

Sports Law

Contributing editors
Centrefield LLP and Laffer Abogados



2019

GETTING THE
DEAL THROUGH 

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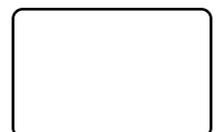


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Preface

Sports Law 2019

First edition

Getting the Deal Through is delighted to publish the first edition of *Sports Law*, which is available in print, as an e-Book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Getting the Deal Through titles are published annually in print and online. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to Centrefield Law LLP and Laffer Abogados, the contributing editors, for their assistance in devising and editing this edition.

GETTING THE 
DEAL THROUGH 

London
September 2018

Spain

Rodrigo García Lucas, Jose Lasa Azpeitia, Francisco Salinas Mezquita,
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Laffer Abogados

Regulatory

1 What is the regulatory governance structure in professional sport in your jurisdiction?

The organisation of sport in Spain (both amateur and professional) is based on a system of collaboration between the public and private sectors (perhaps with excessive public intervention, according to experts).

The most significant institutions are the High Council of Sport in the public sector and the sports federations (national and autonomous) and professional leagues in the private sector.

The High Council of Sport directly exercises the action of the Spanish state in the field of sport in compliance with the constitutional mandate that establishes that the public authorities shall promote physical education and sport and facilitate the appropriate use of leisure (article 43.3 of the Spanish Constitution).

The High Council of Sport is an autonomous administrative body attached to the Ministry of Education, Culture and Sport.

Sports federations are private entities with their own legal personality and their scope of action is national. In addition to their own activities of government, administration, management, organisation and regulation of their own particular sports, they exercise under the coordination and tutelage of the High Council of Sport public functions of an administrative nature, the most important of which is the sport discipline.

The professional leagues are mandatory in disciplines in which there is official competition of a professional nature and state-wide scope, and must exclusively and mandatorily comprise all the sports corporations and clubs that participate in such competition.

They shall have legal personality and enjoy autonomy for their internal organisation and operation with respect to the corresponding Spanish sports federation that they form part of.

Its competences are: (i) to organise its own competitions, in coordination with the respective federation and in accordance with the criteria that, as an exclusive guarantee of national or international commitments, may be established by the High Council of Sport; (ii) to perform, with respect to its members, the functions of guardianship, control and supervision established in the Sports Law; and (iii) to exercise disciplinary authority over the sport clubs that participate in official competitions of a professional nature and over their directors or administrators.

2 To what extent are participants protected from liability for their on-field actions under civil and criminal law?

Civil or criminal liability is not provided for in the regulations of federations or leagues, and ordinary criminal or civil law must be applied.

Therefore, to determine the liability of athletes, it is essential to first indicate whether the damage caused was merely the result of the outcome of play or practice of the sport and, therefore, whether it is part of the necessary risk accepted in the normal practice of the sport, or if the limits of this risk were exceeded, causing damage that should not necessarily result from the practice of the sport.

3 What is the regulatory framework for doping matters in your jurisdiction? Is there also potential secondary liability for doping offences under civil or criminal law?

The fight against doping in sport is regulated in Spain by Organic Law 3/2013 of 20 June on the protection of the health of athletes and the fight

against doping in sport. Under this law, doping in sport is considered to be the performance, by persons included in the scope of application of the law, of any of the conduct this law prohibits. The anti-doping law establishes two different levels: one aimed at federated sport and the other at sport in general, carried out outside the federative structures. Athletes who are officially qualified as international-level athletes or who participate in international competitions are subject to the rules and procedures of the relevant international federation and of the World Anti-Doping Agency, including those relating to the biological passport. This shall be without prejudice to the possibility of doping controls by the Spanish authorities.

