

THE SPORTS LAW  
REVIEW

EIGHTH EDITION

Editor  
Claude Ramoni

THE LAWREVIEWS

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REVIEW

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# PREFACE

*The Sports Law Review* is intended to be a legal guide for all stakeholders in the field of sport, including legal practitioners, academics, sports business entities, sports federations, clubs and athletes. It aims to provide an overview of the relevant legal framework in a wide range of selected jurisdictions, with an emphasis on the most significant developments and decisions of the past year. It shows that sports law – despite having an international dimension that culminates in the adoption of the regulations of international sports federations under the ultimate imprimatur of the Court of Arbitration for Sport – remains both interdisciplinary and subject to state authority. Local laws are particularly relevant in all areas that are not covered by sports regulations or that are subject to sovereign powers and mandatory provisions of state law.

*The Sports Law Review* is of particular interest to sports lawyers who intend to act internationally on behalf of sports federations, clubs and athletes, and must, therefore, be familiar with not only international private norms and the *lex sportiva* but also domestic laws, in a globalised world. The *Review* also allows comparative law and sports law lecturers to obtain a general understanding of the situation in the field of sport worldwide without having to undertake time-consuming research. It can be consulted as a hard copy or on The Law Reviews website, thus providing a unique and specialised resource, and one which is widely disseminated.

The *Review* chapters are traditionally structured in 10 sections, thereby treating all the countries examined similarly, to facilitate comparisons. It opens with the legal structure and organisation of sports clubs and governing bodies, and the dispute resolution system applicable to sports matters. It then presents issues related to the organisation of sports events, such as liability for injuries and riot prevention, and provides a description of the legislative framework governing the commercialisation of sports events, labour, antitrust and taxation. It also addresses topics specific to sports, including doping, betting, match-fixing and grey market sales, and it concludes with a review of the year, outlining recent decisions of courts or arbitral tribunals of interest to an international audience, as well as a summary and outlook for the coming period.

This eighth edition covers the period from July 2021 to July 2022. It gathers 18 chapters written by renowned sports law practitioners and experts based in key countries across all five continents. The year under review was far from being usual in the world of sport. Although the covid-19 outbreak was still present, sporting competitions could be resumed, under specific conditions. Two editions of the Olympic Games, the Summer Olympic Games in Tokyo (23 July–8 August 2021) and the Winter Olympic Games in Beijing (4–20 February 2022) took place within a time span of six months. Each of these Games gave rise to disputes,

notably in relation to athletes' qualification to compete, following numerous disruptions and last-minute adaptations caused by the covid-19 pandemic and the cancellation of the vast majority of the qualification events that were planned initially.

Immediately after the end of the Beijing Winter Olympic Games, Russia invaded Ukraine – during the period of the Olympic Truce. This triggered numerous reactions from national governments and sporting bodies, with significant effects on sport, particularly as Russia was a key actor in terms of the organisation of sporting events, the number of participating athletes and teams, and monetary investments in sport. The reaction of the sporting world to the invasion of Ukraine – with coordinated bans on Russian athletes and teams, and the cancellation not only of all events scheduled in Russia but also of most sponsorship deals with Russian companies – has resulted in numerous actual or potential legal disputes, the vast majority of which remain unresolved as this book goes to publication. Measures adopted at national level in reaction to the Russian invasion have sometimes contradicted the position adopted by international sports governing bodies, with unfortunate negative effects on athletes. Particularly noteworthy was the decision by the United Kingdom not to accept Russian and Belarusian players at the Wimbledon tournament, and the subsequent decision by the Association of Tennis Professionals and the Women's Tennis Association to strip the English Grand Slam tournament of its world ranking points.

International sport has entered a period of uncertainty. Since the end of the Cold War, sport had become a global market, with competitions taking place on all five continents, drawing athletes and investments from around the entire world. The situation has now changed. The Russian invasion of Ukraine, and the resulting decisions by governments and sports governing bodies, effectively mean that Russia (and Belarus) are now completely excluded from the worldwide sports system. In addition, the covid-19 crisis is not over and numerous countries still have restrictions in place, with consequences for the organisation of international competitions all over the globe. It could be said that the combined effect of the war in Ukraine and the covid-19 pandemic means the world of sports now has much less 'global' reach than in the recent past, because participation in international competitions now depends not only on sporting merit but also on the nationality or origin of the athletes, their vaccination status or the travel restrictions in place in their country of residence.

