



CHAMBERS
Global Practice Guides

Sports Law

Portugal – Law and Practice

Contributed by
Morais Leitão, Galvão Teles, Soares
da Silva & Associados, SP, RL.

2018

PORTUGAL

LAW AND PRACTICE:

p.3

Contributed by *Morais Leitão, Galvão Teles, Soares da Silva & Associados, SP, RL.*

The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

Law and Practice

Contributed by Moraes Leitão, Galvão Teles, Soares da Silva & Associados, SP, RL.

CONTENTS

1. Leagues	p.4	7. Agent Issues	p.18
1.1 Legal Structure	p.4	7.1 Basic Role and Importance of Agents	p.18
1.2 Role of the Commissioner/League Office	p.5	7.2 Regulation of Agents	p.18
1.3 Judicial/Governmental Supervision	p.6	8. Tort Law	p.19
1.4 Legal Relations with Players/Unions/Players Associations	p.7	8.1 Dealing with Injuries Sustained by Sporting Competitors	p.19
1.5 Individual Sports	p.7	8.2 Dealing with Injuries Sustained by Fans Attending Athletic Competitions	p.19
2. Contract Law Principles	p.8	9. Gender/Racial Discrimination	p.20
2.1 Drafting	p.8	9.1 Legal Protections Addressing Equality of Opportunity	p.20
2.2 Contractual Dispute Resolution	p.8	9.2 Issues Regarding Gender Testing and Gender Discrimination	p.20
3. Governmental Regulation - Labour Law	p.10	9.3 Basic Legal Framework Protecting Employees or Independent Contractors	p.20
3.1 Regulating Individuals in Sporting Events	p.10	10. Drug Testing and Conduct Regulations	p.20
3.2 Remedies of a Legal Violation	p.12	10.1 World Anti-Doping Agency (WADA)	p.20
4. Governmental Regulation - Antitrust Law	p.12	10.2 PED Rules	p.21
4.1 Role of Competition/Antitrust Law in the Organisation of Professional Sports	p.12	10.3 Legal Issues Regarding Athlete Suspensions or Discipline	p.21
5. Direct Governmental Regulation of Sports	p.12	11. College/Amateur Sports	p.21
5.1 Structure of Sporting Competitions	p.12	11.1 Regulations and Legal Structures Conducted by Academic Institutions	p.21
6. Intellectual Property	p.14		
6.1 Basic Legal Structure	p.14		
6.2 Rights of Athletes	p.15		
6.3 League, Club and Sporting Event Rights	p.16		
6.4 Laws Restricting the Sale of Broadcast Rights to Sporting Events	p.16		
6.5 Legal Issues with “Ambush” Marketing	p.17		

PORTUGAL LAW AND PRACTICE

Contributed by **Morais Leitão, Galvão Teles, Soares da Silva & Associados, SP, RL.** **Authors:** Dzhamil Oda, Francisco Cortez, Paulo Rendeiro, Sofia Vaz Sampaio

Morais Leitão, Galvão Teles, Soares da Silva & Associados, SP, RL. Sports Law team has a total of nine members. Several members of the team also have direct links to Universities. Furthermore, many of the members of MLGTS Sports Law team hold positions in some of the most important sports institutions in Portugal. The team offers expertise in transfers of players and football coaches, sports employment and image rights use contracts, litigation between sports' agents and before sports institutions and sports regulation. In addition to its Sports Law practice, MLGTS

is a leading full-service law firm in Portugal, with a solid background of more than 80 years of experience. Internationally recognised, its reputation stems from the excellence and high level of the services provided to clients, solid ethical values and a distinctive approach with cutting edge solutions. Specialist legal services in the main areas of law and in different sectors of the economy are a benchmark of the firm leading to its involvement in the most important operations in Portugal, as well as in high-value cross-border transactions and disputes.