At present, this offence is regulated in 362 quinquies of the Criminal Code, which defines it as prescribing, providing, dispensing, supplying, administering, offering or facilitating non-competitive federated athletes, non-federated athletes who practise sport for recreation, or athletes who participate in competitions organised in Spain by sports entities, prohibited substances or pharmacological groups, as well as non-regulatory methods aimed at increasing their physical capacities or modifying the results of competitions that, because of their content, repetition of ingestion or other concurrent circumstances, endanger the athlete's life or health. It shall be punishable by imprisonment of between six months and two years, a fine of six to 18 months that depends on the incomes of the person responsible, and its fixed by the judges, and disqualification from public employment or office, profession or trade for two to five years. Aggravating circumstances that are provided are:

- the victim is a minor;
- deception or intimidation has been used; or
- the person responsible has availed himself or herself of a superior position in an employment or professional relationship.

4 What financial controls exist for participant organisations within professional sport?

The most significant financial control in Spain is that carried out by the National Professional Football League (LFP) on the clubs and sports corporations that belong to it – that is, the clubs participating in the first and second divisions of Spanish football. The idea behind this financial control arises from the desire to extrapolate UEFA's famous Financial Fair Play to domestic competition.

It should be noted that this control is effected pursuant to a Regulation developed under Law 10/1990 of 15 October 1990 on Sport, which in its article 41.4.b grants the LFP exclusive competence over the performance of the functions of guardianship, control and economic supervision over its members, as explicitly provided for in its explanatory memorandum.

Dispute resolution

5 Who has jurisdiction over the resolution of professional sport disputes in your jurisdiction, and how is this determined?

It depends on the nature of the dispute. Broadly speaking, and without going into specific cases:

- If the matter arises from the exercise of disciplinary power (which, as we have already explained briefly, is considered an administrative power delegated to the federations), the sports federations that will exercise it (normally two federative bodies) are the

competition committee (or, where appropriate, the single competition judge) and the appeals committee that decides on appeals against the decisions adopted by the former, although there are federations (such as the Royal Spanish Motor Sport Federation) that have only one body. Disciplinary decisions taken at the federal level may be appealed to the Administrative Court of Sport (CAS). The CAS is a collegial institution at state level, a body of the High Council for Sport, which, acting independently of it, decides on administrative and ultimately disciplinary sports matters.

- For matters arising from an employment contract between, for example, a professional athlete and his or her club, the social order courts and tribunals will always be competent, since labour arbitration is not allowed in Spain.
- In the case of private matters (civil or commercial), such as the performance of a contract for the transfer of federative rights or a conflict between a sports intermediary and an athlete, the parties will be in agreement in the event that an out-of-court solution to the conflict has been chosen (for example, submission to arbitration before a national or international court), or submission to the ordinary civil courts.

6 How are decisions of domestic professional sports regulatory bodies enforced?

In the case of disciplinary matters, the federations themselves will be responsible for enforcing the final decision.

In the other conflicts referred to in question 5, the ordinary courts shall enforce them.

7 Can the decisions of professional sports regulatory bodies be challenged or enforced in the national courts?

Article 24 of the Spanish Constitution establishes access to justice as a fundamental right, including the remedies provided by law.

On this basis, decisions of a disciplinary nature may be appealed before the ordinary court (specifically in the Contentious-Administrative Jurisdictional Order), once the administrative procedure has been exhausted (ie, once a decision has been handed down by the Administrative Court for Sport).

The acts of the sports federations or professional leagues that are not of such a disciplinary nature may also be appealed before the competent courts (normally civil courts), and it will be the ordinary courts and tribunals of said jurisdictional order that will be in charge of enforcing the resolution.

Sponsorship and image rights

8 Is the concept of an individual's image right legally recognised in your jurisdiction?

In Spain, the right to one's own image is recognised in Organic Law 1/1982 of 5 May on civil protection of the right to honour, personal and family privacy, and one's own image.

The ownership of the right to the image as such of a natural person is a very personal, non-transferable right. However, the rights to use the image may be transferred or assigned.

In Spain, there is no register of persons holding rights to use an image as such.

9 What are the key legal considerations for the commercialisation and protection of individuals' image rights?

In a legal sense, the right to the image has a twofold dimension: positive and negative. Thus, the positive aspect would be the right to obtain, reproduce and publish one's own image, and to authorise third parties to do so. The negative aspect would be the right to prohibit the obtaining or reproduction and publication of one's own image by a third party without the consent of the owner.