Even when dealt with at an international level, to a certain extent, these issues and their legal consequences will undoubtedly have jurisdiction-specific answers in each case, and this only confirms the interest of the *Review*.

As the editor of this publication, I would like to thank all the authors for their contributions. I also extend my gratitude to all the people involved at all stages of this process, from proofreading to production and distribution. I trust that readers will find this global survey informative.

**Claude Ramoni**

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# PORTUGAL

*Miguel Santos Almeida, João Saúde, Rita Canas da Silva, Teresa Pala Schwalbach and Maria Novo Baptista<sup>1</sup>*

## I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

### i Organisational form

According to Law No. 5/2007 of 16 January (the Basic Law of Physical Activity and Sports), Portuguese sports clubs are constituted as non-profit private associations with the purpose of directly promoting and practising sports.

Sports clubs that intend to participate in professional sports competitions must incorporate sports companies, which are governed by Decree-Law No. 10/2013 of 25 January (Decree-Law No. 10/2013). Sports companies may adopt the legal form of public limited sports companies<sup>2</sup> or single-member private limited liability companies,<sup>3</sup> and these are subject to the general rules applicable to these types of companies established by the Portuguese Companies Code and to the specific rules set out in Decree-Law No. 10/2013.

As to the method of incorporation, sports companies can be founded either from scratch, by transformation of an existing sports club or by the legal personalisation of a team that participates, or intends to participate, in sports competitions.

Non-professional sports clubs can also be incorporated as a sports company, but it is not mandatory as they do not participate in professional sports competitions.

Sports federations assume the legal form of non-profit private associations with a sports public utility status. This status grants sports federations competence for the exclusive exercise of regulatory, disciplinary and other powers of a public nature to the extent that they are a manifestation of the constitutional duty of the state to promote, stimulate, guide and support the practice and dissemination of physical culture and sports.

Sports federations are subject to the general principles of public law and the specific provisions set out in Decree-Law No. 248-B/2008<sup>4</sup> when exercising prerogatives of public power, and to the general rules applicable to private associations when acting within the scope of their private law competence.

---

1 Miguel Santos Almeida is a senior associate, João Saúde, Rita Canas da Silva and Teresa Pala Schwalbach are partners and Maria Novo Baptista is an associate at Sérvulo & Associados.

2 Designated by the abbreviation SAD, for *sociedade anónima desportiva*.

3 Designated by the abbreviation SDUQ for *sociedade desportiva unipessoal por quotas*, and in which the only member is mandatorily the founding club.

4 Decree-Law No. 248-B/2008 of 31 December established the Legal Framework for Sports Federations and the Conditions for the Attribution of Public Utility Status.

## ii Corporate governance

In accordance with Law No. 50/2007 of 31 August, sports federations, sports companies and sports clubs are obliged annually to promote training with the purpose of making all sports agents aware of the values of truth, fairness and correctness, and to prevent actions that may fraudulently alter the results of the competition.

Sports federations, sports companies and sports clubs must have organised accounting according to the rules of the official Accounting Standards System.

Sports companies are subject to specific rules set out in Decree-Law No. 10/2013, such as:

- a* minimum share capital limits depending on the sports modality and league division in which the company participates and the legal form used;
- b* prohibition against sports companies participating in the capital stock of a company of identical nature;
- c* mandatory full-time commitment of executive directors;
- d* a special regime concerning incompatibilities and independence of directors and managers of sports companies;
- e* prohibition against members of the governing bodies of sports federations or associations of clubs of the same sport, professional players, coaches and referees in the sport being directors or managers of sports companies; and
- f* limitations on the exercise of rights of shareholders who hold shares in more than one public limited sports company working within the same sport modality.

As for sports federations, there are specific rules concerning the exercise of the mandate of the members of the governing bodies, such as prohibitions on holding another position in the federation or holding such positions as club or association manager, referee, judge or coach. The term of office is for a maximum of four years.

## iii Corporate liability

According to the specific provisions of Decree-Law No. 248-B/2008, the liability of sports federations, the members of their bodies, employees, legal representatives or agents for actions or omissions carried out in the exercise, and with the prerogatives, of public power is governed by Law No. 67/2007 of 31 December, which establishes the regime of non-contractual liability of the state and other public entities. Pursuant to this legislation, sports federations are exclusively liable for acts carried out with slight fault by the members of their bodies, employees, legal representatives or agents. As for acts committed by those persons with intent or serious fault, the sports federations and the members of their bodies, employees, legal representatives or agents are jointly and severally liable.

