of protection. However, what if a sports professional (e.g. a boxer) is in immediate danger, what safety protocol should apply? What if the boxer is an amateur, training at a club, without medical professionals on hand?

**No Intended Reward or Compensation** - Only first aid provided without the intention of reward or financial compensation is covered. Medical professionals are typically not protected by Good Samaritan laws when performing first aid in connection with their employment.

**Obligation to Remain** - If a responder initiates first aid, he/she should not leave the scene until it is safe to do so, a rescuer of equal or higher ability takes over, or continuing to give aid is unsafe. This can be as simple as a lack of adequate equipment or protection against potential danger to themselves.

**Consent** - The responder must obtain the consent of the patient, or of the legal guardian of a patient who is a minor, unless this is not possible. Consent may be implied if an unattended patient is unconscious, delusional, under the influence of medication or other chemical substances or otherwise unfit to make decisions regarding his or her safety, or if the responder has a reasonable belief that this is the case.

**Duty to Assist** - In most jurisdictions with such a statute, unless a caretaker relationship (such as a parent-child or doctor-patient relationship) exists prior to the incidence of illness or injury, or unless the Good Samaritan is responsible for the existence of the incidence of illness or injury, no person is required to give aid of any sort to a victim.

## Current situation in the UAE

In the UAE it has been reported by a number of sources in the media that a draft 'Rescuer Protection Law' has been prepared with suitable input from the Ministry of Health and the Emirates Medical Association. The authors understand that the draft law has been tailored to ensure that no civil or criminal litigation may be successfully pursued against any person who has, in good faith, provided help to another person in an emergency situation. The UAE would be the first Arab country to introduce such a law.

### 1. What Can/Can't a Responder Do Without Fear of Incurring Liability in the UAE?

Until a Good Samaritan Law has been enacted, it is important to keep in mind that there are a number of laws and procedures that could apply to any given set of circumstances that might otherwise be akin to a Good Samaritan situation, when an individual offers first aid as a rescuer.

Abu Dhabi police have previously stated it is a criminal offence not to immediately contact police in the event of a traffic injury, but pursuant to the UAE Penal Code, it may also be an offence to provide assistance without being trained in first aid. No criminal offence will have occurred, in a broad first aid context, if medical treatment administered has been performed in accordance with accepted scientific principles. The consent of the patient is required (express or implied), unless medical interference is required in emergency cases.

There are certain contexts in which urgent care by non-professionals has been recognised by law. Specifically, in the workplace context, employers will be aware of the minimum first aid requirements under the UAE Federal Labour Law, Law No. 8 of 1980. Sharia law principles do not expect that a rescuer should be competent before assisting someone suffering from a heart attack. In the UAE, a first aid Fatwa allows for a non-Muslim to provide first aid to a Muslim, and for a male to administer first aid to a female. However, employers ought to note carefully in employment files, if there are specific objections to this until the new Good Samaritan Law is fully in force.

With reference to the educational setting, schools in the UAE must have at least one full time nurse and one part time doctor where the school has upwards of 1,000 children. The requirements increase to one full time nurse and at least two full time doctors for schools with up to 2,000 children, in accordance with the School Clinic Regulations administered by the Ministry of Health and Prevention. The Ministry of Interior arranged installation of 82 defibrillators across the UAE during 2016 to ensure lifesaving is a priority. The Abu Dhabi Occupational Safety and Health Centre ('OSHAD') Code of Practice encourages all workplaces, worksites and corporate offices to install automated external defibrillators and install an automated external defibrillator programme.

### 2. What are the specific risks of acting/not acting for a bystander?

The UAE Civil Code states in part that: "Any harm done to another shall render the doer thereof, even though not a person of discretion, liable to make good the harm." Accordingly, the risks to a Good Samaritan of civil claims and or criminal prosecution are prima facie substantial. In many cases, whether it be at sporting events or in public places, the human instinct to help others will overcome immediate concerns about the potential impact upon one's own position.

If someone refrains from assisting a victim despite being in a position to do so, penalties could apply under the Penal Code. Specifically, the Penal Code provides for penalties if someone "refrained, at that moment, from helping the victim... in spite of the fact that he was capable of doing so". A personal trainer, for example, may accordingly face a dilemma when pushing a client to their limits. At what point, should they stop, and are they aware of the adequate steps which require to be taken to avoid injury?

With health and safety in contemplation, it is important to strike an appropriate balance in terms of policy. Perhaps there is a developmental aspect to this issue to the extent that the timing for a Good Samaritan law is now right; whereas prior to the proliferation of basic first aid knowledge, training and best practices the ultimate

concern related to not causing harm. The Penal Code states a person may be fined or imprisoned for a period of at least one year, if they cause the death of another person, or fined or imprisoned for up to two years if an act caused the permanent disability of a victim. A Good Samaritan law could potentially reduce the risk of such provisions being applied in all but egregious circumstances.

## Conclusion

We have seen a number of positive legislative steps in the UAE aimed at facilitating improved safety and security at sporting events in recent years. Provided appropriate guidelines are applied to prevent misinterpretation, the authors take the view that a Good Samaritan law would be beneficial for the UAE to promote helpful intervention and potentially life-saving assistance by decreasing bystander hesitation (i.e., to counteract the well documented 'Bystander Effect', the inhibiting influence of the presence of others on a person's willingness to help someone in need) and provide some comfort and clarity to those who may otherwise have liability concerns on assisting in an emergency situation.

Moreover, with a robust and expanding sports and events calendar and an ever-increasing profile as a global tourism hub, residents, tourists and business travellers alike should feel comfortable that this is a step in the right direction as more helping hands will be available if adverse situations arise in public spaces. Those with appropriate skills and training can feel free to follow their best human instincts and provide aid to others in need without fear of legal action.

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# Economic Impact of the New Egyptian Sports Law



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The Egyptian Sports Law No. 71 of 2017 (the 'Sports Law') was among the package of laws promulgated during the last few years intended to re-invigorate the Egyptian economy. In fact, the Sports Law was issued on the same day as the New Investment Law, which jump-started foreign investment in Egypt. The goal of the Sports Law was to regulate basic sports activities that were left either unregulated or in the hands of independent authorities. Moreover, it was meant to open up the sports field to the rest of the economy and attract a broad range of potential investments.

Additionally, the Sports Law has formalised the process of seeking out talent. Talent is, above all, the bedrock of all sports. The identification and subsequent development of this asset – effectively a natural resource – is key to the growth and sustainability of a dynamic sports industry. Without talent, no investment, no matter how large, would fill the gap of talent. As such, the Sports Law has attempted to increase the economic impact of the sports industry with a two-pronged strategy: firstly, through establishing mechanisms and processes to actively seek out sporting talent; and secondly, through ensuring that investment can be made more easily available to support, develop and optimise assets in the industry.

## Investment in Sports

Before the Sports Law, there was essentially no regulation or distinction between quasi-public entities, such as sporting clubs, and private entities that establish a sporting club, health club, gym or other type of entity that engages in providing or otherwise facilitating sports services. Private companies that established clubs or similar facilities found themselves in legal limbo. There was uncertainty as to whether they were subject solely to the laws regulating companies conducting regular commercial activities, or whether they fell within the legal framework specifically governing 'sports entities.' Sports entities were previously subject to strict regulation by the Ministry. Private companies, on the other hand, remained largely subject to the broader body of Egyptian corporate, civil and commercial laws.

The legal uncertainty was most apparent in cases where private companies owned and operated a facility, such as a health club. Health clubs could reasonably be construed as coming within the paradigm of sport; nonetheless, they did not strictly fall within the framework governing sports entities. This problem was exacerbated by the increase in diversity to which the sports sector has been subjected globally. In recent years the proliferation of sports enterprises, such as



football academies as well as rapid growth and demand for an ever-increasing range of sports services delivered by health and fitness clubs has been exponential. Thankfully, Articles 71 to 78 of the Sports Law have clarified some confusion by distinguishing between sports entities and companies that conduct sports services, establishing a guiding framework under which such companies may operate.

All companies that conduct sports services must be joint stock companies. Sports services are not exhaustively defined in the Sports Law and may include managing, marketing, or operating private clubs and academies, health clubs, and/or fitness centres. Accordingly, small sports-related businesses (such as spas and gyms) may be obligated to abide by this legal structure.

These companies, under the Sports Law, are entitled to issue shares through a public offering and ultimately list on the Egyptian Stock Exchange Market, with the proviso that such action should not affect its sports services. The Sports Law does not define specifically what those issues are which might affect a company's sports services. An individual interpreter may have discretionary power to determine whether a company may issue its shares through a public offering or be listed.

Additionally, sports entities have the flexibility to form joint stock companies with investors and members, or to set up branches established by joint stock companies. All such companies remain subject to approval by the competent authorities in terms of activities while remaining compliant with the provisions of the Sports Law. They are also subject to financial oversight, including such obligations as being required to submit financial statements to the competent authorities, adhering to standards for minimum and maximum fees for the provision of their services, as set by the Minister of Youth and Sports, etc.

### Talent Discovery

Articles 63-65 of the Sports Law establish talent discovery centres across Egypt under the management of the Ministry of Youth and Sports. Moreover, the Sports Law also addresses talent discovery of special needs children. Undoubtedly, establishing a system whereby talent can be sought, identified and developed can be quite a driving force behind a field that has its core based on talent. There are numerous international examples, which have long established that investing in talented youth as they are growing can help take these talents to new heights. The economic impact of discovering such talents can be quite significant as well. For example, Egypt's foremost football player, Mohamed Salah, was discovered at a young age through unofficial scouts. If we imagine for a moment that Egyptian football would have established talent discovery programmes several decades ago, we would inevitably conclude that talent discovery can revolutionise the sports industry.



**...the sports industry offers an entirely new asset class from a previously untapped sector.**

### Conclusion

Although the newly formed talent discovery programmes are yet to bear substantial fruit, we can already see the potential economic impact that opening up the sports industry to investors can have. A small club called Al Assyouty was recently purchased by Saudi investor Turki El Sheikh. As the second part of his investment plan, he renamed the club Pyramids FC and then signed several important and expensive players to rapidly put the team amongst the top teams in the Egyptian Premier League. In economic terms – and this is how investors should see the sports industry under the Sports Law - this is a case of prudent investment followed by solid practices in asset management. Such effects cannot go unnoticed, as the sports industry offers the potential to develop an entirely new asset class from a previously untapped sector. The power of opening up the economy as a whole to investments can have a massive impact on Egypt's economic development and the sports sector is off the bench and ready to go.

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# Intermediaries in Saudi Football



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## Introduction

Intermediaries can have a profound impact in the transfer market in the world of football. Consequently, the Fédération Internationale de Football Association ('FIFA') has implemented the relevant regulations, namely the Regulations on Working with Intermediaries.

For FIFA, it is essential to protect both players and clubs from being involved in unethical and/or illegal practices and circumstances when negotiating transfers and employment contracts.

Accordingly, national football associations must comply with the minimum standards approved by FIFA, which includes those of the Saudi Arabian Football Federation ('SAFF'), the governing body for football in the Kingdom.

An intermediary is defined as *"a natural or legal person who represents players and/or clubs in negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer or loan agreement with a fee or free of charge."*

SAFF was founded in 1956 and in the same year joined FIFA and the Asian Football Confederation ('AFC').

When professional football started in Saudi Arabia, SAFF developed laws and regulations to regulate the relationship between football players and clubs in Saudi Arabia.

On 11 June 2014, the General Assembly of FIFA passed Resolution no. 64. This resolution replaced the 'Regulation relating to Players Agents' by a new 'Regulation on Working with Intermediaries' ('RWI').

