

Legal Commentary

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China's Sports Arbitration System Finally In Place!

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China's sports arbitration system was previously set out in Article 32 of the *Law of the People's Republic of China on Physical Culture and Sports* (the "**Sports Law**", as amended in 2016); however, it was never put into practice because the term was too principled in nature. With China hosting more major international sporting events, such as the Olympic Games and the IAAF World Championships in Athletics, there is an urgent need for a sound arbitration system to hear, review, and settle the ever-increasing number of disputes in this field.

Following this trend, the fast-tracked revision to the Sports Law commenced about a year ago to establish a more specified, implementable sports arbitration system in China. On June 24, 2022, the *Law of the People's Republic of China on Physical Culture and Sports (2022 Revision)* (the "**revised Sports Law**") was finally enacted, following prior release of an initial revision draft on October 21, 2021 (the "**First Revision Draft**") and a second revision draft on April 20, 2022 (the "**Second Revision Draft**"). The revised Sports Law will enter into force on January 1, 2023. As revised, the law adds a new chapter that provides the fundamental framework and principles for sports arbitration in China. In short, pursuant to the revised Sports Law, a sports arbitration commission will be established by the General Administration of Sport of China to govern the arbitration of sports disputes, and to formulate detailed arbitration rules on arbitrators' qualifications, composition of the arbitration panel, and other relevant mechanisms. We look forward to observing how this newly formed system will be implemented.

In this commentary, we give our viewpoints on building and improving the sports arbitration system in China under the revised Sports Law by introducing dispute resolution practices in football, the world's most popular sport, and referring to the arbitration system of the Court of Arbitration for Sport ("**CAS**"), the world's most established system for sports arbitration.

The sports arbitration institution as an independent body

Our viewpoint: Pursuant to the revised Sports Law, the sports arbitration commission is to be established by the General Administration of Sport of China. Given the nature of the General Administration of Sport of China as an administrative organ, it is important to consider how to implement the prescribed arbitration mechanisms and rules to protect them from administrative interference and to guarantee the impartiality and independence of sports arbitration in China.

From a global perspective, de-administration is stressed among all international and national sports arbitral institutions, including CAS, to protect the lawful and independent arbitration of sports disputes from interference by local governments or administrative organs. A typical example is CAS, which boasts the most established sports arbitration system in the world. Since the Swiss-headquartered CAS was originally established as part of the International Olympic Committee (“**IOC**”) and was financially dependent on the IOC, its impartiality and independence were challenged by arbitration parties and questioned by the Federal Supreme Court of Switzerland. In response, CAS underwent significant reforms and created an International Council of Arbitration for Sport (“**ICAS**”) to look after the administration, running, and financing of CAS, which made itself completely independent of the IOC and safeguarded the impartiality and independence of its arbitration process.

In China, the Sports Law also emphasizes that “sports arbitration shall be conducted independently in accordance with law and shall not be interfered with by any administrative organ, social organization, or individual”. Nevertheless, as we notice, the organization responsible for setting up “a sports arbitration commission”, China’s sports arbitration body, was changed from the non-profit All-China Sports Federation in the First Revision Draft to the administrative department for sports under the State Council (i.e., the General Administration of Sport of China) in the Second Revision Draft and in the adopted version of the law. Given that the General Administration of Sport of China is an administrative organ, it is important to consider how to guarantee the administrative, management, and financial independence of the sports arbitration commission that this administrative organ establishes, so as to maintain impartiality and independence of sports arbitration in China.

Scope of arbitrable disputes for sports arbitration

Our viewpoint: *The scope of arbitrable dispute cases before the sports arbitration commission is not specifically defined in the revised Sports Law, leaving substantial room for interpretation and further clarification.*

According to the revised Sports Law, the parties concerned may apply for sports arbitration for three types of disputes pursuant to arbitration agreements, the articles of association of a sports organization, the rules of sports events, etc.: (1) disputes out of dissatisfaction with decisions such as disqualifications, cancellation of competition results, and match suspensions; (2) disputes arising from registration or interactions among athletes; and (3) other disputes arising in competitive sporting activities. The revised Sports Law also excludes from the scope of sports arbitration those disputes arbitrable under the *Arbitration Law of the People’s Republic of China* and labor disputes under the *Law of the People’s Republic of China on Mediation and Arbitration of Labor Disputes*.

