
CHAMBERS GLOBAL PRACTICE GUIDES

Sports Law 2023

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Switzerland: Law & Practice

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Switzerland: Trends & Developments

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SWITZERLAND



Law and Practice

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Bär & Karrer Ltd is a renowned Swiss law firm with more than 170 lawyers in Zurich, Geneva, Lugano, Zug and Basel. Its core business is advising clients on innovative and complex transactions and representing them in litigation, arbitration and regulatory proceedings. The sports law team is headed by Michele Bernasconi, and is supported by a team of nine partners, as well as nine associates from a broad range of adjacent practice areas. The firm's experts have an unmatched depth of knowledge in the sports industry, with a comprehensive practice

that offers a wide range of services throughout Switzerland and abroad. Its sports lawyers represent many of the leading international sport organisations, sports clubs, sporting event organisers, broadcasters and individual athletes in litigation, sports arbitration and other proceedings, as well as in transactions in the sports industry. Clients include UEFA, World Aquatics, CONMEBOL, the Olympic Council of Asia, the Association of National Olympic Committees (ANOC) and the European Athletics Association.

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1. Regulatory

1.1 Anti-doping

Doping as a Criminal Offence under Swiss Law

Under Swiss law, using or applying prohibited substances per se is not a criminal offence for the athlete using or applying the substances. However, certain actions in connection with doping are subject to criminal sanctions under the Federal Act on the Promotion of Sport and Exercise ("Sport Promotion Act", SPA).

A custodial sentence up to five years may be imposed on anyone who, for doping purposes, manufactures, acquires, imports, exports, transports, distributes, sells, prescribes, markets, administers or possesses doping substances, or applies prohibited methods to other persons. The sanction applies to professional as well as amateur sports, such as bodybuilding and fitness, without any connection to competitive or professional sports.

Prohibited Substances

The prohibited substances and methods are enumerated in the Ordinance to the Sport Promotion Act in an exhaustive list. While there are

considerable overlaps, the list does not fully correspond with the Prohibited List of WADA.

Further Anti-Doping Regulations/National Anti-Doping Organisation

In addition, Swiss athletes are subject to the anti-doping regulations of sports governing bodies and WADA and may be sanctioned for doping offences in accordance with the applicable sanctioning regime established in the World Anti-Doping Code (and the corresponding regulations implementing the Code).

Antidoping Switzerland is officially recognised by the Swiss authorities and by WADA as the national anti-doping agency. Its mission is to combat doping in sports by means of testing, investigations, prevention work and collaboration, the latter including working together with law enforcement.

Implementation of the World Anti-Doping Code

In Switzerland, the World Anti-Doping Code is implemented in the form of the so-called Doping Statute of the National Olympic Committee of Switzerland, Swiss Olympic, with binding effects to all its member associations. The Doping Statute is accessible here: [Antidoping Switzerland](#).

Recent Case Law

Most recent cases in which criminal sanctions were handed down under the SPA concern the illegal production and distribution of doping substances in the bodybuilding scene. Often, the cases are interlinked with other violations of other state laws – for example, the Federal Act on Medicinal Products and Medical Devices. Cases have already been brought before the Swiss Federal Tribunal, and sanctions that were handed down included custodial sentences, monetary penalties and the confiscation of considerable amounts of cash.

On an international sporting level, it can be noted that the Court of Arbitration for Sports (CAS), with its seat in Lausanne, Switzerland, regularly renders awards concerning violations of anti-doping rules. These proceedings normally concern appeals against sanctions handed down for anti-doping rule violations. Recent examples involve, for example, the Australian swimmer Shayna Jack (CAS A1/2020), the Italian MotoGP rider Andrea Iannone (CAS 2020/A/6978 & CAS 2020/A/7068) and the Russian figure skater Kamila Valieva (CAS 2023/A/9451-55-56).

1.2 Integrity

Under Swiss law, a distinction is made between misconduct, which directly manipulates sports competitions (“match-fixing” in the more classical sense), and an illicit behaviour, which does not directly manipulate the outcome of a sports competition but that otherwise affects the integrity of sports governing bodies (notably acts of bribery concerning sports officials in connection with bidding procedures).

Manipulation of Sports Competitions (Match-Fixing)

In cases concerning the manipulation of sports competitions, the regulatory framework is pro-

vided by the Sports Promotion Act (SPA) together with its implementing ordinance.

Under the SPA, anyone who offers, promises or grants an undue advantage to a person who exercises a function in a sports competition (which includes athletes, trainers and referees) on which sports betting is offered, for the purpose of distorting the course of this sports competition in their favour or in favour of a third person may be sanctioned. Vice versa, if such person exercising a function in a sports competition demands, accepts or allows themselves to be promised an undue advantage, this may be sanctioned as well.

Both active and passive sports competition manipulation is punishable with a custodial sentence up to five years and/or a monetary penalty.

Other Illicit Behaviour

Misconduct, which does not directly manipulate sports competition but nevertheless is damaging to the integrity of sports, such as the bribery of sports officials, is mainly governed by the Swiss Criminal Code.

Both active and passive bribery is prohibited and may be penalised with a custodial sentence up to three years or a monetary penalty.

In this respect, sanctions may not only apply to the offending person but also to their employer. An undertaking such as a sports governing body may be liable to a fine up to CHF5 million in case it has failed to take all the reasonable organisational measures that are required in order to prevent such misconduct (ie, liability for organisational fault).

Reporting Obligations

Swiss sports governing bodies are required to file a report to the competent authority, in case there is suspicion of manipulation of a competition, which is either taking place in Switzerland or on which sports betting is offered in Switzerland.

Restriction on Federal Funding

Sport organisations may only receive governmental funding from the Federal Office of Sport (FOSPO) if they prohibit their members from placing sports bets on their own competitions and from misusing or disseminating inside information.