It is, therefore, the subject's right to disseminate and publish his or her own image and to prevent the reproduction of his or her image in an erga omnes sense with regard to third parties.

Therefore, for the commercialisation and protection of the rights of use of the image it is fundamental to regulate the terms and conditions under which such rights will be assigned (territory, duration, price, limitations, etc). It is always advisable to seek legal advice for this purpose: both from the perspective of the assignor (owner of the

image) and the assignee (acquirer) of the rights to use or commercialise the image.

10 How are image rights used commercially by professional organisations within sport?

In those cases, such as professional athletes with a certain public impact, the most common way is to use their image rights by assigning them to third parties (eg, clubs, marketing and public relations companies, sports associations) with contracts signed for this purpose.

In this sense, the sports sector has not stood aloof of the immense commercial opportunities that can be generated around the commercialisation of image usage rights (sponsors, sponsorships, public appearances, marketing strategies, etc), which are incentivised by advertising not only on television, on the radio or in the press – as traditional channels – but also on the internet and social media. In this sense, the brands themselves, the organisations (whether profit-making or not) participating in the sector, the clubs and the athletes themselves, as intervening and interested agents, are stimulated by the expansion of the sports industry through the use of their image rights. In this way, it may be possible to finance sports events of great social impact, perhaps promoted by sports organisations in particular, and which in turn may provide a means of promoting and developing sport. All commercial sponsorship, marketing and media operations are based on intellectual property rights and are specifically regulated in the Spanish legal system.

11 How can morality clauses be drafted, and are they enforceable?

Since it is the autonomy of the parties' will expressed in the contract that will govern, with the legal limitations common to all contracts (respect for law, public order, etc), the terms and conditions under which the rights to use the athlete's image will be commercialised, clauses containing statements about the athlete's personal conduct will be fully enforceable and will have the force of law between the parties. For example, it is common to find termination clauses in the event that the athlete is guilty of doping, or, in general, when his or her prestige, professional recognition or general image deteriorates as a result of personal conduct.

12 Are there any restrictions on sponsorship or marketing in professional sport?

Yes. There are regulations common to all types of advertising activities, both at national level (General Law of Audiovisual Communication and the General Law of Advertising) and regional level.

In addition, the Sports Act, or the Act against violence, racism, xenophobia and intolerance in sport, includes restrictions not only on the advertising of certain activities, but also on the introduction and consumption of alcoholic or narcotic substances (including tobacco) in sports facilities, in certain cases.

In Spain, there is no specific regulation prohibiting the advertising of bookmakers or gambling in general, but such activities are restricted and limited in terms of their means, purposes and messages, in accordance with the provisions of the Law on Gambling, and other applicable common or regional regulations.

Of particular note in this respect is article 25 of the FIFA Code of Ethics, which establishes a general prohibition on persons subject to the Code of Ethics (officials and players, as well as match organisers and players' agents) from participating, directly or indirectly, or being associated in any way with betting, lotteries, games of chance and similar activities or businesses related to football matches. Nor may they have any relationship, whether active or passive, with companies, enterprises, organisations, etc, that promote, coordinate, organise or direct such activities or transactions.

Brand management

13 How can sports organisations protect their brand value?

A brand not only consists of an intangible asset, but also, in sports, it is a basic ingredient to create commercial value and differentiate one's products and services from those of one's competitors.

In Spain, protection of trademarks – which may, for example, consist of words, letters, numbers, shapes, colours, logos, labels or a combination of these elements – may be granted (eg, the name and coat of

arms of a club). This can be obtained through registration by filing an application with the Spanish Patent and Trademark Office (SPTO) or the European Union Intellectual Property Office (EUIPO). Trademark protection in Spain is granted for 10 years from the date of application and may be renewed indefinitely for successive periods of 10 years. The protection and registration of a trademark is currently regulated by Law 17/2001 of 7 December on Trademarks (LM).