Conversely, the liability of sports federations, the members of their bodies, employees, legal representatives or agents for actions or omissions carried out outside the exercise of public power is governed by the general civil liability rules of the Portuguese Civil Code. The members of the sports federations' bodies, employees and legal or auxiliary representatives are also civilly liable before the sports federations for damage caused by breaches of their legal or statutory duties.

The liability of managers and officers for the actions and omissions of a sports club is also governed by the general civil liability rules of the Portuguese Civil Code.

As for the liability of managers and officers of sports companies, general rules on directors' liability set out in the Portuguese Companies Code apply pursuant to Article 5 of Decree-Law No. 10/2013.

The Portuguese Companies Code establishes three types of managers' and officers' liability: (1) liability towards the company; (2) liability towards the company's creditors; and (3) liability towards the shareholders and third parties.

Such statutory liability is assumed in the following circumstances: (1) a breach of legal duties intended to protect the company, the company's creditors or the shareholders and third parties; (2) the breach is with fault (fault is presumed in the case of liability towards the company); (3) the breach causes damage to the company, the company's creditor or the shareholders and third parties; and (4) there is a causal link between the breach of duties and the damage caused.

Sports organisations as well as their managers and officers may be held criminally liable for committing the crimes set out in Law No. 50/2007 of 31 August. The criminal liability of managers and officers of a sports organisation implies that they are the authors of the criminal offence imputed to the sports organisation.

Under certain circumstances, managers and officers of a sports organisation are subsidiarily liable for the payment of fines and compensation to which the sports organisation is sentenced. This will be the case, for example, if the crime was committed without their express opposition while they were in office.

## II THE DISPUTE RESOLUTION SYSTEM

### i Access to courts

Athletes and clubs may challenge a disciplinary sanction rendered by the disciplinary council of a sports federation before the Portuguese Court of Arbitration for Sport (TAD), which was created by Law No. 74/2013 of 6 September (Law No. 74/2013).

The final decisions of professional league bodies or other sports entities, as well as the deliberations of the disciplinary council or the decisions of the justice council of the sports federations, when issued in appeals against the deliberations of a federative body other than the disciplinary council, can also be challenged before the TAD.

However, whenever the resolution of 'issues arising from the application of technical and disciplinary rules directly concerning the practice of the sports competition itself' is at stake, the disciplinary council's decisions may only be appealed to the justice council. The access to judicial or arbitration courts for the resolution of such issues is forbidden.

As regards the definition of issues arising from the application of technical and disciplinary rules directly concerning the practice of the sports competition itself, a teleological criterion of the function of the rules should prevail. Decisions regarding the application of rules concerning the actual practice of the sport can only be challenged before the sports federation bodies; those rules governing aspects of the sport beyond its practice and that have a framing function in relation to public interests that are to be maintained and assured cannot be considered technical or disciplinary.

The decisions rendered by sports governing bodies within the scope of their private law competence can be challenged before the civil state courts.

## ii Sports arbitration

As mentioned above, the TAD was created by Law No. 74/2013 and became effective from 1 October 2015. Its jurisdiction extends only to disputes arising after 1 October 2015, unless the parties specifically agree otherwise, and it operates in two spheres: compulsory arbitration and voluntary arbitration.

Within the scope of compulsory arbitration, the TAD has exclusive jurisdiction to resolve disputes arising from acts and omissions of sports federations, professional leagues and other sports entities, within the scope of the exercise of its corresponding powers of regulation, organisation, direction and discipline.

In the context of voluntary arbitration, all disputes directly or indirectly related to the practice of sports, which according to the general Law on Voluntary Arbitration<sup>5</sup> are arbitrable, may also be submitted to arbitration before the TAD. The arbitrability criteria set out in the Law on Voluntary Arbitration consider the economic nature of the dispute.

Disputes arising from sports employment contracts concluded between athletes or coaches and agents or sports bodies may be subject to voluntary arbitration.

Conversely, issues arising from the application of technical and disciplinary rules directly concerning the conduct of a sports competition itself may not be submitted to arbitration before the TAD.

The voluntary arbitration agreement must be made in writing. It can be concluded in the form of an arbitration clause, an arbitral compromise or by means of a statutory clause of the relevant sports governing body.