Measures Taken by Sports Governing Bodies

In addition, sports governing bodies have taken a variety of measures to combat behaviour affecting the integrity of sports competitions, ranging from reporting obligations to sanctioning and monitoring regimes.

In football, for example, UEFA (in co-operation with the company Sportradar) has implemented a betting fraud detection system, which detects irregular betting movements both pre-match and live in all the core betting markets. Moreover, most international sports federations domiciled in Switzerland have implemented rules of conduct, codes of ethics, or similar rules to protect the integrity of their respective sports. Violations of such rules are generally sanctioned very severely.

Case Law

In a recent decision, an Albanian football club, Skënderbeu, has been sanctioned by UEFA with a ten-year ban from UEFA competitions and a fine of EUR1 million for match-fixing. The sanctions have been upheld both by CAS and the Swiss Federal Tribunal (4A_462/2019).

1.3 Betting

Under the newly enacted Federal Gaming Act, betting is in principle permitted but subject to strict regulation and licensing requirements.

Regulatory Regime of Sports Governing Bodies

A large number of international (sports) federations (IFs) with a seat in Switzerland have a specific regulatory regime, including rules against illegal betting. This regulatory regime is then handed down to the national level and thus implemented by national sports governing bodies.

Typically, those bound by an international code of ethics – namely, officials, referees, players, etc, are prohibited from betting both directly and indirectly on games of their own sports and Olympic competitions in general. Furthermore, they are not allowed to share any insider information (such as team tactics or injuries) and must always report any suspicious behaviour.

Sanctions may include disciplinary measures such as a fine or a suspension, and may range up to a life ban. Notable examples of ethics codes of Swiss-based IFs are the FIFA Code of Ethics, the IIHF Code of Conduct and the IOC's Code on the Prevention of the Manipulation of Competitions.

Co-operation

Sports governing bodies often enter into co-operation agreements to protect the integrity of their sport. For example, UEFA signed a memorandum of understanding with the European Union's law enforcement agency (Europol) for mutual support, exchange of information and education programmes.

Furthermore, many IFs have concluded partnership agreements with operators of betting fraud detection systems in order to monitor both their games and the betting markets so as to identify, analyse and sanction illegal betting behaviour.

Recent Case Law

In January 2021, FIFA upheld a suspension of four weeks and a fine of GBP70,000 issued against an English football player, Kieran Trippier, for providing inside information on his transfer, which was later used by friends for betting purposes.

In December 2020, the Tennis Integrity Unit, whose decisions may be challenged before the CAS, banned a French tennis line umpire from officiating for 18 months and issued a fine after having found the umpire guilty of placing bets on tennis matches.

1.4 Disciplinary Proceedings

Disciplinary Proceedings in General

Typically, when enforcing disciplinary sanctions, sports governing bodies will, as a first step, open a formal investigation against an athlete. During such investigation, the alleged misconduct and all the surrounding circumstances are examined, with the athlete being granted the right to be heard.

The investigation is usually carried out either by a specialised internal body or by a department with broad and general jurisdiction, depending on the matter and the organisation of the respective federation.

If a sanction is imposed after completion of the investigation, the athlete may, in many instances, file an appeal before an internal judicial body, such as the Appeals Body of UEFA (in European

football-related matters) or the FEI Tribunal (in equestrian sports).

If foreseen by the applicable rules and regulations, the final decision of the sport governing body may be appealed before the CAS or another arbitral body, rarely before state courts. Ultimately, decisions of CAS may be appealed with limited grounds before the Swiss Federal Tribunal (see **6.1 National Court System**).

2. Commercial Rights

2.1 Available Sports-Related Rights

A variety of sports-related commercial rights are available under Swiss law. In addition to sponsorship and broadcasting (which is addressed in **2.2 Sponsorship** and **2.3 Broadcasting**), event organisers may conclude contractual arrangements relating to merchandising, hospitality and ticketing.

Freedom of Contract and Limitations

While, in principle, contractual parties are free to negotiate the terms of their arrangements, certain restrictions apply.

By way of example, during so-called high-security risk games, the sale of alcoholic beverages is prohibited in the stadium. Furthermore, when selling merchandise, necessary trade marks must be obtained. The sale of fake goods such as football shirt imitations is prohibited and punishable by law.

Secondary Ticket Sales

Under Swiss law, there are no provisions specifically regulating secondary ticket sales. To combat such secondary ticket sales, organisers often rely on technical (personalised tickets) or contractual (prohibition of resale) measures.

Illegal Ticket Sales

On the contrary, the sale of non-existent or forged tickets is a criminal offence and may be sanctioned with imprisonment up to five years and/or a monetary penalty.

2.2 Sponsorship

As in other countries, sport sponsoring in Switzerland is a popular tool for corporate and brand promotion. Depending on the sponsor's commercial strategy, sponsoring takes various forms and ranges from collaborations with athletes, teams and clubs to sponsoring of leagues, tournaments and sports associations.

Usual forms of sponsoring include title or series sponsoring, branding of equipment (jerseys, helmets, etc) and PR activities.

Conversely, sports rights-holders have various options to attract a sponsor's investment, such as:

- live sports, where sponsors may benefit from corporate and brand exposure;
- shirt sponsorships and kit supplier deals;
- stadium sponsorship; and
- name sponsoring (if permitted by the competent sports body, such as in volleyball).

The relevant rights and obligations are negotiated in a sponsorship agreement. Key terms vary and depend on the contractual parties. A standard contract between sponsor(s) and a National Federation may include the following rights of the sponsor in return of a fee:

- branding of equipment;
- production of image and communication material;

- right to use names, photos, testimonials, etc, of the athletes for own commercial and promotional purposes;
- participation of athletes at sponsor's events; and
- social media posts.