14 How can individuals protect their brands?

Like legal persons, natural persons may register a national trademark by registering the distinctive sign with the SPTO or a European Union trademark with EUIPO. Notwithstanding the foregoing, the trademark of an athlete must not be confused with his or her own image – understood as the graphic representation of the human figure, or of any of the elements that make up the personality – which is also subject to protection, although this is regulated by other types of legislation since it is a fundamental right (Organic Law 1/1982, of 5 May, on civil protection of the right to honour, personal and family privacy, and to one's own image, and the Spanish Constitution).

As indicated above, unlike trademarks, the right to use an athlete's image may be assigned, but never transferred, so that the owner of the image will always be the individual himself or herself. Furthermore, the right to an image is inalienable and inalienable – ie, it is not lost over time, regardless of whether the image is used or not.

15 How can sports brands and individuals prevent cybersquatting?

To prevent cybersquatting from causing serious harm to trademark owners, since it may create confusion among consumers and users, the LM has extended the scope of the *ius prohibendi* to the use of the trademark as a domain name, so that the trademark owner can exercise his or her rights against third parties who register a domain in bad faith (article 34.3 e).

Consequently, the owner of a registered trademark may go to court to uphold his or her rights and interests based on this article of the LM. Likewise, once the case has been analysed, and in the event of an act of deception or confusion, or taking advantage of the reputation of others, Law 3/1991 of 10 January on unfair competition could be applied.

16 How can individuals and organisations protect against adverse media coverage?

Depending on the situation, the best protection may come from being silent, making a public statement or taking appropriate legal action. In any case, the balance between the rights of the injured party and freedom of speech and information must always be taken into account.

Broadcasting

17 Which broadcasting regulations are particularly relevant to professional sports?

In general terms, the General Law 7/2010 of 31 March on audiovisual communication regulates the rights to exclusive content. To this end, the intention of the legislation is to protect the right to information of all citizens, and limits are therefore set on exclusivity on the basis of general interest criteria, which ensure the free-access broadcasting of a series of events mainly related to sport with a high audience and value.

In addition, on 12 January 2018 the Spanish government approved Royal Decree 2/2018 laying down certain rules for the implementation of Royal Decree-Law 5/2015 of 30 April on urgent measures with regard to the marketing of rights to use audiovisual content in professional football competitions. Among the novelties introduced by this Royal Decree, mention should be made of the requirement that clubs comply with certain economic obligations, which will vary according to the income they receive.

18 What means are available to restrict illegal broadcasting of professional sports events?

Holders of audiovisual rights and services may seek, through the courts, the adoption of injunctive measures and significant financial penalties to block websites that illegally broadcast sporting events. They may also lodge a complaint, via an administrative avenue, with the Commission on Intellectual Property.

While it is true that audiovisual piracy has fallen sharply in Spain in recent years, judicial proceedings are still very slow.

To this end, different bodies, such as the National Professional Football League, together with the Spanish government, are developing a series of tools and computer programmes to speed up the process of identifying illegal content and protecting the broadcasting of matches more quickly and efficiently.

Event organisation

19 What are the key regulatory issues for venue hire and event organisation?

The organisation of a sporting event involves a multitude of complex actions that require taking into account various matters. In relation to the facilities where the event takes place, account must be taken as to whether the facilities are the property of the event organiser or whether the organiser of the event agrees to take possession of them for the holding of the event by virtue of a lease agreement or by virtue of an assignment agreement with the public authorities. In any case, among the relevant issues to be taken into consideration are the obtaining of municipal licences for establishment and activity, administrative authorisations for the occupation of public roads or open spaces, the adoption of safety and protection measures for the public attending the event required by the applicable regulations (action plans for emergencies and evacuation, maximum capacity, etc.), as well as annoyances to third parties and the taking out of necessary civil liability insurance policies.

Likewise, it is necessary to take into consideration Law 19/2007 of 11 July against violence, racism, xenophobia and intolerance in sport, whose scope of application includes official sports competitions at state level and those organised or authorised by Spanish sports federations, and which aims to promote fair play, coexistence and integration in a democratic society, the maintenance of public safety, and public order in sport tournaments and events through the establishment of certain punishable conduct.