The objective of RWI is to promote the relationship between intermediaries and players and/or clubs. It aims to regulate methods and principles of negotiation between the parties and sets out parties' rights and obligations. RWI also allows SAFF to implement its own regulations that determine the procedures and methods to resolve disputes between clubs, players and intermediaries. Accordingly, RWI was adopted in Saudi Arabia pursuant to the Resolution no. 8400/Q/1 issued by the Executive Board of SAFF on 1, July 2015 as amended on 8 August 2017.

RWI in Saudi Arabia also deals with drafting and preparing employment contracts between football players and clubs, as well as preparing permanent transfers and loan agreements between clubs.

In 2015, SAFF established a Disputes Resolution Chamber in order to adjudicate disputes involving intermediaries.

## Key Principles of RWI

SAFF has adopted a similar approach to the FIFA Regulation as to the scope of the Principles and Definitions. The arrangements between players, their intermediaries and clubs are, according to Article 3 of the RWI, based on three key principles:

- a. football clubs and players may benefit from intermediaries' services when it comes to the execution of football players' employment agreements and/or loan and transfer agreements;
- b. an intermediary must be registered in accordance with the provisions of Articles 4 and 5 of the RWI in Saudi Arabia. When an intermediary is selected, players and clubs must use their best endeavours to ensure that an intermediary has signed the intermediary declaration and representation agreement;
- c. all members of boards of directors and committees, referees and their associate trainers and associates, technical-medical, administrative affairs' officials of the federation, professional associations and clubs, and any other individuals related to any legal person (official) are prohibited from working as intermediaries. These provisions are aimed at associations in relation to the engagement of the services of an intermediary by players and clubs to terminate an employment contract between a player and a club. The provisions can also conclude a transfer agreement between two clubs.

## Registration

As indicated in Article 4 of RWI in Saudi Arabia, SAFF must keep a specific record for intermediaries which will be published. However, relevant parties must declare each time intermediaries are involved in any transaction. Football clubs and players who use intermediary services must submit the intermediary declaration and any other documents requested by the committee of professionalism and players' status with SAFF in respect of each transaction. In addition, SAFF has the right to request any further information or documentation.

## Registration Requirements for Intermediaries

In order to be officially registered with SAFF, the intermediary must:

- a. submit a written intermediary application;
- b. not hold a criminal record nor have violated any public regulations or customs;
- c. not be subject to any active decision taken against him issued by a sports authority or the subject of any disciplinary suspension or not be prevented from participating in any football activity;
- d. hold a bachelor's degree;
- e. experience in football for not less than five years. However, an intermediary is exempt from holding a degree when he has experience of not less than five years as a professional director at a professional club and/or as a players' agent with high school certificate or an equivalent;
- f. Saudi national or a registered foreign intermediary, registered in his country or at any federation, recognised by FIFA, with valid registration as an intermediary;
- g. contracting with a lawyer licenced by the competent authorities in KSA, if required. Contracting with a lawyer not licenced in KSA is prohibited;
- h. be fluent in English, speaking and writing or submit a letter confirming that the intermediary has an employee fluent in English or is dealing with a translation office;
- i. should have a special office for his activity as an intermediary and must submit valid evidence from Saudi official authorities;
- j. provide a letter signed by the applicant to confirm that the applicant does not hold any official work at SAFF, FIFA, AFC, Association, League or any club when submitting the application;
- k. provide a letter signed by the applicant to confirm that the applicant does not have any direct or indirect financial or commercial interest of any form of financial or business relationship with the SAFF or any club;

- l. not have any contractual relationship with FIFA, AFC, SAFF or leagues that could lead to a potential conflict of interest. Intermediaries are precluded from implying, directly or indirectly, that such a contractual relationship with FIFA, AFC, SAFF or leagues exists in connection with their activities;
- m. submit a copy of his ID and passport;
- n. pay the registration fees (currently SAR 20,000 riyals per annum) to the account of the Committee at SAFF. In addition, Intermediaries in Saudi Arabia that have an office registered with the relevant authorities are required to pay five percent of any amount made on an employment, transfer or loan transaction upon registering the player. Furthermore, intermediaries must pay 10 percent in every employment transfer or loan transaction upon registration of the player if they do not have an office in the Saudi Arabia;
- o. submit any documents requested by the Committee at SAFF; and
- p. when applying for registration, declare that he will comply in full with the laws, regulations, directives and decisions issued by the competent authorities at the SAFF, AFC and FIFA and sign the declaration in accordance with Annex 1 or 2 of the RWI in Saudi Arabia.

## Impeccable Reputation

Pursuant to Article 5 of the RWI in Saudi Arabia, the intermediary must sign a declaration in a prescribed format. The complete application and declaration must then be submitted to SAFF.

The applicant is required to make certain declarations and must satisfy various other requirements including the following:

- a. pledge to respect and comply with any mandatory provisions of applicable national and international laws, including in particular those relating to his activities as an intermediary. In addition, an intermediary agrees to be bound by the Laws and regulations of SAFF, AFC and, FIFA in the context of carrying out his activities as an intermediary;
- b. declare that he has an impeccable reputation and confirms that no criminal sentence has ever been imposed upon him with regard to a financial or violent crime;
- c. declare that he has no contractual relationship with SAFF, leagues, AFC or FIFA that could lead to a potential conflict of interest. In case of any uncertainty, the relevant contract must be disclosed;
- d. acknowledge that he is precluded from implying, directly or indirectly, that such a contractual relationship with SAFF, leagues, AFC or FIFA exists in connection with his activities as an intermediary;
- e. declare that, he shall not accept any payment to be made by one club to another club in connection with a transfer, such as transfer compensation, training compensation or solidarity contributions;
- f. declare that he shall not accept any payment from any party if the player concerned is a minor;
- g. consent to SAFF to obtaining full details of any payment of whatever nature made to him by a club or a player for his services as an intermediary;
- h. consent, to the leagues, SAFF, AFC or FIFA to obtain, if necessary, for the purpose of their investigations, all

**Intermediaries may have a profound impact on the transfer market in the world of football.**

contracts, agreements and records in connection with his activities as an intermediary or if any third party involved;

- i. consent, to SAFF publishing details of any disciplinary sanctions taken against him; and
- j. consent to SAFF to use any data or information for the purpose of their publications.

### Conflicts of Interests

Prior to engaging the services of an intermediary, SAFF requires a number of measures to be adhered to so as to avoid conflicts of interest arising. Players and/or clubs shall ensure that there are no conflicts of interest that are likely to exist either for the players and/or clubs or for the intermediaries prior to engaging the services of an intermediary. If the intermediary discloses, in writing, that there is any actual or potential conflict of interest and the intermediary obtained, in writing, consent of all the other parties involved prior to the start of the relevant negotiations, then no conflict of interest is deemed to arise.

When a player and a club each want to use the services of the same intermediary for the purposes of the same transaction, the player and the club must give their express written consent prior to the start of the relevant negotiations, and shall confirm in writing which party (player and/or club) will remunerate the intermediary. The parties shall inform SAFF within 72 hours of any such agreement and accordingly submit all the aforementioned written documents within the registration.

### Disclosure and Publication of Full Details

The requirements relating to disclosure and publication of payments to an intermediary are set in Article 8 of RWI. These are as follows: players and clubs are required to disclose to SAFF the full details of any and all agreed payments of whatsoever nature that they have made or that are to be made to an intermediary.

When SAFF requests players and clubs to disclose all contracts and agreements signed with intermediaries, information

should be disclosed within three business days. All contracts and agreements signed with an intermediary shall be attached to the transfer agreement, loan agreement or the employment contract, as the case may be, for the purposes of registration of the player. The transfer agreement, loan agreement or the employment contract must include the name and the signature of the intermediary,

**The implementation of RWI was effective in reducing the financial burden on football clubs and prevent unlawful practices.**

if the player and club have used the services of an intermediary. In the event that a player and club have not used the services of an intermediary in their negotiation, they are obliged to prove that to be the case.

SAFF is required to disclose at the end of March of every calendar year, on its official website, the names of all intermediaries it has registered, details of transactions in which they were involved and the total amount of all remuneration or payments actually made to intermediaries by their registered players and by each of their clubs.

### Remuneration

Article 9 of the RWI sets out particular requirements in relation to the remuneration arrangements for an intermediary in Saudi Arabia:

#### Type I - Player Representation

The total amount of remuneration due to an intermediary who represents the player in negotiation must not exceed 10 percent of the total value of the player's contract.

#### Type II - Club Representation Whether Transfer Contract or Loan Contract

The total amount of remuneration due to an intermediary who represents a club in a negotiation of transfer or loan contract of player must not exceed 10 percent of the total value of the player's contract.

#### Type III - General Principles

- a. Clubs that engage the services of an intermediary shall remunerate him by payment of a lump sum agreed prior to the conclusion of the relevant transaction. In the case of the completion of a transfer process or loan, the agreed lump sum will be calculated as part of the maximum permitted 10 percent entitlement referred to above.
- b. Clubs shall ensure that payments to be made by one club to another club in connection with a transfer or loan agreement, such as transfer compensation, training compensation or solidarity contributions, are not paid to intermediaries and that payment is not made by intermediaries.
- c. Clubs are not permitted to pay to intermediaries on behalf of players and any club violating this provision shall be subject to disciplinary sanctions.
- d. Officials are prohibited from receiving any payment from an intermediary of all or part of the fees paid to that intermediary in a transaction. Any official who contravenes the above shall be subject to disciplinary sanctions.
- e. Players and/or clubs that engage the services of an intermediary when negotiating an employment contract and/or a transfer agreement are prohibited from making any payments to such intermediary if the player concerned is a minor.

### Disciplinary Powers and Sanctions

In accordance to Article 11 of the RWI, SAFF has the power to impose sanctions and penalties on any party violating the requirements of the RWI. SAFF is required to publish the disciplinary sanctions against any intermediary and to inform FIFA in relation to any disciplinary sanctions taken against any intermediary. In addition, SAFF may impose sanctions on any intermediary, club or player that/who violates SAFF regulations and/or AFC regulations and FIFA regulations.

The new regulations ensure that SAFF is obliged to publish accordingly and inform FIFA of any disciplinary sanctions taken against any intermediary. SAFF may impose a minimum of one or more sanctions such as a written warning, a financial penalty of no less than SAR 20,000 and not exceeding SAR 500,000 register suspensions, register holding or impose a ban on any football-related activity.

### Conclusion

With the regulations outlined by FIFA establishing the relevant minimum standards, the business of intermediaries has suffered some changes over the years. RWI serves to promote the role of an intermediary and the contractual relationship between intermediaries, football players and clubs. Intermediaries compete with other intermediaries not only on a national level, but also on a global scale.

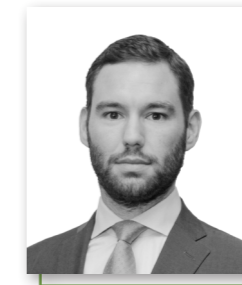
The implementation of RWI has been effective in reducing the financial burden on football clubs and preventing unlawful practices, especially by promoting transparency within national associations that regulate intermediaries on a local level. Most importantly, RWI allows FIFA to monitor association members and check the continuous application of the relevant minimum standards.

Al Tamimi & Company's Sports & Events Management team regularly advises on football transfers and intermediary arrangements. For further information please contact Bandar Al Hamidani (b.alhamidani@tamimi.com).