Authors



Dzhamil Oda provides legal advice in football players' transfers, UEFA Financial Fair Play and football intermediation matters and has also experience in litigation before international sports organisations (in particular, FIFA and the AFC) and before the Court of Arbitration for Sports, Lausanne, Switzerland. He is also a Member of the Justice Council of the Portuguese Bridge Federation.



Francisco Cortez co-ordinates one of the litigation and arbitration teams as well as the sports law team. Francisco is one of the firm's most experienced lawyers in the litigation area, specialising in civil, corporate and commercial litigation. He has been responsible for several highly complex cases, both in judicial courts and arbitration.



Paulo Rendeiro is a member of the corporate and commercial and capital markets team and also of the sports law group. He has been involved in several M&A transactions, restructuring, acquisitions and sales of companies, as well as the execution of tender offers, on behalf of domestic and foreign clients. He also provides general legal advice to companies mainly in the areas of commercial and corporate law as well as legal advice in matters regarding sports law and image rights' agreements.



Sofia Vaz Sampaio is a member of the litigation and arbitration team. She is also a member of the Sports Law team. She has acted as counsel in judicial and arbitration proceedings in a variety of industrial sectors, such as banking, construction, food and beverage, infrastructures, media and advertising, public-private partnerships, energy, and telecommunications domestic and international.

1. Leagues

1.1 Legal Structure

Each specific sports discipline is typically organised in Portugal under the auspices of the relevant sports federations, which are non-profit associations, with public utility status attributed by the relevant public authorities, that encompass clubs or sports companies, regional/local associations, professional leagues, sports practitioners, technical staff (including coaches), judges and referees, and other entities that promote, practise or contribute to the development of the relevant sports discipline. The procedural, substantive and other relevant aspects concerning sports federations and the way sporting competitions are organised under their auspices (including professional competitions) are provided for in the Legal Framework for the Sports Federations and

the Conditions for the Attribution of Public Utility Status (Decree-Law 248-B/2008, 31 December 2008, as amended).

There are particularities as to whether the relevant sporting competition is non-professional or professional. Non-professional competitions are organised and managed by the relevant federation, while professional competitions are organised under a professional national league, which is a non-profit association that exercises its powers by delegation of the relevant federation and must be administratively, technically and financially autonomous vis-à-vis the latter. The recognition of the professional character of competitions is determined by the government member responsible

Contributed by **Morais Leitão, Galvão Teles, Soares da Silva & Associados, SP, RL.** **Authors:** Dzhamil Oda, Francisco Cortez, Paulo Rendeiro, Sofia Vaz Sampaio

for sports pursuant to the requirements provided for in the Ministerial Order 50/2013, 5 February 2013.

The relationship between the federations and leagues is governed by an agreement entered into between those entities, valid for four sports seasons (subject to renewal), which must establish, inter alia, the number of clubs participating in the professional competition, the framework for access between professional and non-professional competitions, the organisation of the activity of national teams, and the support for non-professional sporting activity.

The duties of the leagues comprise organisation and regulation of professional competitions, discipline and refereeing (including drafting and approval of respective regulations, which must be ratified by the relevant federation's general meeting), control and supervision of its associates, and setting of sporting, financial and organisational requirements for participation in professional competitions, as well as supervision of compliance with such requirements by participants in those competitions.

Clubs participating in professional competitions are part of the league and must mandatorily incorporate a sports company, which is a specific type of public or limited liability company, governed by Decree-Law 10/2013, 25 January 2013, as amended.

In Portugal there is currently only one professional league – the Portuguese Professional Football League (*Liga Portuguesa de Futebol Profissional*, hereinafter LPFP), which in season 2017/2018 organised three professional competitions: (i) Liga NOS (first division/league), first-tier professional competition, comprising 18 teams that compete during 34 fixtures; (ii) LEDMAN Liga Pro (second division/league), second-tier professional competition, comprising 20 teams (18 teams from season 2018/2019 onwards) that compete during 38 fixtures; and (iii) Taça CTT (League Cup), competition that involves 33 clubs from both the Liga NOS and LEDMAN Liga Pro, and comprises two qualifiers, a group stage and a “Final Four” stage, the final being played in the winter.