Decisions of the TAD rendered in compulsory arbitration proceedings may be appealed to the relevant central administrative court. On the other hand, the decisions rendered by the TAD in voluntary arbitration proceedings are not appealable, except before the Constitutional Court. Under certain circumstances (e.g., where the content of the decision offends the principles of the Portuguese state regarding international public order), parties may request the annulment of an arbitral decision before the common courts.

According to Law No. 74/2013, state courts are not competent to render interim measures in sports arbitration cases. However, as interim measures must be rendered within five days, the law provides that if the arbitral panel has not yet been constituted and, thus, a timely decision is not possible, the President of the Southern Central Administrative Court or the President of the Lisbon Court of Appeal<sup>6</sup> is competent to render the interim measures requested before the TAD.

Within the scope of voluntary arbitration, the parties are also given the option of requesting that interim measures are rendered by an emergency arbitrator in cases of special urgency. The emergency arbitrator will be appointed from among the TAD's arbitrators by the President of the TAD within two days of the submission of the request.

## iii Enforceability

An arbitration award rendered by the TAD has the same enforceability as a decision rendered by the state courts. Therefore, the arbitration award may be enforced before state courts. The party seeking enforcement must provide the original award or a certified copy thereof and, if it is not in Portuguese, a certified translation into that language.

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5 Law No. 63/2011 of 14 December.

6 Depending on the nature of the dispute.

The enforcement of an arbitral award may be challenged on any of the grounds for annulment of a decision, such as (1) the proceedings violated the principle of adversarial proceedings or the principle of equality of the parties, with a decisive influence on the outcome of the dispute; (2) the award was made for a dispute not covered by the arbitration agreement or contained decisions that went beyond the scope of the agreement; (3) the arbitral court awarded a higher amount than the amount claimed or a made an award on a matter other than the matter claimed, or it considered matters that it should not have considered; and (4) the content of the award violated the principles of international public policy of the Portuguese state.

### **III ORGANISATION OF SPORTS EVENTS**

#### **i Relationship between organiser and spectator**

Pursuant to the Basic Law of Physical Activity and Sports and Decree-Law No. 248-B/2008, sports federations are granted the power to organise and regulate professional sports competitions. This prerogative may also be exercised by the professional leagues, by delegation from the sports federations through a contract, valid for four sports seasons.

Apart from organising and regulating professional sports competitions, sports federations and professional club leagues may also act as promoters of sports events, as can sports companies and sports clubs, according to Law No. 39/2009 of 30 July, which provides the Legal Framework Against Racism, Xenophobia and Intolerance at Sports Events (Law No. 39/2009).

For spectators to attend live sports events, a contract must be concluded between them and the sports promoter.

This contract is not required to be in written form, but the promoter is required to provide the spectator with a physical or electronic ticket containing the most relevant clauses of the contract, such as identification of the sporting venue and of the sports event, identification of the organiser and promoter of the event and identification of the entrance door to the venue, sector, row and seat, as well as a plan of the venue and the point of access.

For the purposes of the contract concluded with the sports event's promoters, the spectator is generally qualified as a consumer and is, therefore, protected by Portugal's consumer protection law, Law No. 24/96 of 31 July. However, there may be cases where the spectator does not qualify as a consumer (e.g., if the 'spectator' is in fact a company that buys the tickets to provide them to its employees, because in that case the services are acquired for professional purposes).

#### **ii Relationship between organiser and athletes or clubs**

As mentioned above, sports federations are the entities with competence to organise and regulate professional sports competitions.

Given their sports public utility status, sports federations are vested with regulatory and disciplinary powers by the Portuguese state. In the exercise of these regulatory powers, sports federations establish the requirements for participating in professional competitions, as well as the rights and obligations of athletes and sports clubs who participate in these competitions.

Also, in the exercise of their disciplinary powers, sports federations provide for and apply disciplinary sanctions to athletes and clubs who commit disciplinary offences, such as quitting sports competitions or missing a sports event unjustifiably.

Although sports federations may delegate their organisation and regulatory powers to professional leagues, currently the only professional league in Portugal is the national football league, the first two league divisions of which are operated by the Portuguese Professional Football League, which in turn organises professional football competitions such as the Premier League matches (known for sponsorship reasons as the BWIN League) and the Allianz Cup. The requirements for participation in professional football competitions, as well as the rights and obligations of athletes and sports clubs, are governed by the Competitions Regulations enacted by the league.