2.3 Broadcasting

In Switzerland, SRG SSR, the publicly funded Swiss broadcasting corporation, offers a high variety of sports events on a free-to-air basis. Recently, broadcasters, including SRG SSR, have started to expand their online services. This has led to an increase in livestreaming of "less popular" sports. Additionally, sports events are available on subscription (pay-TV) basis from other broadcasters.

Broadcasting Rights

Broadcasting rights are usually bundled into a variety of packages by the sports rights-holders, ranging from premium (live TV including priority picking rights per match day) to low-priced options (such as highlights and delayed games).

Premium packages are generally offered on an exclusive basis, subject to limitations by any mandatory law (eg, antitrust restrictions). Typically, exclusivity is offered on a channel and territorial and/or language basis. Low-priced options, on the other hand, are usually granted on a non-exclusive basis.

As a recent example, the rights to the matches of the Swiss Super League – the highest football league in Switzerland – were sold by the Swiss Football League for a period of four seasons to two broadcasters through a dedicated sales process. While all matches will be broadcasted on a pay-TV basis, SRG SSR will broadcast live one match per round on free-to-air TV.

Right to Record and Neighbouring Rights

Venue access is usually granted by the holder of the domestic authority, allowing the broadcaster to record the sport event. Spectators with access to the stadium are generally prohibited from recording, which is foreseen in the house rules of the domestic authority as well as the terms to the entry ticket (see **3.1 Relationships**).

Sports events as such are generally not protected by copyright as they are not considered to be in accordance with the Federal Act on Copyright and Related Rights (“Copyright Act”) (see **5.2 Copyright/Database Rights**). However, producers of image and sound carriers, as well as broadcasters, are granted so-called neighbouring rights. Under these rights, producers of audio-visual materials are granted the exclusive right to reproduce, copy, provide access and distribute the recordings. Broadcasters, on the other hand, are granted the exclusive right to make perceptible and retransmit their programme. However, these rights may not be exercised directly by the producers and/or the broadcasters themselves, but only by an authorised collective rights management organisation.

3. Sports Events

3.1 Relationships

When organising an event, the promoter enters into a multitude of contracts. The contracting parties depend on the event to be organised, but typically include athletes, venue owner(s), local authorities, hospitality and other service providers as well as spectators.

Contractual Relationship between Organiser and Spectator

With the sale and purchase of a ticket in order to gain access to a sports event venue, the

organising entity and the spectator enter into a contractual relation. In addition to the main contractual duties (access to venue in return for a fee), the spectator contract generally includes ancillary contractual rights and obligations of the parties, such as in relation to safety, liability, taking of pictures, etc.

Venue Owner’s Domestic Authority Rights

Sport events take place in privately- or publicly-owned closed venues (eg, stadiums, sport event halls) or on public open grounds (eg, city marathons).

If the event takes place on a private or publicly owned closed venue, such as a stadium, the organiser may aim at protecting its rights under the venue owner domestic authority doctrine.

In fact, many sports events, such as in football, ice hockey or volleyball, usually take place in such closed venues and are thus only accessible with a valid ticket. Based on the venue owner’s domestic authority rights, house rules are typically enacted, which entail regulations on various matters, including the prohibition of taking pictures and video recordings of the event. Identical restrictions or rules are then also contained in general terms applicable to the contractual relationship between the organiser and the spectator.

However, in the absence of copyright protection (which may apply only in limited circumstance to sports events, see **5.2 Copyright/Database Rights**), the sporting event per se does not enjoy particular protection under Swiss law. Hence, as soon as a sporting event or performance is made accessible to the public – ie, outside a sports venue (city marathon, automobile race on public ground, etc) – acts by spectators such as watch-

ing the event from a balcony or the recording the event may not be validly prohibited.

3.2 Liability

Organisers of sports events have, in general, a duty of care and a general duty to provide safety for the spectators and the athletes. Such duty of care may be based on contract or on tort law. In addition, in case of certain accidents, criminal law may be applicable.

Generally, an organiser of a sport event will have to take all reasonable and appropriate protective and precautionary measures to protect spectators and athletes from accidents and damages. Of course, such obligation is not unlimited, and an organiser will be able to reject any liability in case there was a faulty behaviour on the side of the spectator or of a third party that caused the damage or the accident, respectively.

Limitation of Liability

In the general terms and conditions underlying the ticket purchase it is possible for sports event organisers to limit their liability. However, under Swiss law, any agreement purporting to exclude or limit liability for unlawful intent or gross negligence in advance is void.

Furthermore, according to the prevailing Swiss legal doctrine, it is not permitted to exclude or limit in advance liability for bodily injuries (physical integrity) or death.

Rules on Keeping Sporting Events Safe from Violence and Disorder

In the light of disturbances at the 2008 UEFA European Football Championship, various measures have been implemented in Switzerland to prevent violence in and around sport. Besides the Federal Act on Measures to Safeguard Internal Security (BWIS), the most important regula-

tion currently in place is the Cantonal Concordat on Measures against Violence at Sporting Events (“Hooligan Concordat”). According to the Hooligan Concordat, football and ice hockey matches involving clubs of the male top division are in general subject to authorisation by the competent cantonal authorities.

Depending on the risk classification of the matches, the authorities may order various constraints and prohibitions such as ID checks at the entrance of the stadium to ensure that persons with stadium bans do not enter the venue, body searches at the entrance, prohibition of serving alcohol inside and outside the stadium, area restrictions and the duty to report to the police at certain dates and times for actual and potential offenders. Currently, the introduction of mandatory personalised tickets for football games is being discussed, in order to improve security during matches. The topic, however, remains controversial.

4. Corporate

4.1 Legal Sporting Structures

The vast majority of sports governing bodies are organised either as an association (Verein) or incorporated as a company limited by shares (*Aktiengesellschaft*). Combinations of both legal forms are also seen in practice.

Sports Governing Bodies

In Switzerland, sporting bodies typically have an idealistic social purpose and are organised as associations pursuant to the Swiss Civil Code. This applies for both national as well as for the many international sports governing bodies domiciled in Switzerland.