According to the above provision, on one hand, it becomes unclear as to which cases may be considered arbitrable under the catch-all provision of “other disputes arising in competitive sporting activities”; on the other hand, commercial disputes and labor disputes are expressly excluded from the scope of sports arbitration. This hybrid method of broad inclusion and exclusion used in the provision does not make it easy to accurately identify which disputes will fall within the jurisdiction of the sports arbitration commission.

Sports disputes often contain multiple legal relations such as property rights (e.g., salary) and personality

rights (e.g., right of publicity). It is difficult to conclude whether a sports dispute is of a property nature subject to commercial arbitration or a labor dispute subject to labor arbitration. For example, among disputes within the football industry, labor issues are the most typical and common kind of dispute between clubs and their players, which should naturally be regarded as eligible for sports arbitration. However, as this kind of dispute can be classed as both a property rights case and a labor dispute, it invites questions as to whether, under the revised Sports Law, such a dispute would fall within the scope of sports arbitration. However, we certainly understand that such a broad scope of arbitrable disputes under the revised Sports Law is a legislative technique to provide flexibility for subsequent implementation rules. Either way, further clarification is needed, through subsequent arbitration rules and practice to specify which types of disputes are eligible for sports arbitration and which are not.

Linkage between sports arbitration and a sports organization's internal dispute resolution mechanism

***Our viewpoint:** So far, the revised Sports Law appears silent as to whether submitting the dispute to a sports organization's internal dispute resolution mechanism is a prerequisite before resorting to sports arbitration. While implementing the arbitration system under the revised Sports Law, it is worth referring to international practices and establishing an orderly transition between the internal dispute resolution mechanism of various professional sports organizations in China (e.g., the Chinese Football Association) and the sports arbitration system.*

Article 95 of the revised Sports Law provides that sports organizations are encouraged to establish an internal dispute resolution mechanism to resolve disputes in a fair, just, and efficient manner; where a sports organization does not have an internal dispute resolution mechanism or the internal dispute resolution mechanism fails to handle a dispute in a timely manner, the parties concerned may apply for sports arbitration. Article 96 further stipulates that where a party concerned is dissatisfied with the decision or result of dispute resolution under the internal mechanism, it may apply for sports arbitration with the sports arbitration institution within 21 days from the date of receipt of such decision or result.

A further question then arises: can parties concerned directly resort to sports arbitration without referring to an existing internal mechanism to resolve their dispute? In other words, is seeking recourse under an internal dispute resolution mechanism a condition precedent to requesting sports arbitration? While the revised Sports Law is silent on this issue, we are of the opinion that directly requesting arbitration without first going through the internal mechanism will not assist in the rapid resolution of sports disputes within the relevant sports industry. Indeed, the exact process needs to be further tested and verified in practice.

As to sports dispute resolution in the international community, Article R52 of the CAS *Code of Sports-related Arbitration* requires that appellants must have exhausted all internal legal remedies available before appealing their cases to CAS. For example, in football-related disputes, the parties concerned may only appeal their case to CAS if they have sought remedies from the International Federation of Association Football (“FIFA”) and are dissatisfied with the decision made by FIFA; they are not allowed to file the dispute directly to CAS. This is also prescribed in the FIFA Statutes.

This leads to another question. Long before the Sports Law was revised, the Chinese Football

Association (“CFA”) established an arbitration commission as its internal dispute resolution mechanism, while the charter of the arbitration commission still stipulates that “the award made by the Chinese Football Association arbitration commission shall be final and binding”, which is obviously incompatible with the revised Sports Law. Therefore, in light of the design of jurisdictional transition between FIFA and CAS, it is advisable for CFA to introduce a similar mechanism in its charter or arbitration rules to follow the new arbitration system in China, including removing the provision that the CFA award is final and binding, and adding content such as “a party dissatisfied with the CFA award may appeal its case to the sports arbitration commission under the General Administration of Sport of China within 21 days from the date of receiving such an award.”