20 What protections exist against ambush marketing for events?

In Spanish law there are certain mechanisms in place to protect against practices of ambush marketing at sporting events through which official sponsors of such events can seek to defend their legitimate interests. Thus, under Spanish law, ambush marketing practices could be legally qualified and prosecuted as (i) acts contrary to the rights of the owner of a registered trademark for its by third parties for their own benefit in the course of trade without the consent of the trademark owner, as provided for in the LM; (ii) misleading advertising practices and acts of unfair competition resulting from deception, confusion, exploitation of the reputation of others (parasitic competition), or, by application of the general clause of unfair competition, acts objectively contrary to good faith (Law 34/1988, of 11 November, General Advertising Law and Law 3/1991 of 10 January on unfair competition); and (iii) acts contrary to the usage rights of the authors of a work (specifically with regard to their right of public broadcasting), in accordance with the provisions of Royal Legislative Decree 1/1996 of 12 April approving the consolidated text of the Law on Intellectual Property.

However, the practical limitations of the legal protection against such ambush marketing practices, both in Spain and in other neighbouring countries, make it advisable to take protection measures of a contractual nature and based on self-regulation. The most common are: (i) The establishment of certain programmes for the protection of industrial and intellectual property rights owned by the official sponsors of the sporting event (eg, the International Olympic Committee); (ii) the improvement of official sponsorship contracts by reducing spaces to be used by competitors by offering television advertising packages or static advertising, or by including clauses by which the organisers of the sporting event undertake to prevent ambush marketing practices; (iii) the establishment of limitations on certain conduct through general contracting conditions; and (iv) use by organisers and official sponsors of the sporting event of mechanisms aimed at generating an atmosphere of hostility against ambush marketing in the market.

21 Can restrictions be imposed on ticket sale and resale?

Under Spanish legislation, the current law applicable to the resale of tickets is Royal Decree 2816/1982 of 27 August, which approved the

Regulations on the Policing of Public Entertainment and Recreational Activities. The historical context of this regulation has nothing to do with the current reality in which problems are seen with respect to tickets being resold online. Royal Decree 2816/1982 prohibits the 'street or itinerant sale and resale' of tickets, and was enacted in a context where online sales did not exist, and makes non-compliance an offence.

The Spanish Ministry of Education, Culture and Sport recently carried out a prior public consultation under the title 'Draft general provision concerning the activities of sale and telematic resale of tickets for cultural events' and requested a report from the Spanish National Commission for Markets and Competition (CNMC) on the possibility of regulating the online resale of tickets for cultural events. The report issued by the CNMC on 5 April 2018 includes some of the above-mentioned issues regarding the regulatory framework applicable to ticket resale and analyses the EU and Spanish regulatory framework in order to arrive at the following conclusions and recommendations, among others:

- the way tickets for events are marketed, either directly by the promoter or through third parties, should be a free decision of the promoter, based on the principle that there is no justified reason to impose limits on this freedom of commercialisation;
- the resale of tickets contributes to an efficient market outcome and the improvement of social and consumer welfare;
- public intervention has specific tools in competition law to correct abuses or harm to consumers;
- when the public authorities intervene in ticket markets to protect consumers, it must do so in the least restrictive way possible with respect to competition and freedom of enterprise; and
- for these reasons, the CNMC recommends reviewing the existing regulatory framework (national and regional) in accordance with the principle of regulatory assessment and adaptation of existing legislation to the principles of good regulation.

Immigration

22 What is the process for clubs to obtain work permits or visas for foreign professional athletes, and coaching and administrative staff?

There is a special procedure to authorise the residence and performance of professional sport activities by foreigners in Spain. Authorisation for temporary residence and employment is applied for by the sport club, sports association, sports corporation or other entity in order to hire professional athletes. The process to obtain the work permits or visas must be carried out by the person legally representing the sports club, who will personally submit the application for the initial authorisation for residence and employment to the registry of the competent body for its processing (Foreigners Office or, failing that, Area or Unit of Work and Social Affairs), corresponding to the province where the professional sport activity is to be carried out.