# Registration of Professional and Amateur Football Players



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## Introduction

FIFA Regulations on the Status and Transfer of Players ('FIFA RSTP') set out the relevant rules governing the registration of players and the relevant contractual relationships between players and clubs in football. National football associations must comply with the binding provisions mentioned in FIFA RSTP. These provisions must be included, without modification, in the relevant regulations of each and every national association. According to Article 1.3.a) of FIFA RSTP, such binding provisions include Articles 2, 3, 4, 5, 6, 7, 8, 10, 11, 12bis, 18ter, 19 and 19bis of FIFA RSTP. Accordingly, national football associations must incorporate the binding provisions in their own regulations. Among others, provisions concerning the registration of players are deemed mandatory.

## The Status of Players

Football players are either amateurs or professionals. Pursuant to Article 2 of FIFA RSTP, professional football players are defined as all those who have a written contract with a football club and are paid a reasonable remuneration that cover all living costs and expenses. All players who do not have a written contract and/or need to obtain remuneration from other sources are considered amateurs.

## Change of Status

All football players start their career as amateur players. Those who have the capacity to pursue a professional career are normally offered the first professional contract when they become of age. Talented young players may be offered contracts as professional players at the age of 16 or 17, when they start having the prospect of being called to the first team.

Once professional, it is likely that a football player will maintain that status for many years. But it is possible for a player to change his status to amateur. According to Article 3 of FIFA RSTP, a player can only be registered as amateur after 30 days of the last match as professional. And it is also possible for the same player to be re-registered as professional, at any time.

However, if a professional player registers as amateur and re-registers as professional within 30 months, the new club must pay the relevant training compensation to other clubs, as may be due.

## Registration of Players

The registration of football players is regulated under Article 5 of FIFA RSTP.

First of all, it is important to emphasise that all football players need to be registered irrespective of the relevant status. It is mandatory that professional players, as well

as amateur, are registered with a football club in order to be eligible to play in organised competitions. Such registration is made with the relevant national association. Failing to use a football player who is not duly registered in an official match will result in sanctions to the player and/or the club.

Secondly, football players can only be registered with one club at a time. It is not admissible for the same player to maintain registration with two clubs simultaneously, even if the clubs are affiliated with different national associations.

FIFA RSTP also stipulate that players can be registered with a maximum of three clubs during one season, but can only be eligible to play for two clubs. As an exception to this rule, a player may be eligible to play for a third club if the player moves to a club of a national association which season overlaps the season of the previous club (for example, autumn/summer as opposed to spring/winter) and provided the player has fully complied with the contractual obligations towards the previous club.

When a player wants to be registered with a club from a different national association, the new registration is conditional upon the issuance by the former association of an International Transfer Certificate (also simply known as 'ITC').

**Players can only be registered within one of the two annual transfer windows fixed by the national association.**

### Registration Periods

One of the most relevant aspects of football competition, namely in regards to the transfer of players, is the registration period also commonly known as the 'transfer window'. There are two annual transfer windows which periods are determined by each national association separately, at least 12 months in advance. Normally, there is one registration period in the summer and another in the winter, but the specific dates will depend on when the season starts in each national association. It is possible for national associations to determine different registration periods for the male and female competitions. In case an association fails to determine and communicate the relevant registrations periods, the same shall be fixed by FIFA.

According to Article 6 of FIFA RSTP, the registration period between the end of one season and the start of the new season cannot exceed 12 weeks. The registration period in the middle of the season has a maximum of four weeks.

Football players can only be registered within one of the two annual transfer windows fixed by the national association of the relevant new club. This rule allows, for example, a player to be transferred from a club in one country in which the transfer window is closed to a club in a different country in which the transfer window remains open. Every year, we witness the transfer of many players from clubs from top European leagues to clubs in Eastern Europe and in the Middle East, where registration periods remain open for a few more weeks.

### Registration of Free Players

Notwithstanding the above, football clubs are allowed to register free players outside of the transfer windows. Article 6.1. of FIFA RSTP expressly stipulates that "a professional whose contract has expired prior to the end of a registration period may be registered outside that registration period".

This exception is only applicable to professional players and to those whose contracts have expired (or been terminated) prior to a registration period. It is important

**It is mandatory that professional players as well as amateur players are registered with a football club in order to be eligible to play in organised competitions.**

to observe that national associations must give due consideration to the sporting integrity of competitions. Accordingly, national associations may fix a deadline for the registration of free players outside of a transfer window. In particular, it is common to see a prohibition to register players in the last rounds of a competition league (for example, within the last five or ten matches).

It is also important to clarify that if a professional player terminates his contract, for whatever reason, after the end of a registration period, he will not be able to register with another club before the next registration period.

### Registration of Amateur Players

The requirements mentioned above are not applicable to competitions which are 100 percent amateur, i.e., where all participant players are amateur.

Similarly, to professional competitions, national associations also need to determine the registration periods for amateur competitions. However, such periods are typically longer than the ones fixed for professional competitions.

It is worth noting that with regard to clubs participating in professional leagues that intend to register amateur players, they will need to abide by the provisions concerning registration periods.

### Registration Status upon Termination of Activity

According to Article 4 of FIFA RSTP, professional players who end their career upon expiry of the relevant contracts will remain duly registered for an additional period of 30 months. The same is applicable to amateur players who terminate their activity.

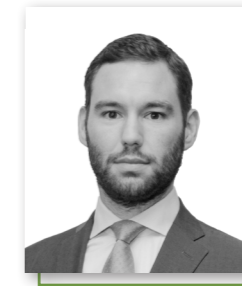
The period above is counted from the last official match of the player by the club.

Al Tamimi & Company's Sports & Events Management team regularly advises on the transfer and registration of players. For further information, please contact Bandar Al Hamidani (b.alhamidani@tamimi.com) or Pedro Castro (p.castro@tamimi.com).

# Stadium Naming Deals: Why Clubs and Sponsors should always Consider their Termination Rights



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Match-day at sports' clubs stadiums is, of course, big business with the potential to generate large amounts of revenue from various streams including tickets, merchandise, concessions and sponsors. In addition, the proliferation of global connectivity and the distribution over several different types of media (broadcast, digital, streaming) means that high-profile sports clubs have the ability to attract tens of thousands of spectators from domestic and international markets.

Therefore, increasing stadium capacity and stadium design, either by an expansion and redevelopment of a current stadium or the development of a new stadium, optimises these valuable revenue streams.

A stadium also provides an opportunity for a club to monetise its stadium's name by entering into a naming rights sponsorship deal, with big international companies and brands - already alive to the demographic appeal of the sports sector - keen to affiliate themselves with a high-profile sports team.

Under these sponsorship arrangements, the club is contractually obliged to name its stadium with the title sponsor's name, for example, in the English Premier League ('EPL'), Arsenal Football Club's stadium is called the Emirates and Manchester City F.C. play at the Etihad stadium. In the media and market, the title sponsor becomes synonymous with the club and recognised as part of the club's fabric.

Stadium naming rights' partners are extremely attractive for a club (and venue) to supplement revenues needed to cover increasing expenses such as players' high salaries, transfer fees and to service commercial loans and other construction costs and expenses.

For the title sponsor, a close affiliation with a globally supported high-profile club (or venue) creates valuable brand awareness, and the arrangements are typically long-term (and high-value) in order for the sponsor's relationship and association with the stadium and club to become sufficiently entrenched to gain maximum value and exposure in the global market.

## The History of Stadium Naming Rights

The history of naming stadiums can be traced back to the early 1900s in the USA, when in 1912 the Boston Red Sox Fenway Park is said to have been connected by name to its owner's property company which was called Fenway Realty. Wrigley Field, home of the Chicago Cubs, was named after the Wrigley Brothers chewing gum company in 1926. Examples of other high-profile venues with international banks as title sponsors include Citi Field, home of the New York Mets, and Barclays Center, home of the Brooklyn Nets and New York Islanders.

In 2017, it was reported that the current highest value naming rights deal had been agreed in relation to the Scotiabank Arena, home of, amongst others, the iconic Toronto Maple Leafs. It has been reported that the deal with Scotiabank is worth USD \$800 Million over a 20-year period.

In Dubai, the recently opened Coca-Cola Dubai Arena demonstrates the trend that, aside from sports clubs, naming rights are valued for multi-purpose use events venues and that naming rights partnerships really are a global affair.

However, the [re]naming and [re]branding of a stadium is a complex and costly process and, therefore, naming rights agreements are generally long-term contracts, under which the club, or stadium owner, is likely to benefit from a significant, and reliable, revenue stream. On the other hand, the sponsorship benefits for the naming rights' partner, whilst heavily dependent upon the nature of the naming rights' sponsors business, generally include:

- physical branding, advertising and signage at the stadium;
- the use by the club or stadium of the partners' name in the media;
- if relevant, exclusive supply rights to the stadium (for instance, a food and beverage company may require exclusive rights to supply certain products on matchday); and
- "back-end rights", including matchday experiences at the stadium which can be used for corporate hospitality and the rights of first offer and refusal on various events or items relating to the club and stadiums.

## What Happens if Things go Wrong?

The deal value to a club and the title sponsor is clear if the partnership lasts the distance. However, these types of long-term and high-profile arrangements create a raft of potential legal and commercial issues, and given the underlying concept of a sponsorship deal is to enhance market reputation, a key issue relates to circumstances when actions (or omissions) of one of the parties threaten to tarnish, by association, the goodwill and reputation of the other. In such circumstances, the million-dollar question is: how easily can either the club, or the sponsor, disassociate itself from the other?

There have been a number of cases in North America where clubs or venues have sought to disassociate themselves from naming rights' partners that were subject to bankruptcy proceedings, including, the Tennessee Titans in the case of the Adelphia Coliseum, the Rams in the case of the Trans World Dome and the Houston Astros in case of Enron Field.

In March this year, the United Airlines Memorial Coliseum (formerly the LA County Memorial Coliseum) was subject to public objections,

including politicians and World War 1 veteran groups raising arguments that the change of name was disrespectful and amounted to changing the fabric of a national heritage site. It will be interesting to see if the 16 year, USD \$69 million naming rights' deal is ended following public pressure.

On the other hand, could a title sponsor disassociate itself from a 'rogue' or reputationally damaged club or venue to avoid or limit any negative associated publicity? The reputation of a stadium or club, and by association its title sponsors, may be affected by various potential issues, examples of which could include:

- misbehaviour of high-profile professional players employed by the club;
- misbehaviour of supporters - recent examples in the news in the UK of football supporters' actions causing potential reputational damage by association, include an Arsenal supporter invading the pitch at the Emirates Stadium during play and assaulting Chris Smalling, a Manchester United player. EPL club Chelsea FC has recently had to deal with being associated with a number of its supporters who have been the subject of Police investigations for racial hate crimes;
- corporate offences - for example, in the case of penalties imposed on certain corporations relating to money laundering offences; and/or
- safety and security issues - for example, there have tragically been a number of recent terrorist attacks, including in the Stade de France Stadium in Paris in 2015.

Accordingly, there is potential for unforeseen events, often beyond the control of the parties, to become associated with a venue, the club and/or a sponsor, and, whilst not all events will cause medium or long-term damage, public sentiment is arguably at the very heart of brand value.

## Termination Rights

Naming rights' agreements will provide early termination rights for both the club or the sponsor upon certain events occurring.

Upon the occurrence of a specified event(s), the party wishing to terminate the agreement will, typically, need to serve a notice to terminate, and grant the other party a period in which to remedy the position, if possible. The termination provisions should deal with who pays the cost for rebranding the stadium, which should be set out in the terms of the contract.