The main reason for sports governing bodies opting for the legal form of an association is a large degree of flexibility in the internal organisation, a wide-ranging autonomy and, at least in some cantons, certain tax benefits. Swiss association law provides for a wide discretion to the associations in their organisation and governance.

Professional and Non-professional Sport Clubs

For domestic sports clubs, it is also common to be organised as an association, particularly non-professional sports clubs. On the contrary, professional teams of sports clubs, especially in football and ice hockey, generally focus more on economic profits and thus operate as a company limited by shares. In this respect, it is noteworthy that the Swiss Football League and the Swiss Ice Hockey Federation only grant a licence to participate in their championships if the professional teams of sports club are organised as a company limited by shares. In parallel, however, it is also possible that the “umbrella” organisation and/or the amateur section of the same sports club is still incorporated as an association.

4.2 Corporate Governance

Apart from a very limited set of duties particularly addressing sporting events, such as the prohibition of match-fixing, there is no general code under federal Swiss law which would contain sport-specific corporate governance rules. However, general corporate governance rules applicable to (commercial) entities are pertinent. In addition, within the autonomy of associations, sports governing bodies are permitted to enact corporate governance codes themselves. Indeed, this has been done in the recent past by a large number of international sport federations.

General Corporate Governance Rules

Directors and owners of sport clubs, as well as executive members of associations are subject to the general corporate governance rules under Swiss law: amongst others, rules apply regarding duties of fidelity, independence, conflict of interests, transparency (eg, towards the shareholders), etc.

Sport-Specific Corporate Governance Codes

Swiss association law is based on the principle of autonomy. This includes the right of self-organisation and structure. Accordingly, sports associations are free in establishing their internal governance – that is, the rights and obligations of their members.

Due to the growing commercialisation of sports and demand for transparency, many sports associations and federations have introduced quite strict corporate governance regulations. FIFA, for example, enacted the FIFA Governance Regulations and the FIFA Code of Ethics, which establish general principles regarding duties, powers and responsibilities of certain bodies and their members. Non-compliance may lead to severe disciplinary sanctions.

Financial Stability and Prevention of Insolvency

Financial stability and preventing clubs from going insolvent are matters of the utmost importance to ensure fair and undisturbed competitions.

As a result, sport licensing authorities often require detailed financial information to verify a club’s financial soundness. If the financial status of a club or a team is considered unsatisfactory, the club or team may be refused the licence and, therefore, the right to participate in a certain competition.

Insolvency

In the event of insolvency of a Swiss sporting club, the proceedings are governed by the Federal Debt Collection and Bankruptcy Act. Under this Act, in essence, it is up to the creditor's assembly to decide whether to continue the operation of the sporting activities during the insolvency.

Should the creditor's assembly agree to continue to operate the sporting activities, then, subject to the position of the competent league and/or regulatory sporting authority, the club may continue to play, at least until the end of the season (when granting of a new licence may presumably fall to the insolvency proceedings).

What is more, the competent league and/or regulatory sporting authority may, depending on the applicable regulations, in case of insolvency issue sanctions, take appropriate measures to protect an ongoing competition.

4.3 Funding of Sport

Professional and elite sport in Switzerland is mainly funded through the commercialisation of rights (ticketing, sponsoring, merchandising, broadcasting revenues, etc), contributions from international sports federations and national organisations such as the Swiss Sports Aid Foundation, lottery and betting funds, as well as the public purse (federal, cantonal and local government).

The funds are distributed to the sports associations, the national sports federations, organisers of sports events and national leagues, athletes, coaches as well as to Antidoping Switzerland.

Depending on their potential of success, athletes may qualify for the Swiss Olympic Card and thereby receive financial support, subsidised

services and discounted offers from the sponsors of Swiss Olympic, FOSPO, the federations and clubs. Furthermore, athletes have the possibility to join the Swiss Military Elite Sport Recruit School (Sport RS) in which, after their basic military education, they will attend an intense training period organised by FOSPO. After completing the Sport RS, athletes are offered further training to prepare for international championships (Olympic Games, world championships, etc) and they may perform additional military service that entitles them to income compensation.

In the context of the COVID-19 pandemic, certain extraordinary payments were made, upon application, to sports entities in Switzerland. In addition, the government has opened specific finance support programmes and offered loans and other financial help. Some of those support programmes are still ongoing (either directly or indirectly supporting sports organisations), but for many of them, expiry dates have been fixed.

4.4 Recent Deals/Trends

In a recently published deal, the private equity company CVC made an investment worth a reported USD300 million with the International Volley Federation (FIVB) in a newly founded joint-venture, VW Volleyball World SA.

The partnership will particularly focus on event-hosting, fan experience, media, data and digital opportunities, as well as sponsorship.

5. Intellectual Property, Data and Data Protection

5.1 Trade Marks

Swiss trade marks can be registered online by filing an application with the Swiss Federal Institute of Intellectual Property (IPI). The entire pro-

cess is well-structured and very well-managed by the Swiss IPI.

Registration Process

Upon payment of a registration fee, the IPI examines if there are any pertinent grounds to exclude the trade mark from protection. In principle, any sign that is capable of being represented graphically can be registered as a trade mark, provided that the sign is used to distinguish goods or services from those of a competitor.

On the contrary, descriptive or deceptive signs, simple signs or signs contrary to public policy cannot be registered. The IPI will review the formal requirements but does not examine if similar or identical trade marks exist.

Following a successful registration, the trade mark is published online in the Swiss trade mark register (*Swissreg*). The trade mark protection starts with the entry therein.

If the trade mark was originally registered outside of Switzerland and an additional protection through Swiss jurisdiction is sought, the owner shall apply for an extension through the World Intellectual Property Organization (WIPO). A corresponding entry will be made in the WIPO database. An additional publication in *Swissreg* does not take place.