### **iii Liability of the organiser**

Under Law No. 39/2009, sports events organisers are obliged to adopt regulations regarding the prevention and punishment of manifestations of violence, racism, xenophobia and intolerance. If organisers fail to comply with this obligation, they will be prevented from benefiting from public support and may have their sporting public utility status suspended until compliant, and furthermore may be liable for an administrative offence.

The above-mentioned legislation imposes on promoters of sports events the obligation to (1) approve internal regulations regarding security and the use of publicly accessible spaces; (2) take the measures necessary to ensure the safety of the sports venue and the adjacent space (safety rings); (3) apply sanctioning measures to associates involved in public order disturbances, preventing their access or requiring their expulsion from the sports venue; (4) designate a security manager and a supporter liaison officer; and (5) ensure the presence of a security manager and private security personnel at qualified high-risk sports events.

It is an administrative offence if the promoter fails to comply with its obligations, and the promoter may incur a fine of up to €200,000, with an ancillary penalty requiring sporting events to be held behind closed doors or a ban imposed with special conditions of access and restrictions on supporters of the relevant sports venue for up to 12 fixtures.

In addition, the administrative procedure may be initiated *ex officio* by the competent authority, the Authority for the Prevention and Combating of Violence in Sport.

### **iv Liability of the athletes**

In most sports, physical contact and offences against honour between athletes may be frequent during competitions. Although conduct of this kind may fall within the scope of civil and criminal liability, the liability of athletes for the injuries to physical integrity and honour caused in a sports event depends on whether the injuries were received within the rules of the game and the permissible risk assumed by the injured party, and these points should be considered on a case-by-case basis according to the sport in question.

Whenever the injuries fall within the scope of the permissible risk, Portuguese case law assumes that the injured person has given their consent to the injuries, and this is qualified as a justification of the unlawful conduct and, therefore, the athlete responsible is not liable.

However, when the injuries caused have no relevance to the sports activity and exceed the permitted risk, the athlete responsible may be held civilly liable under the regime of non-contractual liability.

Athletes may also be criminally liable for offences against physical integrity and honour that exceed the permitted risk of the sports activity, in which case criminal proceedings normally require a complaint by the injured person (except in the case of crimes that seriously offend against physical integrity).

## **v Liability of spectators**

Law No. 39/2009 imposes obligations of cooperation on the spectator with regard to the safety conditions of the sports venue and sports event, namely obligations (1) not to enter the stadium if they are under the influence of drugs or have a blood alcohol level higher than 1.2g/l; (2) not to carry objects that may generate acts of violence; (3) not to display racist or xenophobic messages nor to chant content of this kind; (4) not to throw objects; and (5) to comply with the regulations adopted by the organiser and the promoter.

If the spectators fail to comply with their obligations, it is an administrative offence punishable with a fine of up to €10,000, with an ancillary penalty of restricted access to sports venues.

Law No. 39/2009 also provides for a criminal regime applicable to spectators, penalising damage to facilities, equipment or any other assets, participation in riots during travel to or from sports events, throwing of liquid products, invasion of sports event areas and rioting.

## **vi Riot prevention**

Law No. 39/2009 stipulates a set of obligations for organisers and promoters of sports events in relation to riot prevention, such as creation of areas with special conditions for access and containment of supporters at sports events considered to be high risk, as well as the obligation to ensure the presence of a security coordinator and private security personnel at such sports events.

According to Decree-Law No. 216/2012 of 9 October, promoters are obliged to request policing for sports events as an integral part of professional sports competition promotion. The costs of such policing are borne by the promoters. The state only contributes to these costs in the case of sports events in which national teams participate, national championship events for age groups below senior level or district championships.

Under Law No. 39/2009, rioting is a crime punishable with imprisonment of up to three years, with an ancillary penalty of restricted access to sports venues for one to five years.

# **IV COMMERCIALISATION OF SPORTS EVENTS**

## **i Types and ownership of rights**

As other countries members of the European Union and the World Trade Organization, Portuguese jurisdiction allows for exploitation of patents, trademarks, merchandising, copyrights, broadcasting rights, sponsorship and image rights.