This application must be submitted on the official application form for residence and work authorisation, accompanied by the documentation required for this purpose. Once the fees have been paid and the company's social security obligations have been fulfilled, employment may begin. For this purpose, prior to the beginning of the work activity, the applicant entity must communicate the use of the sports licence as a residence and provisional work authorisation.

23 What is the position regarding work permits or visas for foreign professional athletes, and coaching and administrative staff, temporarily competing in your jurisdiction?

The granting of residence permits varies according to whether the foreign athlete in question is an EU or non-EU citizen. If the athlete is a national of a member state of the EU, EEA or Switzerland, he or she and his or her family members have the general right to enter, leave, travel within and reside freely in Spanish territory.

In the case of a non-EU foreign athlete, he or she will be subject to a special procedure to authorise the residence and performance of professional sport activities by foreigners, which is somewhat more flexible than the common procedure, by virtue of which they can enter, reside in and work in Spain on the basis of a temporary residence and work permit.

24 What residency requirements must foreign professional athletes, and coaching and administrative staff, satisfy to remain in your jurisdiction long term or permanently?

The two main ways of legally residing in Spain in the long term are to obtain either a long-term residence permit or Spanish nationality.

There are several procedures for obtaining a long-term residence permit, the most common of which is to have legally and continuously resided in Spain for five years. Once this authorisation has been obtained, the applicant may reside and work in Spain indefinitely under the same conditions as Spanish citizens.

On the other hand, there are also several procedures for obtaining Spanish nationality, among which the following are worth mentioning: 10 years' residence in Spanish territory, marriage to a person of Spanish nationality after having resided in Spain for one year, and by means of a naturalisation letter, which is of an *ex gratia* nature and not subject to the general rules of administrative procedures. It will be granted at the discretion of the government by means of Royal Decree, based on an assessment of the existence of exceptional circumstances.

25 Do the family members of foreign professional athletes, and coaching and administrative staff, legally resident in your jurisdiction have the same residency rights?

Family members of professional athletes are subject to a different residency regime from that of professional athletes. To accede to such residency, applicants must prove, among other things, that they have public or private health insurance, as well as sufficient financial means to cover their living and accommodation expenses, including, where appropriate, those of their family for the period for which they wish to reside in Spain, and without having to carry out any work or professional activity. Spanish law also provides for the right to family reunification, and residents of Spanish territory may reunite their family group.

Sports unions

26 How are professional sporting unions incorporated and regulated?

In the field of professional sport, and in general, the existence of trade unions is protected by the Spanish Constitution, and their creation must be carried out in accordance with the provisions of Organic Law 11/1985 of 2 August on freedom of trade union associations.

The incorporation of a trade union requires the filing of its articles of association and by-laws in the public office established for this purpose.

However, in professional sport, it is important to distinguish between trade unions as such, which must be formed in accordance with the aforementioned regulations, and professional associations, which are also established under the Spanish Constitution, but in accordance with regulations other than those applicable to trade unions. In any case, professional associations do not have the status of trade unions and therefore do not enjoy the same prerogatives as trade unions.

27 Can professional sports bodies and clubs restrict union membership?

No, since this would violate the right of professional athletes to join trade unions freely and also the very function of trade unions and the rights and prerogatives protected by the Spanish Constitution.

28 Are there any restrictions on professional sports unions taking strike action?

The Spanish Constitution recognises the right of workers, including professional athletes, to strike in defence of their interests.

The right to strike is limited by other constitutionally protected rights and goods, in particular the freedom to work of workers who do not wish to join the strike, and the functioning of essential community services.

At present, the right to strike is regulated by Royal Decree Law 17/1977 of 4 March on labour relations.

The right to strike is held individually (ie, by workers), although it is exercised collectively, for example, through trade unions.

The right to strike in professional sport is subject to the same legal rights and limits as in other areas of work.