Advantages of Registration

Protection is the main advantage of the registration. The owner can preserve their rights in case of an unauthorised use of a trade mark in civil and/or criminal proceedings. The protection inherently allows the owner to prohibit third parties the use of similar trade marks for similar products and/or services.

5.2 Copyright/Database Rights Copyright

The copyright law of Switzerland is codified in the Swiss Federal Copyright Act. It protects the authors of literary, artistic and scientific works and software, which are equally deemed works. Work is protected irrespective of its value or purpose if it is considered to be a literary and artistic intellectual creation with an individual character.

Protection begins with the creation of the work and expires 70 years (or for software 50 years) after the death of the author. An exception applies for photographs without an individual character; their protection expires 50 years after creation. Copyright vests in the person of the author at the time they created a work and can be inherited. Registration of the work is not required (there is no copyright register in Switzerland). The latter has the exclusive right to exploit the work without registration. Copyright can be assigned or licensed to a third party. Such exploitation is not subjected to any formal requirements, even though written form is recommended. Nonetheless, moral rights of the author must be respected.

The author or the exclusive licensee can allege violations of its copyrights in civil and/or criminal proceedings (intentional copyright infringement is a criminal offence), unless an exception provided for by the Copyright Act is applicable. In cases of urgency, provisional measures can be sought. Damages are calculated in accordance with tort law, account of profits or unjust enrichment.

As to live sports events, obtaining copyright protection is often difficult as, in general, they are not considered to be works within the meaning of the Copyright Act since they lack intellectual creation and/or individual character.

Photographical Reproductions

The Copyright Act has recently been revised and a new category of protection has been introduced. In essence, pictures without individual character (while fulfilling the other requirements) may enjoy protection as photographic reproductions.

While similar, the protective rights differ in certain aspects from the scope of protection given to copyright-protected work.

No Database Right

Even though there have been several attempts to do so, Switzerland has never implemented a database right similar to the one introduced by the Database Directive in 1996. Accordingly, there is no *sui generis* protection of databases in Switzerland.

Swiss law only provides to database owners very limited protection under the Copyright Act and the Act against Unfair Competition. According to Swiss copyright law, databases only qualify for protection if they qualify as original databases. The requirement of originality demands that a database must constitute an intellectual creation by reason of the selection or arrangement of its contents in order to enjoy copyright protection.

As soon as a database serves its true purpose (ie, is comprehensive), it fails to meet the criteria of originality. Consequently, the majority of the databases are not protected under copyright law even if substantial investments have been made to produce them.

5.3 Image Rights and Other IP

The athlete's image rights are part of their personality rights and are protected from unlawful infringements by the Swiss Constitution and the Swiss Civil Code. The protection is to some

extent limited as soon as an athlete is considered a public personality.

Nonetheless, in accordance with the Swiss Civil Code, any commercialisation of image rights requires the athlete's consent. Commercialisation without consent is considered an unlawful infringement and allows the athlete to seek legal protection against the infringing party. Protection includes a cease-and-desist order and claim for damages.

Further, trade marks are frequently used by athletes to exploit their image rights. In case of an unauthorised use of a trade mark, the athlete has the above-mentioned remedies at their disposal (see **5.1 Trade Marks**).

5.4 Licensing

The most common way for athletes to exploit their IP is to register their brand/name as a trade mark, which is subsequently licensed to their partners or sponsors. The latter can use the brand/name for merchandising or brand extension purposes.

Restrictions to the assignment of IP rights apply to author's moral rights (one part of the copyright) and anyone's personality rights. Both rights cannot be assigned but contractual waivers are permitted to a certain degree. In practice, licence agreements are very common.

5.5 Sports Data

According to Swiss law, no ownership rights on data exist. The applicable data protection law only provides for defence claims. This makes any exploitation of data *per se* difficult.

Sports data is commonly used for statistical or analytical purposes.

Vast potential in sports present real-time data and analytics. They are of interest not only from the perspective of athletes or teams in order to track their performances during the game and use it for analysis purposes, but also present a new form of fan engagement – the latter leading to creation of new revenue streams.

During the 2018 World Cup, FIFA allowed teams to use player tracking systems during games for the first time.

5.6 Data Protection

The Swiss Data Protection Act (DPA) is the relevant law applicable to sports data in Switzerland (and to all data processing acts in general). The DPA has recently undergone a revision in order to be more aligned with the EU General Data Protection Regulation (GDPR).

Revision of the DPA

The revised DPA aims, amongst other things, at strengthening the individual's data protection rights and, as mentioned, aligns Swiss data protection law more closely with the GDPR. As a consequence, the revised DPA will require data controllers – such as sporting federations and associations – to comply with new and stricter rules with regard to the processing of personal data from affected data subjects and provide, in case the relevant prerequisites are met, for further obligations such as the performance of a Data Protection Impact Assessment (DPIA) or the appointment of a Swiss representative. The revised DPA will enter into effect on 1 September 2023.

Private Regulations of Sports Associations

The strengthening of the individual's data protection is mirrored in the private regulations of sports associations. FIFA provides for FIFA Data Protection Regulations, establishing a standard

to be applied when processing personal data and to provide preventive safeguards against the infringement of personality and privacy rights through the inappropriate processing of personal data.

Relevance of the GDPR

Finally, it must be noted that although the GDPR does not directly apply in Switzerland (as Switzerland is not a member state of the European Union), certain data-processing activities of entities based in Switzerland may nevertheless fall under the scope of applicability of the GDPR. Therefore, in practice, as soon as an entity or sports governing body has an international outlook (which is certainly the case for all international federations), it is standard practice to align all processing activities directly with the GDPR.

6. Dispute Resolution

6.1 National Court System

In principle, sport-related disputes fall within the ordinary jurisdiction of state courts, the same as any other type of disputes. There is no statutory law which would per se provide a mandatory alternative forum for such disputes.