The owner of the above-mentioned rights depending on the type of sport in question. For example, in futsal and hockey, the respective sports federations are the exclusive owners of the merchandising, copyrights, broadcasting rights, sponsorship and image rights of all matches played in the various competitions. Therefore, the commercialisation of these rights is undertaken by the sports federations, which can transfer or license the rights through written agreements.

Conversely, in football, the ownership of television and multimedia broadcasting rights for matches in the first and second national leagues for men's football belongs to the sports clubs or sports companies who participate in these competitions. Although currently Portuguese sports clubs in professional competitions sell these rights individually, as of the 2028/2029 sports season, such rights will have to be jointly sold in terms to be defined by

the Portuguese Football Federation by the end of the 2025/2026 sports season, subject to approval by the Portuguese Competition Authority, as set out in Decree-Law No. 22-B/2021 of 22 March.

## **ii Rights protection**

Although there is no specific statutory framework for protection and enforcement of sports-related rights, general provisions of Law No. 27/2007 of 30 July,<sup>7</sup> Decree-Law No. 63/85 of 14 March<sup>8</sup> and Decree-Law No. 110/2018 of 10 December apply.<sup>9</sup>

The above-mentioned legislation provides the general rules on protection and enforcement of industrial rights and establishes a criminal regime applicable in cases of violation of intellectual property rights.

When seeking protection of its rights, a rights holder will have to prove ownership and any infringement of the rights.

## **iii Contractual provisions for exploitation of rights**

A rights owner may license or sell its rights through a written contract, in which it is mandatory to identify the parties and the scope of the agreement, including a list of the rights licensed or sold, as well as the price. In the case of a licence agreement, the agreement must state whether the licence is exclusive or not.

# **V PROFESSIONAL SPORTS AND LABOUR LAW**

## **i Mandatory provisions**

Athletes' employment contracts are governed by Law No. 54/2017 of 14 July and subsidiarily by Law No. 7/2009 of 12 February (the Labour Code).

Contrary to the general rule set out in the Labour Code, athletes' employment contracts must be made in writing and are subject to registration with the corresponding sports federation. An athlete's employment contract must contain:

- a* identification of the parties, including nationality and date of birth of the athlete;
- b* date of conclusion;
- c* indication with respect to the intervention or non-intervention of an intermediary;
- d* sports activity the athlete undertakes to engage in;
- e* remuneration;
- f* express mention of the existence of a trial period (if applicable);
- g* effective date of the contract; and
- h* term of the contract.

As a general rule, an athlete's employment contract cannot have a duration of less than one sports season nor more than five sports seasons. If the athlete is a minor, the employment contract cannot have a duration of more than three seasons.

An athlete's employment contract may be terminated in the following situations:

- a* expiry of the contract;

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<sup>7</sup> The Television Law.

<sup>8</sup> The Copyright and Related Rights Code.

<sup>9</sup> The Industrial Property Code.

- b* termination by mutual agreement;
- c* termination for cause (by the club or by the athlete);
- d* termination without cause (by the athlete's initiative);
- e* termination during a trial period; and
- f* collective dismissal.

In the event of termination for cause, the party that causes the termination or that has unduly promoted it must indemnify the counterparty for the value of the remuneration that the athlete would have been due if the employment contract had been terminated at its term. A higher level of compensation is possible, however, where the injured party proves that the damage suffered is of a higher amount.

Athletes are free to terminate the contract without cause, subject to payment to the employer of compensation fixed for that purpose (termination clause).

## **ii Free movement of athletes**

As a member of the European Union, Portugal does not impose any restrictions on the free movement of athletes nor does it limit the number of foreign athletes competing in a championship.

Moreover, under the Portuguese Labour Code, the access of a job candidate or an employee to any type of professional activity, or to training to gain access to such activity, may not be limited based on nationality.

## **iii Application of employment rules of sports governing bodies**

Employment-related provisions in the statutes or regulations of (international) sports governing bodies may be incorporated into employment contracts of athletes provided that they do not contradict mandatory rules established in Portuguese law.

Law No. 54/2017 of 14 July also stipulates that the employment-related provisions established therein may be subject to development and adaptation by means of a collective bargaining agreement, provided that any collective bargaining agreement is more favourable to the employee (in this case, the athlete) than the original provisions.

## **VI SPORTS AND ANTITRUST LAW**

There is no specific legislation regarding competition law infringements in the sports sector. Consequently, Law No. 19/2012 of 8 May (the Competition Act) and the rules contained in the Treaty on the Functioning of the European Union (Articles 101 and 102) are applicable, particularly regarding restrictive practices and abuse of dominance.