Typical termination events include a failure of the sponsor to pay its sponsorship fees, the bankruptcy of a party or a failure to comply with a material provision of the agreement. In the Kiel Center St. Louis Blues' naming rights agreement, the sponsor, Savvis, had a right to terminate the agreement if the club did not play their home games at the stadium.

The concept of termination for events which may be reputationally damaging are particularly sensitive. Whilst strict 'morality clauses' may be difficult to negotiate since they are not necessarily seen as market practice for these types of agreements, as mentioned above, the agreements should provide for an early termination event of a material or persistent breach of any of the main contractual provisions. Therefore, a breach of an undertaking or warranty not to damage the reputation of the other may fall within this category. However, relying on such a provision to terminate an agreement comes with certain risks since it can be difficult to ascertain causation for reputational damage, causing even greater scope for dispute.

The issue surrounding the former LA County Memorial Coliseum is particularly interesting, since it appears unlikely that that this agreement may be terminated unilaterally by the contracting parties in circumstances where third parties object to the rebrand.

In civil law jurisdictions, the relevant codified laws relating to contractual arrangements will also need careful consideration. In the United Arab Emirates, for example, under the UAE Civil Code, in certain circumstances, a contract may be terminated for non-performance and/or the termination of a contract may require a court order.

Moreover, to the extent that a title sponsor and club have been affiliated for a significant number of years, the name of the sponsor and the stadium will be synonymous in the public domain, with supporters and media channels alike referring to the stadium as the sponsor's name rather than the club's name.

Therefore, and notwithstanding a successful early termination of the contractual provisions, the disassociation between the parties may well take some time; and then there remains the question of compensation and damages.

## Conclusion

Whilst the financial benefit for a club, and the marketing benefit for the sponsor is clear, as demonstrated above, both the sponsor and the club must be particularly careful when considering a long-term stadium naming rights' arrangement.

Interestingly, neither of the EPL clubs Manchester United F.C. or Liverpool F.C. have entered into stadium naming rights' agreements with title sponsors, with both clubs retaining their traditional stadium names of 'Old Trafford' and 'Anfield' respectively, which have years of history and goodwill for its worldwide fans and supporters.

On 3, April 2019, EPL football club Tottenham Hotspur ('Spurs') played its inaugural EPL match, against Crystal Palace F.C., at its new 'state-of-the-art stadium, complete with retractable pitch for conversion for use for NFL games. This new 62,000-seater stadium took around two years to construct on the site of Spurs' old White Hart Lane stadium, and the new stadium holds almost twice as many supporters as the old one. Presently, the new Spurs' stadium does not appear to have entered into a naming rights' arrangement with a third-party sponsor, and the new stadium is currently known simply as the 'Tottenham Hotspur Stadium'.

Given the increase in television rights' revenue for EPL clubs (and a comparison may be made with NFL in the USA) these clubs may be less tempted to agree upon title sponsorship arrangements, which have the potential to materially influence the club and stadia persona. A GBP £20 million per year stadium naming rights' agreement may now not be as attractive as it was previously for these clubs, particularly given the potential long-term issues a club may have in shaking off a stadium name in the event of an unpopular or damaging event involving the sponsor.

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Al Tamimi & Company's Sports & Events Management team regularly advises on Naming Rights and Sponsorship Agreements. For further information please contact Adam Powell (a.powell@tamimi.com).



# Unlucky Article 13: A Footballer's First Professional Contract in the UAE; Is the Deck Stacked Against Locals?



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**N.B.** The majority of this article was first published on the LawInSport Blog on 21 June 2019.

This blog examines the United Arab Emirates ('UAE') Football Associations ('UAEFA') Regulations on the Status and Transfer of Players ('RSTP'). More particularly, Article 13 of the UAEFA RSTP is proving controversial at present for two main reasons:

1. it obliges amateur junior players, upon turning 18 years old, to sign their first professional contract with the same club at which the players had been training;
2. it only applies to UAE nationals, not to a new category of 'non-UAE citizens' (namely children of Emirati mothers, expats born in the UAE, and expats resident in the UAE for at least the past three years) who are now permitted to compete in domestic sports pursuant to a 2018 UAE Cabinet Resolution.

We discuss each point in turn.

## The UAEFA Regulations on the Status and Transfer of Players

Article 13 of the RSTP provides the following conditions (amongst others) for UAE nationals to become professional football players:

- UAE players should be at least 18 years old;
- players are obliged to sign their first professional contract with the club they have been training with as an amateur

junior player (the 'Parent Club'), on the condition that a written offer is to be presented by the Parent Club to the player within two months of the player's 18th birthday;

- the written offer presented to the player should not exceed a term of five years;
- any offers presented by the Parent Club to the player should be legally binding on both parties;
- in the absence of the above-mentioned written offer, the player is considered, and further to the expiry of the two-month period, to be free to contract with a third party club at the discretion of the player.

The obligation on amateur junior players, upon turning 18, to sign a professional contract with the same Parent Club at which the player had been training prior to turning 18 is controversial. Whilst beneficial to the clubs, it appears to conflict with the doctrine of 'freedom of contract'.

The imposition of the above conditions was previously justified by sports specificity in the UAE football market. Football clubs in the lower division had raised concerns that high-performing junior UAE players developed at a Parent Club would not stay with those clubs once they reached the age of eligibility to sign their first professional contract. This meant that such players could benefit, at the Parent Club's expense, from its investment training programmes and facilities and then immediately upon reaching the age of 18 leave to join one of the higher ranking/powerful clubs.

This situation created an imbalance amongst UAE football clubs - rather than being able to sell the economic and federative rights to a player to a third party club for a financial benefit, a Parent Club would receive only a sum equal to training compensation (a 'one-off' compensation payment to a Parent Club that developed a player from the age of 12 but did not ultimately sign a professional contract with the player on turning 18). In all cases, the level of such training compensation was significantly lower than a corresponding rights-based transfer fee. This situation was deemed unfair and thus Article 13 of the RTSP was viewed as a legitimate means to create certain balance by protecting the investment of Parent Clubs while still encouraging players to seek to develop at different clubs in the country.

However, because of the strict conditions of Article 13, it became common practice for some of the UAE national payers to refuse to sign their first obligatory professional contract and to try to circumvent this obligation. This situation has created tension between different clubs and players within the UAE and creates the potential for disputes.

### FIFA's view

The provisions of Article 13 of the RSTP raise questions as to its general compatibility with the UAE Constitution, Civil Code and Employment laws and the FIFA RSTP, primarily in relation to compliance with the doctrine of freedom of contract and the freedom of movement of players.

In its circular to the UAEFA evaluating the UAEFA RSTP, FIFA recommended that, unless UAE Law generally contained a provision similar to the restrictions under Article 13 of the RSTP, Article 13 should be repealed as it violates one of the most valuable principles in the football world; the freedom to contract.

Despite the recommendations made by FIFA, and the absence of any parallel laws in the UAE allowing restrictions on contracting with Emirati football players turning 18 years old, the UAEFA has maintained its position, justifying the imposition of this restriction under sports specificity in the football market.

It is accepted that FIFA has no authority to oblige the UAEFA to amend the provisions of Article 13 since the content of Article 13

## The provisions of Article 13 of the RSTP raise questions as to its general compatibility with the UAE Constitution, Civil Code and, Employment laws and the FIFA RSTP.

does not fall under the mandatory provisions imposed by FIFA on its affiliated members (i.e., provisions that must be included in the regulations of the national football associations). Hence, the provisions of Article 13 are an internal matter under the exclusive jurisdiction of the UAEFA; and FIFA's powers are limited to evaluating UAEFA regulations and to making recommendations for amendments.

Moreover, Article 13 only applies to Emirati players and clubs affiliated with the UAEFA. This means that in the event of a dispute arising between a player and one or more clubs in connection with Article 13, FIFA has no jurisdiction - the dispute is ultimately deemed to be between members of the UAEFA.

FIFA's lack of jurisdiction regarding the enforcement of Article 13 at a national level may be explained by the absence of an international dimension and that such provisions are applicable only to Emirati players in accordance with the regulations imposed by the UAEFA. On that basis, the competent judicial body to address any issue arising from Article 13 is the UAEFA Players' Status Committee (which initially applies the regulations at the national level rather than FIFA regulations).

### The Cabinet Resolution and its Impact on the UAE Football Market

Moving onto the second area of controversy: in June 2018, United Arab Emirates Cabinet Resolution No. 27 ('Resolution') was issued following the Instruction of His Highness Sheikh Khalifa Bin Zayed Al Nahyan, President of the UAE. The Resolution allows certain 'non-UAE nationals', mainly including:

- children of Emirati mothers,
- expats born in the UAE, and
- expats resident in the UAE for at least the past three years, to participate and compete in official domestic sports competitions on the same terms as nationals, offering them the possibility to become professional athletes as members of UAE sports' squads.

One of the reasons behind the Resolution was to expand the base for selection, feeding competitive sports in the UAE. Increasing the level of competition and play is, in the long term, expected to increase standards at the national level as well.

Prior to the Resolution, only UAE nationals were able to lawfully compete in competitive domestic sports. There has now been a restructuring of UAE national sports' federations to accommodate new categories of non-UAE nationals eligible to compete.

Specifically, in relation to football, these non-UAE nationals no longer fall under the 'quota' for foreign players, which restricts the permissible number of foreign players in any professional football club to a maximum of four in the professional league and two in the first division. As a result, they can enter into professional contracts and enjoy the same privileges and protections as Emirati players. In addition, they also benefit from FIFA's jurisdiction and the enforcement of FIFA's regulations (mainly with respect to the freedom of contract and freedom of movement), because their non-UAE citizenship provides the requisite international dimension for FIFA to assume jurisdiction over disputes involving such players. This means that the general doctrine of freedom of contract should prevail to the extent permissible for non-UAE national players.

### Comment and the Difficulty with Article 13: Potential Discrimination

The interaction between the Resolution and Article 13 appears to raise issues of potential discrimination against UAE football players.

Article [20.1] of the Resolution allows certain non-UAE nationals to compete and play in official domestic competitions and to enjoy the privilege of being considered as local players. Therefore, an UAE football club that develops a non-UAE national junior player **cannot** oblige that the junior non-UAE player to enter into a first professional contract with the club under Article 13 (in contrast with Emirati players discussed in the section above).

Before the issuance of the Resolution, the restrictions under Article 13 on Emirati players may have been disproportionate, but were somewhat understandable based on market requirements, sustainability and sports specificity. However, the Resolution has perhaps now cast it in a different light as it may appear to result in potential discrimination against Emirati players.