However, in reality, most sports governing bodies establish (first) an internal judiciary system, based on association law and aimed at enforcing properly the internal rule of the organisation.

Further, the vast majority of sport organisations rely on arbitration as a system to solve sport-related disputes. This is to ensure, on one hand, the equal treatment of all athletes, players, clubs, etc, and on the other hand to avoid the situation whereby a state authority without expert, in-depth knowledge of the specificities of that sport may have to decide a sporting mat-

ter. Therefore, the role of national state courts in connection with sport-related disputes is very limited and mostly confined to criminal law matters relating directly or indirectly to sport.

The Basis: Autonomy of Associations

The autonomy of associations under Swiss law provides extensive freedom to sports governing bodies in terms of how internal dispute resolution proceedings shall be organised. Moreover, the Swiss Federal Tribunal has explicitly recognised the specific needs of arbitration in sport, with the involvement of sport-specialised arbitrators. The Swiss Federal Tribunal has therefore adopted a rather tolerant approach with regard to the validity of arbitration clauses inserted in sports regulations and accepted by an athlete or a club only “by reference” to those regulations.

There are a few limitations to this, but they are important and are as outlined below.

Limitations

First, even if an association implements an “internal judiciary system”, there is a mandatory right to appeal against any decision rendered by an association, provided that all internal dispute resolution mechanisms have been exhausted. The appeal can be made before a state court or, alternatively, in case of a valid arbitration clause, before an arbitral tribunal. In the majority of these cases, the Court of Arbitration for Sport in Lausanne is determined in the applicable regulations as being the competent appeal instance.

Furthermore, certain disputes – such as domestic employment law matters – are arbitrable only under limited circumstances, so that for such matters a jurisdiction of state courts may exist.

Finally, based on the jurisprudence of the SFT, it is admitted that an athlete cannot be requested

to waive their right to appeal with the Swiss Federal Tribunal against a final decision of an arbitral body, if the athlete has been required to accept the competence of that arbitral body.

6.2 ADR, Including Arbitration

As mentioned in **6.1 National Court System**, many sports governing bodies in Switzerland have established their own internal judiciary systems and (for the subsequent court review) enacted arbitration clauses.

Dual System of Internal Judicial Systems and Sports Arbitration (CAS)

Most prominent examples of alternative dispute resolution mechanisms are the internal judiciary instances within IFs, such as FIFA and UEFA, including the FIFA Football Tribunal and the UEFA Control, Ethics and Disciplinary Body.

In particular relation to the decision-making bodies of FIFA, it must be noted that they do not only adjudicate on disciplinary matters (ie, on “vertical” disputes between FIFA and a direct or indirect member), but also on financial disputes between clubs, players, associations, etc (ie, on “horizontal” disputes).

Internal judiciary systems of sports governing bodies are very loosely regulated by statutory law. Only fundamental principles of association law and other fundamental principles of the law apply.

6.3 Challenging Sports Governing Bodies

Sports governing bodies establish disciplinary regulations and disciplinary committees in order to ensure the compliance by their direct or indirect members with the rules of the sport organisation. Disciplinary proceedings may lead to sporting and financial sanctions, such as a

suspension, a fine, a transfer ban, match suspensions, etc. The Swiss Federal Tribunal has repeatedly confirmed that such disciplinary proceedings are matters of civil law and not of criminal law.

As a remedy available to the parties, decisions of internal judiciary instances can, as mentioned in **6.1 National Court System**, be appealed either before a state court or, typically, before the CAS.

7. Employment

7.1 Sports-Related Contracts of Employment

The relationship between a sports organisation (eg, a club) and its players or athletes is, in particular for team sports, usually based on a fixed-term employment contract governed by Swiss employment law.

Content

In principle, within the limits of mandatory Swiss law, the parties are free to negotiate the term of the employment contract. In certain industries, such as football and ice hockey, the competent sports associations have enacted standard contractual terms, which are typically included in the respective player–club relationship.

In the event of a transfer of a player, their employment contract with the former club must be validly terminated first, before a new employment contract with the new club may be concluded. Accordingly, in case the contract between a certain player and a club is still valid and its duration has not expired, it may be necessary for the new club to enter into a transfer agreement with the club, to ensure that the old contract is validly terminated.

Salary Caps

Salary caps are not common in Switzerland. In fact, as of today, no sports organisation has enacted salary cap rules to limit the amount of money a team may spend on its players' salaries. Club Licensing and Financial Sustainability Regulations enacted by UEFA provide for certain limitations, but they are of other types and nature than a salary cap. It is not to be excluded that, in the near future, some budget limitations or even salary caps may be introduced in the Swiss professional hockey league.

7.2 Employer/Employee Rights

The relationship between a sport organisation, such as a club, and its personnel is usually based on employment law. While staff and working personnel are typically employed, members of commissions, such as executive boards, are usually contracted on the basis of a simple mandate.

There is no statutory law which would specifically define rights and obligations under such contracts. General provisions of the Swiss Code of Obligations apply.

Additional Rules

In addition to the respective contractual terms, sports governing bodies usually provide for a detailed set of ethics rules (code of conduct), with respective duties and sanctioning regimes.

In a recent decision, FIFA sanctioned the former President of the Paraguayan Football Association with a lifetime ban from football and a fine of CHF1 million for bribery, in application of the FIFA Code of Ethics.

7.3 Free Movement of Athletes

Based on international treaties between Switzerland and the European Union (EU) as well as the European Free Trade Association (EFTA),

citizens of contracting countries are granted the right to freely choose their place of employment and residence within the respective territories. Consequently, discrimination because of citizenship is in principle forbidden.

The respective provisions also apply to athletes, staff, trainers, etc. Accordingly, in relation to EU and EFTA nationals, capping the number of foreign athletes competing in a sport may violate the aforementioned treaties.