The provisions of the Competition Act are enforced by the Portuguese Competition Authority, which has been significantly active in the context of television and multimedia broadcasting rights and no-poach agreements.

## **VII SPORTS AND TAXATION**

For each stakeholder in sports, such as clubs, sports companies, agents and athletes, there is a different applicable tax framework according to their activities in the country.

As a rule, Portugal follows the Organisation for Economic Co-operation and Development's (OECD) Model Tax Convention on Income and on Capital, although tax exemptions have generally been granted to international sports events that promote Portugal's image abroad, such as the recent 2020 UEFA Super Cup final.

In this context, Portugal has a corporate income tax (CIT) and a personal income tax (PIT), which between them cover all the types of income that companies or individuals may receive, irrespective of their nature (e.g., salaries, service fees and royalties).

Focusing particularly on athletes, and further to Article 17 of the OECD Model Convention, Portugal is entitled to claim PIT on the activities of athletes exercised in the country, irrespective of whether the income accrues to the athlete himself or herself or to another person.

In the case of sportspersons, taxation tends to apply either to salaries or to fees, depending on the nature of the relationship in place (whether an employment agreement or a services agreement).

If sportspersons are tax-resident in Portugal, they are subject to PIT at the progressive rates in force in Portugal, which may go up to 48 per cent, and are subject to an additional solidarity surcharge on income exceeding €80,000 (this surcharge varies between 2.5 per cent and 5 per cent). For non-resident sportspersons, PIT is withheld at a 25 per cent rate on gross income if the sportsperson's activities are conducted personally in Portugal, irrespective of whether the payer is established in Portugal or the income accrues to a person other than the athlete himself or herself.

Notably, income arising from the transfer of image rights has been a controversial topic in Portugal as it may qualify as a salary or as capital income, depending on whether the assignment is made in parallel to an employment relationship or to a third party.

Furthermore, it is necessary to distinguish the image rights that are part of a collective right (including, for example, the promotion of a certain sporting event in which a team participates) from individual image rights that are used because of the public notoriety enjoyed by a particular sportsperson (for example, in advertising a product).

- Nonetheless, provided that the applicable conditions are met, no PIT shall be due on:
- a* scholarships granted to high-performance sports practitioners and their coaches, by the Portuguese Olympic Committee or the Portuguese Paralympic Committee, within the scope of the programme contract for the preparation of the Olympic, Paralympic or Deaflympic Games, or by the respective sports federation;
  - b* sports training grants duly recognised in the terms legally stipulated, awarded by the respective sports federation to non-professional sports agents, namely practitioners, judges and referees, up to the maximum annual amount corresponding to €2,375, as well as, within this limit, the compensation awarded by the same federations for the non-professional performance of the functions of judges and referees; and
  - c* awards in recognition for the value and merit of sporting successes.

Furthermore, special PIT regimes have been created that may also apply to sportspersons, such as Young PIT (a programme for young people aged between 18 and 26 that provides a partial PIT exemption on employment income for three years, consecutive or interpolated) and the Return Programme, which may grant tax or financial benefits for individuals who previously lived in Portugal and return after a few years to work.

Where sports-related services are rendered by non-resident companies, they may be subject to a CIT 25 per cent rate, unless a double tax treaty foresees otherwise.

## VIII SPECIFIC SPORTS ISSUES

### i Doping

The use and trafficking of prohibited substances or methods are forbidden and sanctioned under Portuguese law. All events are subject to Law No. 81/2021 of 30 November, which approved the new Anti-Doping Law in Sports in Portugal and incorporates in the Portuguese jurisdiction the rules and procedures of the World Anti-Doping Agency (WADA).

The Portuguese Anti-Doping Authority (ADoP) is the entity with authority to control and implement relevant measures and procedures in the context of the fight against doping in Portugal. Notably, the list of forbidden substances and methods is subject to annual review by the ADoP, with subsequent approval and publication by the government.

Pursuant to the Anti-Doping Law in Sports, the infringement of anti-doping rules may be sanctioned as a criminal offence (with penalties up to five years of imprisonment), an administrative offence (subject to a fine of up to €9,996) and as a disciplinary offence (subject to suspension of up to 25 years).