Employment**29 What is the legal framework for individual transfers? What restrictions can be placed on individuals moving between clubs?**

The employment relationship of a professional athlete is considered a special labour relation and is governed by the provisions of Royal Decree 1006/85. Subsidiary to this, there are several collective agreements that supplement this regulation for collective sports that are professional in nature (among others, football and basketball).

The main rules applicable to the employment relationships of professional athletes, established by Royal Decree 1006/85, are as follows:

- contracts are temporary in nature;
- the athlete has the right to terminate the employment contract by payment of a termination clause; and
- any labour dispute between athletes and their employers should be submitted to the labour courts.

30 Can individuals buy their way out of their contractual obligations to professional sports clubs?

The Spanish system of transfers is, despite being founded in 1985, very novel because of the inclusion of a mechanism for the termination of contracts (termination clause), which, in practice, means the player is not dependent on the exclusive will of his or her employer for a transfer to another club. In addition, it establishes the athlete's right to a 15 per cent share of the financial compensation established in his or her transfer contract.

The biggest problem arising from the possibility of paying for one's freedom by paying the termination clause is that clubs tend to include in their contracts exorbitant amounts of money in the clause, although players can go to the labour courts to reduce such amounts.

31 What are the key athlete welfare obligations for employers?

The main such obligation is the insurance of the salaries established in the contract in the event of injury, even of long duration, throughout the entire term of the contract, as laid down in different collective agreements. The social security payable by the worker is limited to a low wage base (around €4,000), which means that there are no excessive social security charges for the player, with the club being responsible for social security contributions.

32 Are there restrictions on the employment and transfer of young athletes?

The main limitation is the absolute prohibition on contracting players under the age of 16. For athletes between 16 and 18, the signature of the parents or legal guardians will be required for the formalisation of an employment contract.

In addition, according to the case law of the Spanish Supreme Court, the player is free to cancel contracts signed before the age of 18 that are believed may infringe upon his or her rights and professional future.

33 What are the key child protection rules and safeguarding considerations?

See question 32. We should recall the Supreme Court ruling of 5 February 2013 (*Baena* case), which states that:

The power of representation of parents, which arises from the law and serves the best interests of the minor, cannot be extended to those areas that involve a manifestation or presupposition of the development of the child's free personality and that can be carried out by the child himself, such as a decision on his or her professional footballing future that can clearly materialise at the age of 16.

34 What employment relationship issues arise when athletes represent both club and country?

The main issue is that the Sport Law (1990) establishes the obligation of athletes to represent their country. This provision is of dubious constitutionality, as it may infringe the constitutionally recognised right to freedom of speech.

35 How are selection and eligibility disputes dealt with by national bodies?

Selection and eligibility criteria for Spanish athletes at the Olympics and World Cup are the sole responsibility of the different national coaches of each sport. For certain sports there are minimum requirements established by the national federations. Once these minimum requirements have been reached, the selection is made exclusively at the judgement of the federation and corresponding coach, with such a wide degree of discretion that makes it very difficult to challenge them. In any case, any dispute would be brought before the jurisdictional bodies of the federation and ultimately decided by the High Council of Sport.

Taxation**36 What are the key taxation issues for foreign athletes competing in your jurisdiction to be aware of?**

There is currently no specific tax regime applicable to foreign athletes competing in Spain.

However, it should be borne in mind that, depending on the exact date of arrival or departure, the remuneration obtained in Spain, and the years of entry or departure, an athlete could be taxed as a non-resident under non-resident income tax. This tax provides for a maximum rate of 24 per cent.

Tax rates for those resident in Spain can reach 52 per cent depending on the Autonomous Community in which the player resides. It is important to review the cost of the wealth tax in Spain, which can amount to up to 2.5 per cent per annum of the player's total assets.

Special attention should be paid to the tax treatment of any income on a player's image rights being received by a company based either in Spain or abroad, as such income is generating a large number of lawsuits with the Spanish tax agency. Likewise, the Spanish tax agency

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is questioning the nature of the payments made by clubs to athletes' intermediaries.

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