However, work permit restrictions, hence capping of the number of athletes, may be applied to non-EU and non-EFTA member states residents (subject to treaties to the contrary). As a general requirement, applicants must be considered highly qualified. For athletes over the age of 21, this means, for example, that they must have several years of solid competition experience at the international level (with at least three years of experience in one of the top leagues).

No work permit is required for participating in competitions and taking part in training for up to two months a year. However, if applicable, a visa must be obtained.

Notwithstanding the above, some sports have applied limitations on the basis of citizenship, with such restrictions based on simple “gentlemen’s agreements”.

8. Esports

8.1 Overview

Esport is an emerging area in Switzerland and has experienced constant growth rates in recent years. Nevertheless, in international comparison, esports in this country is still small and the existing national competitions (with the exception of

the esport competitions organised by FIFA) and leagues have not reached the size that would permit Swiss athletes to perform on a professional basis. Moreover, there are certain Swiss sports clubs, notably in football, which have started establishing their own esport teams. However, due to various negative reactions towards esports by fan groups of these clubs, the commercial success of this remains to be seen.

The Swiss e-Sports Federation (SESF), a founding member of the International e-Sports Federation (IESF), was established in 2008. The SESF pursues the recognition of esport as a sport.

The legal landscape for esports is relatively stable and there have not been significant trends or developments recently.

9. Women’s Sport

9.1 Overview

As in many other sports and other jurisdictions, there has been an exciting growth in women’s sport, notably in football. Since 2020, the women’s football league has an official sponsor and more games are broadcast by SRG SRR, either on TV or livestreamed on their website. In many other popular sports in Switzerland (such as tennis or skiing), women’s sport has always played an important role, so that there have not been significant changes recently.

The Swiss National Olympic Committee (Swiss Olympic) continues to specifically promote female top athletes – for example, with a specific programme called *Frau und Spitzensport* (“woman and elite sport”). The programme supports female athletes in elite sports in optimising their performance. The focus is on topics that

are specifically relevant for female athletes, such as pregnancy, in regard to training, nutrition and recovery.

10. Non-fungible Tokens (NFTs)

10.1 Overview

Recently, the sports market has seen an increase in co-operation between sports organisations and NFT providers and platforms. NFTs are typically used to generate additional source of income – for example, by way of a co-operation/ sponsorship agreement with an NFT platform, which pays the sports organisation a fixed and/ or royalty-based fee in return for the right to use certain intellectual property rights of said sports organisation for operating a fantasy game. Additionally, certain sports organisations have also started using NFTs as a way to increase direct fan experiences.

While offering great new business opportunities, there are also risks associated to such operations. For example, in practice, it may be difficult to obtain outstanding payments from defaulting NFT providers. Moreover, there are several questions relating to intellectual property – such as the use of name, image and likeness (NIL) rights of athletes – which may be difficult to handle in practice, causing corresponding risks and uncertainties.

11. Regional Issues

11.1 Overview

While Switzerland is not part of the EU, Switzerland's relationship with the UK was governed in

the past in key areas, such as trade and migration, based on bilateral agreements between Switzerland and the EU. With Brexit, these have had to be replaced by new bilateral agreements.

Switzerland and the UK were largely able to retain their existing legal relationship. However, particularly in relation to migration, a new regime applies. In replacement of the previous free movement of persons, Switzerland has introduced a separate quota for UK nationals to work in Switzerland.

If, on the other hand, a Swiss person wants to emigrate to the UK, they will be evaluated according to the new points system. Whether or not this points-based system will have any influence on Swiss sports is difficult to predict for the time being and must be reviewed at the appropriate time. Having said this, it appears in practice that it has become more difficult, at least in football, to transfer a player from the Swiss League to the UK under this new points-based system.

Brexit also continues to have an impact on sports insofar as cross-border data flows are concerned. In many sports, personal data (such as athlete results data) is a key asset, which needs to be transferred between various jurisdictions, in particular in the context of international competitions. In so far as transfers to or from the UK are concerned, there have been some obvious legal questions triggered by Brexit, but it currently seems that a legal regime is in place to ensure that data transfers can continue quite smoothly.

Trends and Developments

Contributed by:

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Bär & Karrer Ltd

Bär & Karrer Ltd is a renowned Swiss law firm with more than 170 lawyers in Zurich, Geneva, Lugano, Zug and Basel. Its core business is advising clients on innovative and complex transactions and representing them in litigation, arbitration and regulatory proceedings. The sports law team is headed by Michele Bernasconi, and is supported by a team of nine partners, as well as nine associates from a broad range of adjacent practice areas. The firm's experts have an unmatched depth of knowledge in the sports industry, with a comprehensive practice

that offers a wide range of services throughout Switzerland and abroad. Its sports lawyers represent many of the leading international sport organisations, sports clubs, sporting event organisers, broadcasters and individual athletes in litigation, sports arbitration and other proceedings, as well as in transactions in the sports industry. Clients include UEFA, World Aquatics, CONMEBOL, the Olympic Council of Asia, the Association of National Olympic Committees (ANOC) and the European Athletics Association.

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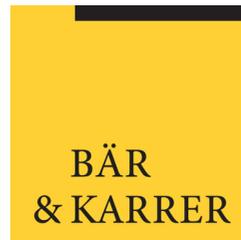
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Introduction

In the world of sports, Switzerland remains the country in which the International Olympic Committee, many international sports federations (Fédération Internationale de Football Association (FIFA), UEFA, Fédération Internationale de Volleyball (FIVB), Union Cycliste Internationale (UCI), International Ice Hockey Federation (IIHF) and many others), and the Court of Arbitration for Sport (CAS) are located.