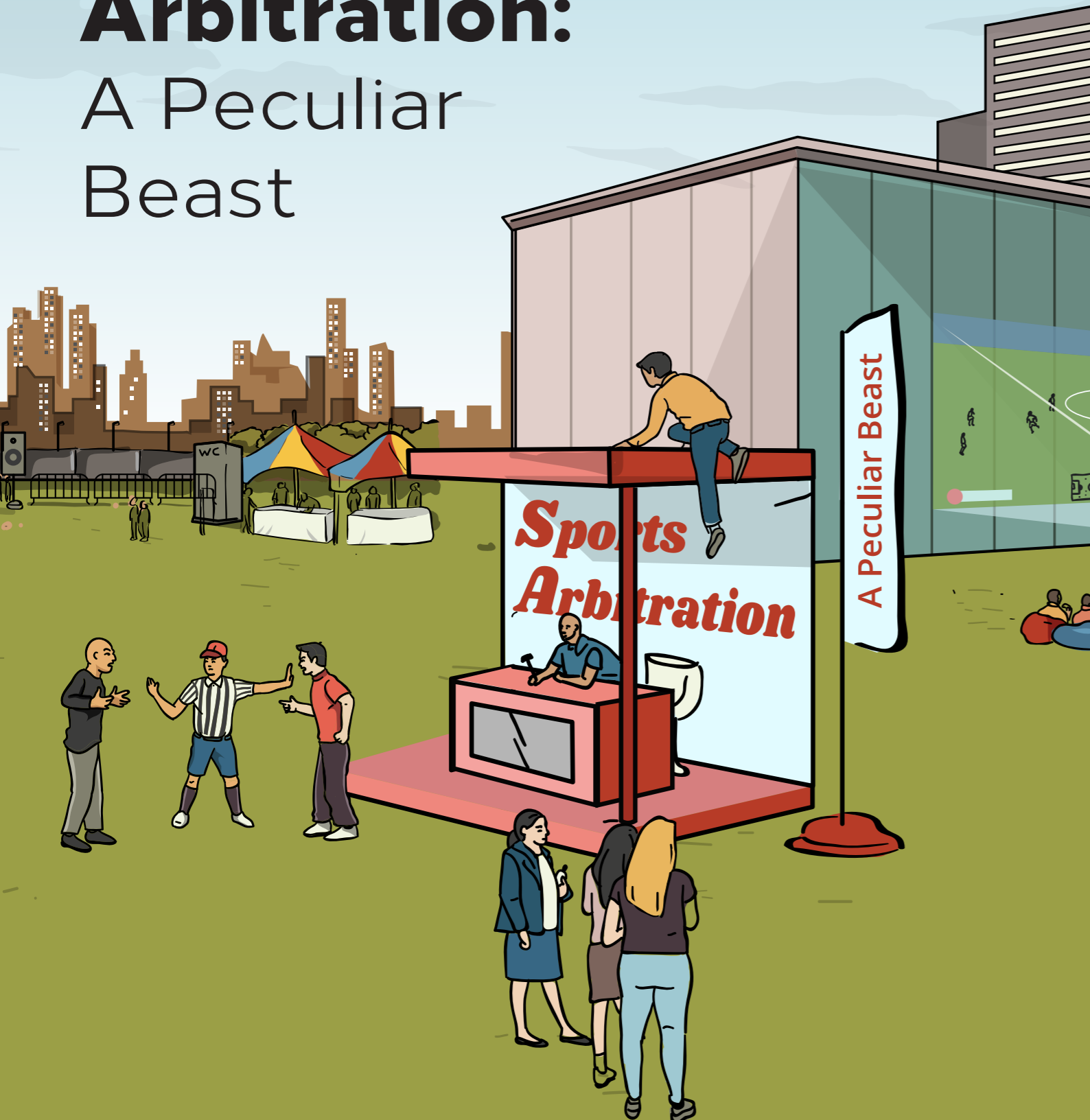
The rationale behind the obligations and restrictions stipulated in Article 13 could be construed as protecting the overall interests of football development in the UAE, by granting powers to protect the interests of clubs (particularly feeder clubs skilled at player scouting and development). However, such measures should still be proportional and non-discriminatory and should not prohibit players' fundamental rights.

In the authors view, issuance of the Resolution may have unintentionally raised concerns as to the proportionality of Article 13 and could open the door to challenges as to the legality of this Resolution. Therefore, regulatory reform may be required to be considered, including considering reducing the maximum term permitted for the first professional contract, imposing Article 13 across all categories of junior amateur players or waiving Article 13 in its entirety.

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# Sports Arbitration: A Peculiar Beast



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**N.B.** A version of this article was originally published on *LawInSport*, the leading online international sports law publication.

## Introduction

Ever-increasing public and private sector investment into the Middle Eastern sports market, through high-profile sponsorship deals, investment in sporting properties and successful bids for major events, continues to transform the region into a major player in the global sports industry. Having a legal infrastructure that underpins such initiatives, particularly in relation to the resolution of disputes, is crucial to safeguard their long-term sustainability.

In broad terms, sports disputes tend to fall into two categories: commercial disputes; and disputes of a disciplinary nature. The former covers disputes relating to the execution of commercial contracts, such as those relating to player transfers, broadcasting rights, sponsorship rights or the staging of sporting events. The latter covers alleged breaches of a particular governing body's regulations designed to protect, amongst other things, the integrity of its sport, such as doping and match fixing.

In the UAE, as well as in many other GCC countries and in line with international practice, sports disputes are routinely referred to arbitration. The relevant contract and/or governing body's regulations will generally determine the appropriate forum for disputes

to be resolved. Ordinarily, first instance disciplinary decisions are handed down by a non-arbitral dispute resolution chamber of the relevant governing body, usually with a right to appeal such decisions to an arbitral body either internally (i.e., an arbitral body set up by the governing body), nationally (e.g., a national sports arbitration centre) or internationally (e.g., the Court of Arbitration for Sport).

This article provides an overview of the internal, national and international sports arbitral bodies relevant in the UAE context, and goes on to consider some of the key differences between sports arbitration and commercial arbitration that underscore the need for bespoke sports arbitral bodies both locally and internationally.

## Sports Arbitral Bodies

### The Internal Dimension – Case Study: UAEFA Arbitration Committee

The Arbitration Committee of the UAE Football Association ('UAEFA') is a typical example of how certain UAE sports federations have established arbitral bodies to resolve certain disputes between stakeholders in their sports.

In accordance with FIFA's Statutes, the UAEFA Statutes contain a general prohibition on stakeholders (UAEFA members, players, officials, agents etc.) taking their disputes to local courts, unless specifically provided for in the UAEFA Statutes or FIFA Regulations.

Instead, domestic disputes should be referred to the UAEFA, and international disputes referred to the Asian Football Confederation ('AFC') or FIFA.

The UAEFA Statutes state that the UAEFA's Dispute Resolution Chamber has jurisdiction to hear domestic disputes between clubs and players relating to employment contracts (save for certain matters that should be heard by local courts pursuant to UAE public policy considerations), training compensation and solidarity payments, with appeals being heard by the UAEFA's Arbitration Committee. Furthermore, the UAEFA Arbitration Committee Regulations confirm that its jurisdiction extends to: (i) disputes between parties who have agreed to submit their dispute to the Arbitration Committee; (ii) disputes between the UAEFA, its board, committees, members, players and/or intermediaries that do not fall under the jurisdiction of the UAEFA Judicial Bodies (comprising the Disciplinary Committee and Appeal Committee); (iii) cassation appeals against decisions of the UAEFA Judicial Bodies; and (iv) appeals against decisions of the UAEFA Player Status Committee. The UAEFA Statutes expressly exclude any jurisdiction on the part of the Court of Arbitration for Sport ('CAS') to examine any decision passed by the UAEFA Arbitration Committee. Hence, decisions rendered by the UAEFA Arbitration in respect of purely domestic disputes are final and there is no external right of appeal; it being noted that where the UAE's Federal Arbitration Law applies to the arbitration then its provisions, including its provisions in respect of setting aside an arbitral award, will apply.

### The National Dimension

Given the special nature of sports dispute resolution and the requirement in certain sporting contexts to abide by specific international sports procedures, UAE legislators are mindful of the potential benefits of having a dedicated forum to resolve disputes in the sports sector. In 2013, the UAE Minister of Youth, Culture and Community Development formed a committee to draft the articles of association for a new UAE sports arbitration centre, prompted by a decision of

**Sports arbitration is a different beast to commercial arbitration. This is largely due to the overriding objective to facilitate consistency of decisions and public sanctioning, so as to uphold the integrity of sport in the eyes of fellow athletes and the general public.**

the UAE National Olympic Committee that, inter alia, approved the formation of such an entity. A draft law creating a National Sports Arbitration Centre ('NSAC') has since been produced, which envisages the NSAC having jurisdiction to hear appeals challenging the decisions of UAE sports federations.

The draft law is yet to be promulgated and some UAE sports federations have made alternative interim arrangements either by expressly including a right of appeal to the CAS within their regulations or establishing their own internal arbitral body. The establishment of the NSAC remains a very attractive prospect and would help cement the UAE's status as a progressive sports market, following in the footsteps of the recently opened Saudi Sport Arbitration Centre ('SSAC').

The SSAC opened in 2016 and has its headquarters in Riyadh. It is an independent body established in accordance with the Olympic Charter, the CAS Rules and Regulations and the Saudi Law of Arbitration. It has exclusive jurisdiction to resolve sports-related disputes in the Kingdom of Saudi Arabia ('KSA'). Arbitration awards issued by the SSAC are final and not subject to appeal (unless otherwise stated in the Statutes of the SSAC or the relevant international federation). The applicable KSA arbitration law will determine what challenges, if any, an SSAC arbitral award may be subject to. The wide jurisdiction of the SSAC, and its range of specialised divisions (including, most notably, a specific football disputes division) is a laudable statement of intent and should help preserve the rights of sporting stakeholders and aid the broader development of the KSA sports sector.

### The International Dimension: Court of Arbitration for Sport

The CAS, which is by far the best-known independent international sports arbitral tribunal, was established in 1984 in Lausanne, Switzerland on the initiative of the International Olympic Committee. It is an independent institution that facilitates the resolution of global sports-related disputes by arbitration

or mediation, and has its own dedicated procedural rules that cater to the specific needs of the sporting world. Cases are heard by a sole arbitrator or a panel of three arbitrators, who the parties select from a closed pool of around 300 experts in sports law.

The CAS has three divisions. The Ordinary Arbitration Division determines first-instance disputes between sporting stakeholders that are generally commercial (rather than disciplinary) in nature. The Anti-Doping Division hears first-instance anti-doping cases. The Appeals Arbitration Division hears disputes arising from first-instance decisions made by sports governing bodies. In addition to providing Ordinary Arbitration, Anti-Doping and Appeal Arbitration services, the CAS also provides ad hoc expedited arbitration services at major sporting events, such as the FIFA World Cup and the Olympic Games.

Individuals and entities within the Gulf Cooperation Council ('GCC') sports sector have, for many years, submitted cases to the CAS and its role in providing a neutral, efficient and cost-effective mechanism to resolve sports disputes is well recognised across the GCC. Indeed, the Abu Dhabi Judicial Department entered into a partnership agreement with the International Council of Arbitration for Sport ('ICAS') in 2012 that paved the way for the opening of a CAS Alternative Hearing Centre in Abu Dhabi later that year, following in the footsteps of those opened in Sydney and New York. Such a development is recognition by ICAS that the region is a key growth market in professional sport, as demonstrated by the opening of Yas Marina F1 circuit in Abu Dhabi and the relocation of the International Cricket Council headquarters to Dubai, as well as the staging of major international sporting events including the 2022 FIFA World Cup Qatar, the FIFA Club World Cup, the AFC Asian Cup and numerous ATP tour tennis, European Tour golf and UCI cycling tour events. Crucially, it also affords local sporting stakeholders privileged access to the jurisdiction of CAS with concomitant time and cost efficiencies.