### ii Betting

Betting on sports is not a prohibited practice and is subject to regulation in Portugal. Decree-Law No. 422/89 of 2 December, which establishes the legal framework for gaming in Portugal, is applicable, as is the Online Gambling and Betting Act,<sup>10</sup> Decree-Law No. 67/2015 of 29 April (approving the legal framework for land-based fixed-odds sports betting) and Decree-law No. 68/2015 of 29 April (approving the legal framework for land-based horse race betting).

A lottery-funded company that operates under oversight by the Ministry of Social Affairs, Santa Casa da Misericórdia, has the exclusive right of exploitation and operation in relation to betting on sports events on a territorial basis. The right to exploit online gambling and betting on sports events is reserved to the state; however, under certain conditions, it can be the subject of a licensing agreement with the government.

### iii Manipulation

Regarding match-fixing and the manipulation of sports results, Law No. 50/2007 of 31 August establishes that the use of means that aim to artificially alter the results of sports events is considered a criminal offence punishable by imprisonment for up to eight years.

Match-fixing may also lead to the application of ancillary penalties, such as suspension from sports competitions for up to three years, privation of the right to receive public subventions and a prohibition on performing sporting duties for up to five years.

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<sup>10</sup> Decree-Law No. 66/2015 of 29 April.

#### iv Grey market sales

Pursuant to Decree-Law No. 28/84 of 20 January, tickets for an event cannot be resold at a higher price than the price fixed by the event promoter or organiser. As such, grey market sales may be deemed a criminal offence subject to a penalty of imprisonment for up to three years.

In addition, some organisers may contractually impose on purchasers a general prohibition to resell tickets on the grey market.

### IX THE YEAR IN REVIEW

In March 2021, Decree-Law No. 22-B/2021 entered into force, establishing that the ownership of television and multimedia broadcasting rights for matches in the Premier League and the League Portugal 2 (the first and second national league divisions for men's professional football)<sup>11</sup> belongs to the sports clubs or sports companies participating in these competitions, in contrast to what was previously provided in the Competitions Regulations, under which the clubs individually held the ownership of these rights.

However, Decree-Law No. 22-B/2021's most innovative feature was the implementation in Portugal of a centralised marketing model for television and multimedia broadcasting rights; thus, following the model already followed in the main European leagues. This model will only come into effect in the 2028/2029 season, with both the Portuguese Professional Football League and the Portuguese Football Federation being responsible for defining the ways in which it will be adopted, subject to approval by the Competition Authority.

In the context of the fight against doping in sports, on 30 November 2021, the new Anti-Doping Law in Sports entered into force, revoking the previous Law No. 38/2012 of August 28. The new Anti-Doping Law in Sports incorporates in the Portuguese jurisdiction the new WADA World Anti-Doping Code.

The year 2021 was also marked by the indictment issued on 13 April by the Portuguese Competition Authority, regarding an alleged no-poach agreement involving the Portuguese Professional Football League and 31 sports companies.

The accused entities had allegedly entered into an agreement that prevented first and second league division clubs from hiring football players who had unilaterally terminated their employment contract by invoking the covid-19 pandemic. The Competition Authority found that:

*The agreement is, therefore, likely to reduce the competitive pressure between the target sports companies, potentially altering the result that would be obtained through free competition, replacing it with another that is influenced, or even determined, by the coordination of behaviour to restrict market demand for the hiring of professional players.*

Following the accusation, the Competition Authority issued a condemnatory final decision on 28 April 2022, imposing a total fine of around €11.3 million.

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11 Known for sponsorship reasons as the BWIN League and the Portugal League 2 SABSEG respectively. See also Section III.ii.

## **X OUTLOOK AND CONCLUSIONS**

Notwithstanding the overall positive assessment regarding the TAD, and the recognition of its importance for the fair settlement of sports disputes and for the development of sports law in Portugal, the functioning of this arbitral tribunal over the past seven years has revealed deficiencies in the original legal framework, warranting submission to the Secretary of State for Youth and Sport of a proposal to revise the law that created the tribunal, Law No. 74/2013.

The following are the main issues requiring legislative intervention: (1) the organisation and competence of the TAD; (2) the statute on the TAD arbitrator; (3) access to the TAD; (4) procedure rules; (5) increased transparency; and (6) the enforcement of awards.

Although the proposed amendments have not yet been subject to detailed discussion and analysis by the competent entities, it is expected that Law No. 74/2013 will soon be revised.

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