Moreover, under the current system, an awkward dilemma may arise where a party has received a satisfactory result from the sports organization’s internal dispute resolution mechanism but cannot truly enforce its rights because the internal mechanism does not have any legal enforcement effect. For example, in a typical labor dispute between a football club and its player, if the arbitration commission within the CFA rules in favor of the player and requires the club to pay salary in arrears, theoretically, the player will not need to seek legal remedy through any other channels. However, because the award made under the internal mechanism cannot be legally enforced, once it is made, even if the CFA has imposed its own penalties on the club, the club may still refuse to pay the relevant salary and the player will in fact be unable to safeguard his legitimate rights and interests because he is not entitled to request a court to order compulsory enforcement. In such a circumstance, can the player submit the same case directly to the sports arbitration institution under the Sports Law? Does it fall within the statutory scope of arbitration under the Sports Law where “a party concerned is dissatisfied with the decision or result of dispute resolution under the sports organization’s internal mechanism”? These questions also await clearer answers once specific arbitration rules are implemented in the future.

The legal effect of sports arbitral awards

***Our viewpoint:** Although the revised Sports Law confers final and binding force on sports arbitral awards, it concurrently allows an award to be overturned by the people’s court if “there are errors in the application of laws and regulations”, which effectively threatens the final and binding effect of sports arbitration awards and may undermine the efficiency of dispute resolution.*

According to Article 97 of the revised Sports Law, “A sports arbitral award shall take legal effect as of the date on which it is made. After the award is made, if either party concerned applies for sports arbitration or lodges a lawsuit before a people’s court in regard to the same dispute, the sports arbitration commission or the people’s court shall reject such lawsuit application or filing.” This provision will effectively confer final and binding force on awards made by the sports arbitration commission.

Surprisingly, however, Article 98 of the revised Sports Law expressly stipulates that, “Under any of the following circumstances, a party concerned may petition the intermediate people’s court in the place where the sports arbitration commission is located for overturning the award within 30 days upon receiving the arbitral award: **(1) there are indeed errors in the application of laws and regulations; ...**” “Errors in application of laws and regulations” as a statutory cause for overturning a sports arbitration award will definitely cause the court to conduct a substantive review of the award, which goes beyond the mere

review of non-substantive issues such as major procedural defects, the bribery of arbitrators, etc., and will undoubtedly pose severe challenges to the final and binding effect of sports arbitral awards.

By comparison, as to the mechanism for overturning a CAS award, Article 190 of the *Federal Act on Private International Law of the Swiss Confederation* provides that a CAS award is final from the time when it is communicated, and an arbitral award may be set aside only: (1) where the sole member of the arbitral tribunal was improperly appointed or the arbitral tribunal improperly constituted; (2) where the arbitral tribunal wrongly accepted or denied jurisdiction; (3) where the arbitral tribunal ruled beyond the claims submitted to it, or failed to decide one of the claims; (4) where the principle of equal treatment of the parties or their right to be heard in an adversary procedure were violated; (5) where the award is incompatible with public policy. Thus viewed, the statutory grounds for overturning a CAS award are essentially procedural, meaning that the Swiss Federal Supreme Court will not intervene in or entertain a substantive trial of the dispute. In fact, the Swiss Federal Supreme Court has confirmed in its No. 4A_18/2008 judgement that, even an obviously wrong application of the law or finding of facts is not a sufficient ground to overturn an arbitral award for the reason of violating public policy.

In our opinion, “erroneous application of laws and regulations” as a ground for overturning an arbitral award under the revised Sports Law deviates from the general principles that judicial review of an arbitral award should only focus on procedural issues and the court should respect the discretionary power of arbitral tribunals on substantive issues. On one hand, such a basis may virtually undermine the final and binding force of an arbitral award; on the other hand, the court’s intervention in review of substantive issues may severely complicate and prolong the arbitration process, which contravenes the original purpose of establishing the arbitration system as a way to accelerate the resolution of disputes through adjudication by professional arbitrators who are familiar with the corresponding sport.

Sports arbitration rules

Our viewpoint: *In formulating its sports arbitration rules, China should focus on correlating the national sports arbitration rules with the international system, so as to advance jurisdiction of China’s sports arbitration commission over relevant international disputes and expand China’s influence in sports arbitration in the international community.*

The internationalization of sports is an inevitable trend. China has affirmed its determination to follow this trend in Article 14 of the revised Sports Law, providing that “the State encourages international exchanges in sports, promotes the Olympic spirit, and supports participation in international sports.” A well-established sports dispute resolution mechanism will undoubtedly strengthen China’s internationalization of sports. Therefore, under the overarching framework of China’s sports arbitration system designed by the revised Sports Law, it is crucial to formulate organized arbitration rules to expand China’s jurisdiction and influence in sports arbitration in the international community.