## Unique Nature of Sports Arbitration

Sports arbitration has a number of features that make it different to standard commercial arbitration, such as:

1. **Public judgments** – many sports disciplinary cases result in a public judgment and sanction. Indeed, the CAS and many other national and international arbitral bodies often publish judgments on their websites to demonstrate to both the public and fellow athletes that justice is being done. This is in contrast to the strict confidentiality that ordinarily applies to commercial arbitration proceedings.
2. **Public hearings** – recent cases in the sports disciplinary context have emphasised the right to a fair hearing including, where desired by the athlete, the right to a public hearing. Part of the rationale for this is that public hearings reassure the public and fellow athletes as to the integrity of the proceedings and mitigate the potential for real or perceived bias, negligence or corruption in private proceedings. This is in contrast to commercial arbitration where it is usual for hearings to be held in private.
3. **Standardised penalties** – many sports governing bodies operate a tariff system for decision-makers to refer to when sanctioning athletes for disciplinary offences, for example in the context of anti-doping. The rationale for this is that sports disciplinary panels should not apply wholly inconsistent sanctions to similar offences. As a result, the outcome of certain sports arbitrations can be less discretionary than the outcome of commercial arbitrations.
4. **Lex Sportiva** – a body of sports law jurisprudence has developed over the years that, inter alia, ensures the fundamental principles of fairness and proportionality are borne in mind by decision-makers. Since sports arbitral awards are often public, sports arbitrators routinely refer to, and rely upon, the decisions of other arbitrators and governing bodies in analogous disciplinary cases which, whilst not binding in nature, are highly persuasive. This promotes consistency of decisions and reassures sporting stakeholders that analogous cases will be treated similarly. This contrasts with commercial arbitration where arbitral decisions are often confidential and not routinely available to guide subsequent arbitrators.
5. **Expedited proceedings** – sports governing bodies and ad hoc CAS tribunals routinely hand down decisions within 24 hours when required by the demands of sporting competition timetables e.g. when a footballer receives a red card and seeks to challenge his/her suspension for the next match

which is only 48 hours hence. Although it is open to the parties to commercial arbitrations to agree the procedures that will apply to their dispute, including expedited proceedings, and although the rules of many commercial arbitration institutions provide for the same, it is rare for commercial arbitrations to be conducted with the level of expedition as many sports arbitrations.

6. **Interim measures and enforcement** – generally speaking interim measures are often more effective in the sporting context than general commercial arbitration, as sports governing bodies invariably comply with such orders (and arbitral awards) and have very effective and direct means of ensuring that their members do likewise (e.g. preventing them from taking part in a tournament). As a consequence, they are routinely sought to address issues discrete to sporting competition, such as provisional suspensions and transfer bans pending the conclusion of proceedings. The system of enforcement of interim measures (and arbitral awards) in standard commercial arbitrations is less predictable and may necessitate the additional time and expense of going to local courts.
7. **Closed list of arbitrators** – it is often the case in the sporting context (e.g. CAS arbitrations) that the parties may only nominate an arbitrator from a closed list of potential candidates. This restrictive system is justified on the basis that it ensures that sports law specialists determine such disputes. This is in contrast to standard commercial arbitration, where parties often have freedom to nominate an arbitrator of their choosing.
8. **Consistent legal seat** – the legal seat of all CAS arbitral proceedings, regardless of the venue of the hearing, is Lausanne in Switzerland. Hence, all CAS arbitrations are subject to Swiss arbitration law and decisions are only challengeable (in very limited circumstances) before the Swiss

Federal Tribunal. This is also the case with other key Swiss-headquartered sporting institutions, such as FIFA and the International Olympic Committee. This consistency of seat and therefore the applicable procedural law is not replicated in standard commercial arbitration, where parties generally have the freedom to choose the seat of their arbitration.

As explored above, sports arbitration is a different beast to commercial arbitration. This is largely due to the overriding objective to facilitate consistency of decisions and public sanctioning, so as to uphold the integrity of sport in the eyes of fellow athletes and the general public. Consequently, bespoke arbitral bodies – on an internal, national or international level – are necessary in order to administer justice in the unique context of sport. Such bodies are efficient in terms of cost and time and help promote consistency in decision-making, which in turn reassures investors that the region's sports market is mature, predictable and worthy of investment.

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**A body of sports law jurisprudence has developed over the years that, inter alia, ensures the fundamental principles of fairness and proportionality are borne in mind by decision-makers.**

# Football Players: Not a Third Party in the Context of TPO Ban



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## The New Edition of the FIFA RSTP: June 2019

The Fédération Internationale de Football Association ('FIFA') has published an amended version of its Regulations on the Status and Transfer of Players ('FIFA RSTP') effective as of 1 June 2019.

The amended version of the FIFA RSTP introduces only one but yet very important amendment that is relevant in the context of the prohibitions of Third Party Influence and mainly Third Party Ownership, also commonly known as 'TPO'. In particular, FIFA has amended the wording of the definition of "third party".

Under the new edition of the FIFA RSTP, "third party" is now defined as

*"a party other than the player being transferred, the two clubs transferring the player from one to the other, or any previous club, with which the player has been registered."*

The previous version of the FIFA RSTP did not include any reference to the player object of a transfer, but only to the clubs transferring the player and to previous clubs. The new wording provides clarification as to the football player not being considered a 'third party' for the purposes of the prohibition of TPO arrangements.

## Background of the TPO Ban

TPO refers to a contractual arrangement in which the economic rights of a football player are assigned, either in full or in part, to any type of investor, including but not limited to agents, sports management companies and investment funds. TPO typically relates to the right to receive a percentage of the value of a future transfer of a player to another club, which is assigned to an investor pursuant to a certain financial investment made in a football club.

TPO arrangements have been common practice in South America as well as Portugal, Spain and Eastern Europe.

In 2006, Premier League team West Ham United signed Argentinian top players Carlos Tevez and Javier Mascherano. Upon completion of the said transfers, it was found that the economic rights of both football players were owned by offshore investment funds. This situation shocked the football community in England, particularly because the investment funds had the right to influence and decide on the future transfers of each player, including the new club and the transfer fee.

Due to concerns pertaining to the integrity of competitions as well as the development of young players, the English Football Association ('FA') prohibited TPO starting from the 2008-2009 season. A few years later, the FA and the English Premier League initiated discussions with other associations and FIFA so as to ensure that a TPO ban could be introduced worldwide.

In September 2014, after due consideration of all implications related to TPO, the FIFA Executive Committee passed a general principle of a ban on TPO. Accordingly, the FIFA RSTP were amended and a new Article 18ter was introduced in the version that came into effect on 1 January 2015 stating as follows:

*18ter Third-party ownership of players' economic rights*

1. *No club or player shall enter into an agreement with a third party whereby a third party is being entitled to participate, either in full or in part, in compensation payable in relation to the future transfer of a player from one club to another, or is being assigned any rights in relation to a future transfer or transfer compensation.*
2. *The above-mentioned interdiction is to come into force on 1 May 2015.*  
(...)

Subsequent to the decision of FIFA to ban TPO, the European Parliament also issued a Written Declaration dated 11 November 2015 regarding the ban on TPO of players in European sport. The said Written Declaration of the European Parliament encompassed all team sports.

The prohibition of TPO arrangements is aimed at protecting the integrity of competitions, sportsmen and women, by sustaining the independence and autonomy of football clubs and players.

### Relevant Decisions of FIFA Disciplinary Committee

On 26 June 2018, FIFA issued a press release concerning the interpretation of 'third party' in four distinct cases involving the following clubs: SV Werder Bremen (Germany), Panathinaikos FC (Greece), CSD Colo-Colo (Chile) and Club Universitario de Deportes (Peru). Such cases related to the remuneration terms agreed with certain football players and whether there would be any issue pursuant to the limitation of TPO under Article 18ter of the FIFA RSTP. In addition, FIFA also considered Third Party Influence pursuant to Article 18bis of the FIFA RSTP.

In particular, the said football clubs have agreed with certain players that the players would be entitled to receive, as part of the remuneration package, an additional amount in a future transfer to another club. The FIFA Disciplinary Committee decided that in such circumstances the additional amount, either a lump sum or a percentage of the transfer fee, was not considered a violation of Article 18ter of the FIFA RSTP. Thus, FIFA considered that the player would not be deemed a 'third party' for the purposes of TPO.

However, the FIFA Disciplinary Committee concluded that the agreements between CSD Colo-Colo and Club Universitario de Deportes were a violation of Article 18bis of the FIFA RSTP as it enabled one football club to affect the other club's independence. The clubs were fined in the amounts of CHF 40,000 and CHF 30,000, respectively, based on the findings of Third Party Influence.

**It has now been clarified that football players are not considered a 'third party' for the purposes of TPO.**

**Third Party Ownership refers to a contractual arrangement in which the economic rights of a football player are assigned, either in full or in part, to any type of investor.**

It was based on the cases described above that FIFA discussed and approved the amendment of the definition of 'third party' in the FIFA RSTP.

With the registration period (i.e. transfer window) now open and with many players being transferred to new clubs during the summer, the impact should be immediate.

### The Impact of the New Definition of 'Third Party'

As explained, the previous version of the FIFA RSTP only made reference to the clubs transferring the player and to previous clubs of the player. Although it was possible to argue that a player, by nature, should not be deemed to be a third party with respect to his/her transfers, the situation was not clear under the previous definition of 'third party'.

With the amendment introduced by the new edition of the FIFA RSTP, it has now been clarified that football players are not considered a 'third party' for the purposes of TPO.

This will certainly potentiate the increase of the number of agreements granting players the right to receive a percentage of the relevant transfer fee in future transfers.

**\*On 1 July 2019, FIFA announced that in a meeting held on 3 June 2019 the FIFA Council approved additional amendments to the FIFA RSTP which will come into force in October 2019. The KSA Sports Team will provide a separate update on the extent and potential impact of these additional amendments in due course.**

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# E-Cigarettes and Alcohol: Definitely or Maybe?



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**N.B.** A version of this article was originally published on *LawInSport* (19, June 2019), the leading online international sports law publication.

The laws in the UAE concerning the sale, promotion and consumption of e-cigarettes, tobacco and alcohol can be tricky to navigate. Recent regulatory developments in the e-cigarette space have provided a welcome degree of clarity; however, venue owners, event managers and other sporting stakeholders should proceed with caution in this area to avoid falling foul of the law and offending local customs. This article provides an overview of the current regulatory landscape.

## New National Standards for E-Cigarettes

The Emirates Authority for Standardisation and Metrology ('ESMA') recently issued new standards for Electronic Nicotine Delivery systems ('ENDs', also known as 'e-cigarettes' or 'vapes'). This has caused a flurry of activity amongst wholesalers and retailers alike who, for the first time, may legally import and sell such devices and affiliated products in the UAE marketplace from April 2019.

Under the new ESMA standards (5030:2018), wholesalers and retailers may import and sell e-cigarettes, electronic pipes, electronic shisha devices and e-liquid refills, so long as they conform to certain legal requirements

and carry appropriate health warnings. Previously, such activities were not permitted under UAE law.

This relaxation of the restrictions on e-cigarettes and associated products has prompted a robust warning from the UAE Ministry of Health and Prevention ('MOHAP') that such products are potentially unsafe, particularly for young people. A recent MOHAP circular to healthcare facilities specifically alerted doctors to check whether e-cigarettes have been a factor in any reported fits or seizures, in light of similar concerns raised in the US market. The circular requests that doctors clarify whether patients have been using e-cigarettes, obtain details of the e-cigarette brand and duration of use, observe blood and/or urine cotinine levels and report any concerns to MOHAP as regards adverse reactions to e-cigarette products.

Despite the abiding concerns regarding the safety of e-cigarettes, increased regulation should allow authorities to clamp down on the hitherto active black market in illegally imported (and often dangerous) devices and refills sold in the UAE. This development also perhaps reflects a commonly held view that e-cigarettes are the lesser of two evils when compared to regular cigarettes. However, their use remains subject to much the same controls as regular cigarettes in the UAE, including a prohibition on use in certain public areas such as shopping malls and cinemas.