The country's unique position continues to have a strong impact on what can be observed as its current trends and developments. Like the rest of the world, Switzerland was severely affected by the COVID-19 pandemic. Because of its unique position in the world of sports, many of the legal and regulatory impacts of the pandemic could be closely observed in Switzerland.

Further sports law-specific challenges have also been caused by the war in Ukraine (eg, exclusion of Russian athletes and Russian clubs from international sports competitions). There have also been other recent developments unrelated to the war (eg, promotion of women in sports governing bodies and the influence of digitalisation on sports).

The Importance of Swiss Law

Whether in disputes related to COVID-19, the war in Ukraine or in other sports-related disputes (commercial, contractual, disciplinary, etc), Swiss law will continue to play an important role.

There are a number of reasons why many sports-related matters are and will continue to be governed by Swiss law.

On the one hand, Swiss law ordinarily governs international commercial contracts in the world of sports. Most contractual/commercial disputes (eg, related to sponsorship agreements or TV rights contracts) will thus be subject to Swiss law considerations.

However, for disputes of a regulatory nature, Swiss law also plays a predominant role. The statutes and regulations of most international sports federations provide that such disputes are adjudicated primarily based on applicable regulations, but with Swiss law applying on a subsidiary basis. This mechanism is also reflected in the procedural rules of CAS, which establish that a dispute is governed, primarily, by sports regulations and only in a subsidiary way by a state law.

The Regulatory Approach

Since 2020, many international sport federations issued specific rules and regulations to preserve the possibility to continue sports activities and events, both on a professional and amateur level.

By way of example, Swiss Tennis was one of the very first Swiss sport federations to issue a COVID-19 protocol and so ensure that practising tennis remained possible, notwithstanding the restrictions caused by the pandemic. On an international level, UEFA developed a “back to football” framework, allowing for European football competitions to continue and to be completed. On a domestic level, the major Swiss leagues (football, ice hockey, handball, basketball, floorball, etc) also implemented detailed health and safety protocols and have so managed to continue their competitions – if not at all levels, then at least at the highest (generally professional) level.

Furthermore, various international sport federations took specific (temporary) measures addressing the exceptional situation deriving from the war in Ukraine. FIFA, for example, issued an Annexe to its Regulations on the Status and Transfer of Players (RSTP) which applies to all employment contracts of an international dimension concluded between players or coaches and clubs affiliated to the Ukrainian Association of Football (UAF) or the Football Union of Russia (FUR), as well as to the registration of all players registered with the UAF.

Matters of Debate

Although, fortunately, the sports legal landscape is no longer dominated by COVID-19, many disputes are still (directly or indirectly) caused by circumstances of the pandemic. Furthermore, several disputes have been caused by the war in Ukraine.

FIFA adjudicates disputes where football clubs and football players argue about possible amendments, changes or even terminations of existing contracts because of a change in the overall economic environment of football. A first – quite solid – body of case law has developed in the meantime, which indicates that FIFA shows great restraint in accepting unilateral changes to existing contracts.

Other sports federations or stakeholders are still involved in disputes concerning TV and broadcasting rights, often linked to adjustments in payment terms which one party may require, or to unilateral terminations of such contracts. Similar disputes have also occurred in relation to sponsorship agreements or other commercial contracts in a sporting context. Many disputes of this type are still pending, and we expect to see further development of relevant case law in 2023 and even beyond.

Needless to say, each of these cases has its unique features, and each dispute will ultimately have to be decided on a case-by-case assessment, taking account of all pertinent factual, regulatory and legal circumstances. Hence, it is not possible to make general predictions about the outcome of such cases.

Financial Impacts

The COVID-19 pandemic and to some extent the war in Ukraine caused financial difficulties on various levels in recent years. Probably most affected by the pandemic were those sport disciplines that enjoy little TV coverage, the so-called “minor sports”. In the absence of any income generated by ticket sales, and with negligible turnover generated by TV rights, those sports and the respective (amateur) leagues were particularly thankful to receive important financial funding by the Swiss government.

Some funding even had to be made available to sports clubs of a higher level, up to the highest professional leagues in football or other professional sports. Since TV revenues in Swiss leagues are still not at a very substantial level, gate revenues continue to be an important factor within budgets of many sports organisations.

In 2022, however, sports organisations in Switzerland recovered financially. For 2023, it remains to see whether gate revenues, TV revenues, etc, will again increase so that sports in Switzerland will return to a pre-pandemic level from a financial perspective.

Impacts on the Dispute Resolution System in Sport

The pandemic also had an important impact on the dispute resolution system in sport; in 2021 and 2022, CAS conducted a large number of hearings online, and so did other sport judicial bodies. It seems that in 2023 hearings will continue to be conducted in many cases online, in particular where costs, travel circumstances or reasons of urgency so demand. Online arbitration hearings will thus remain an important feature.

Other Recent Topics

On a commercial level, the trend to increase interactive possibilities for fans has continued. More and more football clubs are introducing NFTs for fans while other sports clubs are examining the possibilities of NFT. There is a

vast potential in esports, which has huge market potential, especially for the younger generation.

Furthermore, the Swiss government has decided to introduce far-reaching policies in relation to Swiss sports law.

On the one hand, the Swiss Olympic Association and national sports federations will have to fulfil a mandatory women's quota of 40%. The goal of this policy is to promote women in sports governing bodies.

On the other hand, in reaction to well-publicised cases of abuse of athletes, particularly in the sports of gymnastics, the Swiss government decided that sports associations must comply with an ethical code approved by the Swiss parliament in 2021 in order to keep receiving state funding. Furthermore, an independent reporting office with investigatory powers, as well as a disciplinary body with sanctioning powers were introduced.

Conclusion

As a last point, the war in Ukraine is sadly still impacting the world of sports. It remains to be seen whether it will trigger more substantial legal disputes. Most importantly, it must be hoped that hostilities in Ukraine can finally be resolved, without further unnecessary loss of life – this is far more important than any legal considerations.

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