This acute need for organized sports arbitration rules is exemplified in the numerous unfavorable results received by Chinese football clubs and other parties in previous international arbitration proceedings before FIFA and CAS, resulting from certain partial stances taken by FIFA and CAS and China’s unfamiliarity with the dispute resolution procedures and rules established by these international institutions.

As China is set to build up its own sports arbitration system, it will be helpful to study FIFA's Circular 1010, under which FIFA agrees to delegate its jurisdiction to relevant national-level arbitral tribunals if they satisfy certain criteria. If the sports arbitration commission to be established satisfies such criteria, we reasonably anticipate that the sports arbitration commission of China will retain jurisdiction over relevant foreign-related disputes, and that the unfavorable situations previously facing Chinese clubs and other parties in foreign-related disputes may change.

Given that, while formulating China's sports arbitration rules, the sports arbitration commission is advised to connect the national rules to the corresponding international standards and to introduce detailed procedural provisions to protect the rights of parties, so as to establish a set of sophisticated, comprehensive, and internationalized arbitration rules.

For example, as to the appointment of arbitrators, CAS expressly requires in its *Code of Sport-related Arbitration* that, in addition to appropriate legal training and a good command of at least one CAS working language, an eligible arbitrator should possess a good knowledge of sport in general and recognized competence with regard to sports law¹. A dual background of law and sport is obviously a reasonable criterion for selecting sports arbitrators. However, given the current sports development reality in China, if the "law plus sport" standard is adopted to select sports arbitrators, it is highly likely that only a few candidates will be qualified; but overly lenient requirements are not desirable either, which may compromise the professionalism of sports arbitration. Thus, how to strike a balance when setting forth the criteria for appointing arbitrators under China's sports arbitration system is another issue to be considered.

With respect to publicizing arbitral awards, according to the *CAS Code of Sports-related Arbitration*, the awards of appeal cases, cases of a disciplinary nature, and some cases before the ad hoc division for the Olympic Games will be made public, and contents to be disclosed include basic information of the parties concerned, the composition of the arbitral panel, basic facts and applicable laws identified in the award, and the reasons and rationale for making the award. Similarly, FIFA also publishes the judgments it makes, including the redacted version of judgments that contain confidential information. As a result of such publicity, jurisprudence has been gradually developed for international football dispute resolution. According to our experience in representing parties in international football dispute cases before FIFA and CAS, parties cite previous CAS and FIFA awards to support their arguments. Publicizing awards will also assist in providing parties with reasonable expectations of the results of the disputes.

As for the sports arbitration regime in China, the revised Sports Law does not touch on whether an arbitral award should be made public or not, which is an issue awaiting clarification by subsequent rules. We suggest that sports arbitration awards be made public in China for the following reasons. Unlike the traditional civil and commercial arbitration systems which are fully developed, sports arbitration in China is still in its infancy. Publication of arbitral awards will place China's sports arbitration system in line with the internal standard and thus at a high starting point; it will also invite industry and public supervision to spur prudence, impartiality, and fairness of the arbitration process. This will enhance the credibility of sports

¹ Code of Sport-related Arbitration in force as from 1 July 2020, S14: The ICAS shall appoint personalities to the list of CAS arbitrators with appropriate legal training, recognized competence with regard to sports law and/or international arbitration, a good knowledge of sport in general and a good command of at least one CAS working language ...

arbitration among the public in China, and bolster the healthy and fast development of the national sports industry in China.

Conclusion

The revision of the Sports Law is a milestone event in the field of sports dispute resolution in China, which signifies a major leap in the country's establishment of its own sports arbitration system. We will closely monitor and look forward to the series of subsequent rules and measures for implementing the system. We are convinced that the ever evolving and improving sports arbitration system in practice will provide strong legal guarantees for China to realize its national fitness strategy while the country is marching on the goal to become a global sporting powerhouse.

Important Announcement

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