## Advertising of E-Cigarettes and Tobacco

The advertising of e-cigarettes and tobacco products remains prohibited in the UAE. Federal Law No. 15 of 2009 regarding Tobacco Control restricts direct and indirect tobacco advertising, promotion and sponsorship; and imposes legal obligations in respect of health warnings on packaging and labelling. Cabinet Decision No. 24 of 2013 concerning the Implementation Regulation for the Federal Tobacco Control Law also sets out further restrictions in relation to advertising, promotion and sponsorship. Consequently, direct tobacco advertising (e.g. national TV, newspapers, magazines, internet advertising and billboard advertising) is prohibited, as is free distribution, promotional discounts and sponsorship. In addition, the UAE is a signatory to the World Health Organisation Framework Convention on Tobacco Control ('WHO FCTC') and is thus under an obligation to implement comprehensive restrictions on tobacco advertising, promotion and sponsorship. Prevailing health concerns and the addictive nature of nicotine mean that it is highly unlikely that any change will be made to UAE advertising laws to accommodate e-cigarettes.

In the sporting context, rights holders, teams and venue owners are increasingly cognisant of developments in the e-cigarette space. Sport has had a chequered history of dependence on tobacco sponsorship revenues over the years. Formula 1, in particular, was synonymous with tobacco advertising for decades until it was banned in 2007, prompting the exit of long-time sponsors such as West and Lucky Strike from the sport. Nevertheless, the 40+ years association between Phillip Morris International ('PMI') and Scuderia Ferrari endured, albeit largely reduced to a corporate hospitality footing. That remained the case until 2018, when PMI's 'Mission Winnow' branding appeared on Ferrari's cars and driver's helmets in the final five Grand Prix races of the 2018 season, including the season-ending Formula 1 Etihad Airways Abu Dhabi Grand Prix. Mission Winnow is a CSR initiative to showcase PMI's scientific pursuit of less harmful ways to consume tobacco. Following closely on PMI's heels, British American Tobacco ('BAT') announced an eight-year partnership with McLaren from 2019 onwards, under 'A Better Tomorrow' branding designed to promote BAT's portfolio of 'potentially risk-reduced products'.

**Sport has had a chequered history of dependence on tobacco sponsorship revenues over the years. Formula 1 in particular was synonymous with tobacco advertising for decades until it was banned in 2007.**

The extent to which such campaigns will be tolerated remains to be seen. Early signs suggest that host countries, rather than sporting regulators, will take the lead on this front. Indeed, increased scrutiny by Australian regulators (and calls from the World Health Organisation) appears to have played some part in Mission Winnow and 'A Better Tomorrow' branding being removed for the 2019 season-opening Australian Grand Prix (although PMI deny any link in this regard). Mission Winnow was also removed from the 2019 official team name of Scuderia Ferrari, having formed a part of it in pre-season testing. Mission Winnow and 'A Better Tomorrow' branding did, however, appear at subsequent Grand Prix, with McLaren taking matters a step further by including Vype (a BAT e-cigarette product) branding as part of its car livery at the 2019 Bahrain Grand Prix, marking the first occasion a Formula 1 team has promoted an e-cigarette product by name.

Federal Law No. 15 of 2009 prohibits the promotion of tobacco products directly and by any other means which stimulate trading and increase the number of users. UAE Cabinet Decision No. 24 of 2013 prohibits the direct or indirect provision of information regarding tobacco products with the aim of encouraging the tobacco trade or increasing the number of tobacco consumers. Similarly, tobacco advertising and promotion are defined broadly in the WHO FCTC and capture activities having the effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly. It seems likely therefore that the lawfulness of the PMI and BAT campaigns under UAE law will hinge on whether e-cigarettes are considered to fall within the definition of 'tobacco products' (which is a matter of some debate as, for example, some e-cigarettes contain laboratory synthesised nicotine, rather than nicotine derived from tobacco) and the extent to which such campaigns are considered to indirectly promote such products.

Albeit less headline-grabbing in nature, the legalisation of e-cigarettes could also lead to other practical considerations for sporting venue owners and attendees. For example, larger designated smoking zones may be needed at venues to reflect the increasing popularity of such products. Visitors to Expo 2020 Dubai and tourists in the UAE, will be pleased that they can, if they so wish, bring their e-cigarettes with them into the UAE or purchase such products whilst in the UAE without falling foul of local laws.

## Alcohol: Sale, Consumption and Advertising

The position as regards alcohol sale and consumption in the UAE is more settled, being only permitted in specific designated areas, including licensed restaurants and bars attached to hotels. It is acceptable for tourists and non-muslim UAE residents to drink alcohol in such locations, provided that the latter obtains an alcohol licence before doing so. Anyone brought to the attention of the police who has consumed alcohol may be arrested outside of the designated area where they consumed the alcohol. Being drunk and disorderly, in a public area in the

UAE is a serious offence and may result in imprisonment for up to six months and fines of between AED 1,000 to 2,000. In addition, there is a zero tolerance approach to drink driving. Holding an alcohol licence does not permit that person to drink in public places or to be intoxicated in a public area, in accordance with Dubai Law No. 16 of 1972 concerning alcohol beverage control.

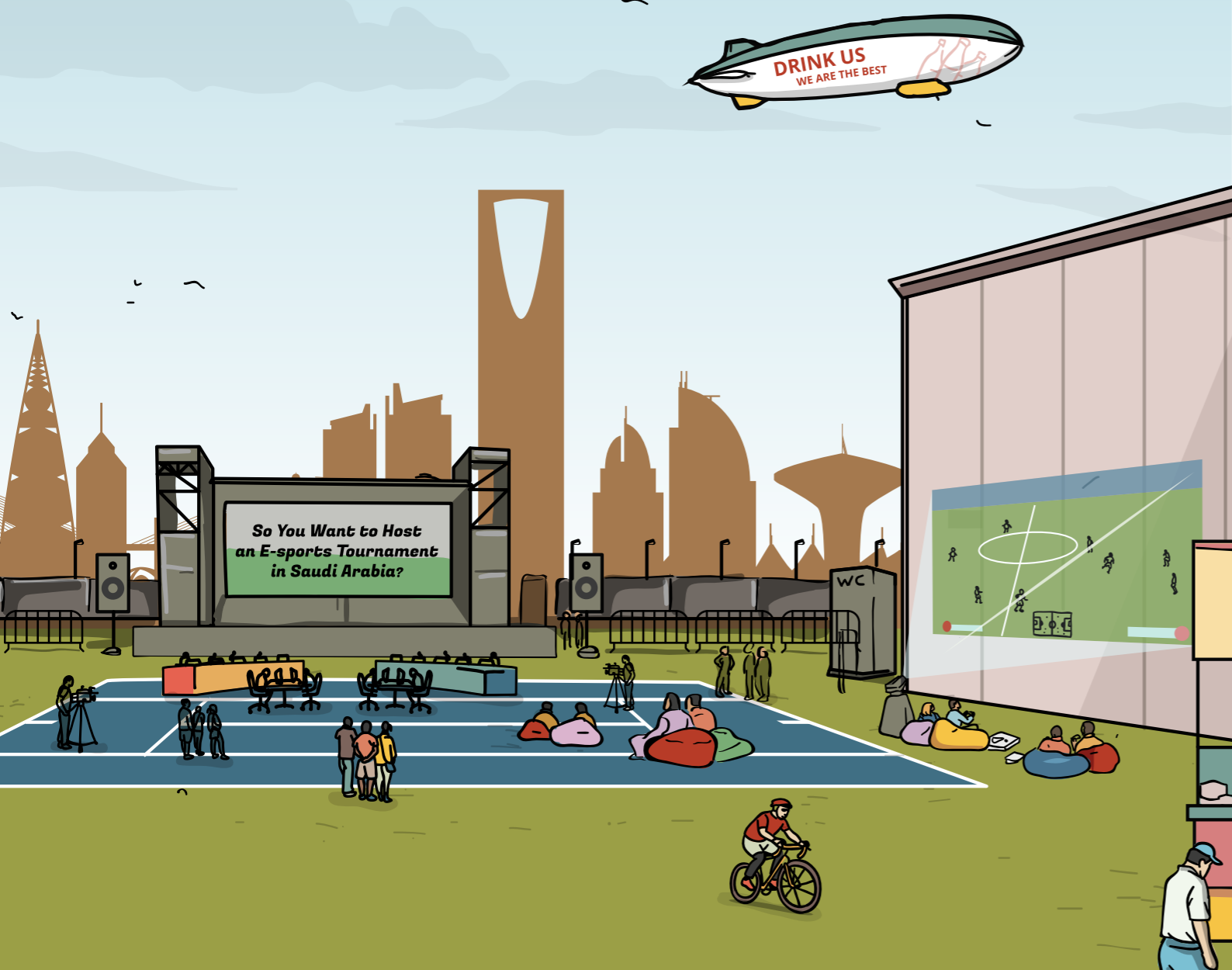
The UAE's National Media Council has issued guidelines for advertisers, making it clear that advertising for alcohol (and e-cigarettes/tobacco) is prohibited in all forms in the UAE, including social media. A contravention of the NMC guidelines could result in that company being fined and shut down for six months, as well as the senior management being at risk of imprisonment under the UAE Penal Code. However, confined alcohol promotion at sports and other mass attendance events in the UAE is a relatively common sight, purportedly under the umbrella of the alcohol licence held by the relevant establishment on such occasions. Accordingly, attendees at events such as the Dubai Duty Free Tennis Championships, the Emirates Airlines Dubai Rugby Sevens and the newly opened Coca-Cola Arena may see contained alcohol promotion, for example branded neon signs, brand specific bars, and 'two for one' offers. Often such promotions are in screened-off areas at such venues, but this is not always the case. This may indicate that the level of understanding of the relevant laws is inconsistent, or simply that some stakeholders are more alert to the risks than others.

Navigating the UAE regulatory landscape therefore requires careful thought, in particular by alcohol and e-cigarette companies, venue owners and event operators alike to ensure that all relevant federal and local laws are complied with and local customs respected.

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Al Tamimi & Company's Sports & Events Management team regularly advises on regulatory issues in the sports and events sector. For further information please contact Steve Bainbridge (s.bainbridge@tamimi.com).

# So you want to Host an E-sports Tournament in Saudi Arabia?



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Saudi Arabia boasts a rising number of globally successful Saudi e-sports champion players, and e-sports are hugely popular. Therefore, you may be wondering, how do I host an e-sports event in Saudi Arabia, or an online e-sports tournament targeting Saudi players? Do I need a permit or licence? How do I bring e-sports stars from other countries to test their mettle against Saudi players here in the Kingdom? This article sheds some light on the process.

The Saudi Arabian Federation for Electronic and Intellectual Sports ('SAFEIS') was established in October 2017 to foster and manage the development of the Saudi e-sports industry, issue permits and licences for e-sports tournaments and ensure that such tournaments comply with a few basic integrity and public safety-type considerations. While SAFEIS is the key authority in Saudi Arabia responsible for approving e-sports events, the General Entertainment Authority ('GEA') has been established to manage the development of entertainment and public events in the KSA more broadly and will also be involved for certain aspects of "on-the-ground events".

The most important recent achievements of Saudi Arabia in terms of seasonal e-sports events are qualifying for the FIFA 2018 World Cup; the National Championships for Small Dialogue; the Kingdom of Balot Championship; and the Bodyweight Cup for the Rammers, which was hosted in Saudi Arabia over five days.

In line with one of the pillars of Vision 2030, the organisation of such e-sports events is now becoming more open in term of participation by both local and foreign entities. The role of the participants is to organise and contribute with SAFEIS by signing agreements governing the organisational relationship between the participant company and SAFEIS. For instance, SAFEIS has contracted with a well-known local food restaurant to be an exclusive partner for food services in the upcoming SAFEIS e-sports events, in which the participant in such food services obtained certain permits from SAFEIS. However, the companies may be required to obtain a licence from other government authorities in addition to SAFEIS, depending on the activities included in the e-sports events, most commonly the GEA.

## Legal Requirements Specific to E-sports Events

There is a requirement to comply with the SAFEIS E-sport Competitions and Tournaments Regulations.

There are age limits associated with competing in an e-sports tournament. While they are not set out in the regulations, we expect it is likely that if an event is open to players under the age of 18 this should be flagged to SAFEIS for its prior approval.

There are certain integrity rules, for example that devices must be identical for all players. Device specifications must be sent to SAFEIS for approval for the largest types of tournaments. If you have your own equipment, the rules also allow players to use their own devices where such devices are not prohibited. Our expectation is that if a player's individual device conforms with specifications pre-approved by SAFEIS, it would be permitted. The use of a player's own device should be flagged to SAFEIS in the licence application process.

SAFEIS requirements differ depending on the size of the tournament. When competitions are free to enter, small and do

not involve the award of prizes, there is no need to engage with SAFEIS.

As would be expected, for larger events, rules and referees should be pre-approved by SAFEIS and publicly announced in advance once approved by SAFEIS. There are also other requirements, such as appointing team liaison officers who have responsibility for team conduct before SAFEIS. Larger tournament organisers must also update SAFEIS regarding certain changes to event schedules and other details.

Small public or private tournaments that impose a participation fee and award prizes must obtain a temporary permit from SAFEIS

be imposed, including revocation of a licence, repayment of fees to players and fines of up to 100,000 Saudi Riyals (about 30,000 USD). A licence may be cancelled or suspended for certain conduct including:

- violations of public order, morals or endangerment to security, public health, environment or safety;
- forgery, fraud or misleading information in any documentation or application submitted to SAFEIS by the event organiser;
- misuse of the SAFEIS logo; and/or
- assignment of a licence without SAFEIS's prior written approval.

- provides a detailed marketing plan for the contemplated entertainment activity;
- obtains all other necessary licences from all relevant authorities;
- the participating companies shall not be from the prohibited list in GEA; and
- confirms that the content of entertainment activity shall not include anything that violates the culture and values of Saudi Arabia.

The General Authority for Sport may also co-operate with these seasonal events, in relation to the Facility Reservation Service to enable companies and governmental organisations to apply for a reservation to the sports facility under certain terms and conditions set out by the authority.

## In line with one of the pillars of the Kingdom's Vision 2030, the organisation of e-sports events is now becoming more open in terms of participation by both local and foreign entities.

in advance. For smaller scale competitions, either individuals or entities may apply for a temporary permit, but for larger competitions, only entities institutions may do so, and a licence must also be obtained. The temporary permit is issued on an event-by-event basis. (Whether or not this includes the various rounds of an e-sports event is unclear in the Regulations and is something that may depend on individual tournament format.) Permits are temporary and cannot be transferred or re-used. Future competitions may not be announced on the basis of holding a permit for a particular e-sports tournament.

While there is no fee for a temporary permit or licence, operational fees are payable to SAFEIS per day that the competition is occurring. Such operational fees increase in proportion to the size and scale of the event.

Generally, for small e-sports tournaments, it is not permitted to use the SAFEIS logo for any reason in association with the tournament. However, for larger tournaments, use of the SAFEIS logo can be agreed with SAFEIS on a case-by-case basis. Organisers should be aware that they are required to send information to SAFEIS both before and after the competition, such as data about the participants (before the competition) and results (after the competition).

### Infringement of SAFEIS Regulations

SAFEIS officers attend e-sports events and will monitor activity for any violations and refer them to a Disciplinary Committee. Punishments for violations of the rules may

### On-the-ground Events

As mentioned by Prince Faisal bin Bandar, the President of SAFEIS "By organizing these events we aim to increase the recognition of the legitimacy of gaming and e-sports as an economic source rather than simply as entertainment." It is a growing global competitive sport with a path joined by participants from anywhere in the world, representing a very significant economic opportunity for us as in Saudi Arabia "Our focus is on helping the state explore and expand the entire gaming industry by opening up new ways to participate and benefit from it."

The GEA was established by Royal Decree on 30 Rajab, 1437H corresponding to 7 May 2016 to organise, develop, and lead the entertainment sector in Saudi Arabia. GEA contributes to e-sports events with a view to improving and enriching the lifestyle and social cohesion among the community. It also works with SAFEIS in providing licences and permits to the participating companies related to the entertainment and peripheral events associated with an e-sports event.

The essential conditions for obtaining such licences are that the applicant:

- can demonstrate sufficient experience in the field of entertainment;
- provides a complete operational plan for the entertainment activity with which the licence complies as determined by the GEA criteria;

### What's Next?

Given the enormous popularity of e-sports we expect continued interest by Saudi Arabia's young population and therefore an attractive opportunity for those looking to involve Saudi players in their tournaments. If you are hosting an event in Saudi Arabia, you may need to obtain a SAFEIS licence, and other licences depending on the peripheral entertainment. If you are hosting an e-sports event targeting Saudi Arabian players you would be well advised to inform SAFEIS and potentially apply for a permit. As of 13 June 2019, the e-sports rules have not been made publicly available, so talking with local experts experienced in advising on Saudi Arabian events both virtual and 'on-the-ground' will be a must.

Al Tamimi & Company's Corporate Commercial and Technology, Media and Telecommunications teams regularly advise on virtual and on-the-ground sports events and other entertainment. For further information please contact Sarah Al Saif (s.alsaif@tamimi.com) or Amy Land Pejaska (a.pejaska@tamimi.com).

# How can an Employer Effectively Manage its Employees?



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On 3 January 2019 news broke that a football coach of one of the UK's leading clubs, Craig Bellamy, had "temporarily removed" himself from his coaching position in order to co-operate with the club's investigation into various allegations of bullying. It is not clear whether a temporary removal would amount to a resignation or rather a request to be placed on a period of suspension pending the outcome of an investigation. This scenario has prompted a number of questions into the steps an employer can take when it becomes aware of allegations into employee misconduct. If Craig Bellamy is found guilty of these allegations, would this justify a fair dismissal? We consider the position from a UAE perspective below.

## Investigations and Disciplinary Action

In the UAE, the statutory investigatory and disciplinary processes are watered down in comparison to many other jurisdictions including the UK and Europe.

Prior to any disciplinary sanction being imposed, the UAE Labour Law requires an employer to ensure that:

1. the employee has been notified in writing of the allegations against him;
2. the employee has been given an opportunity to comment on or provide an explanation relating to the allegations; and

3. it has investigated any defence provided by the employee in respect of the allegations.

An employer must initiate this procedure within 30 calendar days of discovering the alleged misconduct, and any disciplinary sanction must be imposed within 60 calendar days of the investigation having been concluded and a decision to uphold the allegations.

Ensuring the correct procedure is followed before implementing a particular disciplinary sanction is important to avoid litigation and best protects the employer should a claim be filed by an employee.

Unlike other jurisdictions, there are no best practice guidelines detailing the conduct of any disciplinary meetings or notifications, apart from providing the employee an opportunity to comment on the allegations against him/her and to provide any relevant explanation or defence.

Irrespective of an employee's misconduct, if an employer fails to comply with the statutory procedure, any subsequent dismissal could be deemed by the Labour Courts as unfair. The Labour Law permits an employer to impose certain penalties on its employees, which include a warning, fine, or dismissal (with or without notice) subject to the employer having first followed the above disciplinary process.

## Suspensions

In certain circumstances, for example, in Craig Bellamy's case and in light of the club's safeguarding concerns, an employer may be minded to temporarily suspend an employee pending the outcome of the internal investigation. But can an employer do this in the UAE?

The answer is, yes. The UAE Labour Law makes two references to suspension: one as a form of disciplinary penalty; and the other where an employee is charged with a crime. Suspension is rarely applied as a disciplinary sanction and if so, it is limited to 10 days as 'reduced' pay.

It is much more common that an employer will temporarily suspend an employee where a suspension would help to protect the integrity of its investigation. It is considered best practice to suspend the employee with pay and this is the most common approach adopted in the UAE. Whilst the Labour Law does not specify a specific timeframe for paid suspensions, practically, the employer should ensure that the investigation is completed in a timely manner, and any period of suspension is kept to a minimum.

An employee may however be suspended from work without pay where a criminal complaint has been submitted and is undergoing investigation. If the UAE public prosecution does not issue an indictment or if it does but the employee is acquitted of the crime by the criminal courts, the employee must then be reinstated and paid for the period of the suspension. However, if the employee is convicted, there is no requirement to pay the employee for the suspension period and he/she may then be summarily dismissed based on the conviction. We look at terminations below in more detail.

## Terminations

In general, an unlimited term contract may either be terminated at any time on written notice, or summarily for gross misconduct. If, in this case, the allegations against Craig Bellamy were upheld, the club should consider whether the termination of his employment is warranted under the circumstances.

Where a contract is terminated on notice, this must be for a 'valid reason'. Although there is no definition of a 'valid reason' in the UAE Labour Law, an employee's employment will be deemed to have been arbitrarily terminated if the reason for the termination was 'irrelevant to the work'. In such circumstances, an employee has the ability to bring a claim for unfair/arbitrary dismissal which, if successful, would be payable in addition to his/her contractual and statutory entitlements.

The maximum compensation arising from a finding by the Labour Court of arbitrary termination is three months' total salary. The actual amount of the award, if any, is ultimately determined by the Labour Court and is generally dependent on service length. Where a detailed disciplinary procedure has been undertaken in advance of the dismissal, this assists in mitigating the risk of any award for arbitrary dismissal compensation.

In our experience, in order to successfully rely on an employee's performance or misconduct as a reason for termination, the Labour Court would expect to see that three or four warnings have been issued to an employee prior to dismissal.

In contrast to the UK position, the UAE Labour Law sets out an exhaustive list of circumstances in which an employee's employment may be terminated summarily and without end of service gratuity. The

**The threshold for a summary dismissal for gross misconduct is extremely high.**

**Ensuring the correct procedure is followed before implementing a particular disciplinary sanction is important to avoid litigation.**

threshold for a summary dismissal for gross misconduct is extremely high and often requires a criminal conviction prior to dismissal. Where such a dismissal is not justified, it is very likely that the employee will proceed to file a claim at the Labour Court, which the employer will be unable to defend.

In all circumstances, it is recommended that termination advice be sought on a case by case basis.

## What Should an Employer do in Practice?

In order to circumvent the legal consequences associated with the termination of an employee on disciplinary grounds, it is important that the employer follows a fair and reasonable process. It is recommended that employers introduce and thereafter maintain a disciplinary policy, which not only complies with the UAE Labour

Law disciplinary procedure, but also provides a degree of flexibility allowing the employer to exercise its reasonable discretion. Employees should have access to the policy, which should serve as a guide throughout the disciplinary process. Where disciplinary action is taken, this should always be justifiable and considered in light of the specific and particular circumstances of the situation.

Al Tamimi & Company's Employment & Incentives team regularly advises on all employment related Sports & Events Management Practice matters. For further information please contact Sabrina Saxena (s.saxena@tamimi.com).

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