The participation in official competitions organised by LPFP is mandatory for the clubs that have qualified for them. The clubs are also subject to a specific licensing procedure provided for by law and LPFP's regulations in order to participate in the relevant competition.

Both first and second leagues are open to new memberships, in accordance with the rules of promotion and relegation of teams, respectively, from and to lower competitions. Hence, save for specific exceptions, first and second best classified clubs from the second league are promoted each season to the first league, while the last and the second-to-last clubs

from the first league are relegated each season to the second league. The same works for the second league: the two clubs that achieved the best results in the highest non-professional football competition are promoted each season to the second league, while the last and the second-to-last clubs from the second league are relegated each season to the highest non-professional football competition (exceptionally, in the current season 2017/2018, four clubs will be relegated to the highest non-professional football competition).

Promotion and relegation are dependent on the fulfilment by the clubs of the requirements established within the licensing procedure mentioned above. Clubs may also be admitted in the first and second leagues following a court order, in which case-specific rules provided by LPFP apply. There are also specific rules for situations where clubs are relegated for not fulfilling the licensing requirements or following disciplinary sanctions, and LPFP can also reduce the number of teams participating in the relevant competition as a last resort solution when vacancies are not filled.

There are two other official competitions, organised by the Portuguese Football Federation (*Federação Portuguesa de Futebol* – FPF), in which participation is mandatory for professional clubs – the Portugal Cup (*Taça de Portugal*), a competition held throughout the season that involves both professional and non-professional clubs, organised in seven fixtures plus a final, and Super Cup Cândido de Oliveira (*Supertaça Cândido de Oliveira*), one match that opposes the winner of the first league and the winner of the Portugal Cup, or the other finalist if the same club wins both the first league and the Portugal Cup.

The clubs also participate in the UEFA (Champions League and Europa League) and FIFA (FIFA Clubs World Cup) competitions. In the 2017/2018 season, six Portuguese clubs accessed the UEFA competitions – three clubs in the Champions League (two via direct access and one via play-offs) and four clubs in the Europa League (one of the clubs that was eliminated from the Champions League was relegated to the Europa League).

Apart from the national official competitions and UEFA and FIFA competitions, Portuguese clubs can also participate in other national or international tournaments to the extent that such tournaments do not collide with the official schedule. This is usually the case of off-season and friendly matches, cups traditionally organised by some of the clubs (eg, Sporting CP's *Troféu Cinco Violinos*, SL Benfica's *Eusébio Cup*) or regional club associations (eg, Lisbon Football Association's *Taça de Honra*).

1.2 Role of the Commissioner/League Office

As detailed in 1.1 Legal Structure above, there is only one professional league in Portugal – the Portuguese Professional

Contributed by **Morais Leitão, Galvão Teles, Soares da Silva & Associados, SP, RL.** **Authors:** Dzhamil Oda, Francisco Cortez, Paulo Rendeiro, Sofia Vaz Sampaio

Football League (*Liga Portuguesa de Futebol Profissional*, LPFP). The LPFP structure comprises five different bodies: General Meeting, President, Board of Directors, Audit Committee and Jurisdictional Committee.

The bodies comparable to the role of a Commissioner (as for instance in US competitions) and that comprise the executive branch of LPFP are the President and the Board of Directors.

The President is subject to election in the General Meeting by LPFP associates (in casu, the clubs that participate in the professional competitions) for four-year terms. He is responsible for representing the LPFP, ensuring its regular functioning and promoting the collaboration between its different bodies. He also must execute the decisions adopted by LPFP bodies and negotiate contracts, among other powers. The President is inherently Vice-President of the Portuguese Football Federation and part of the respective board of directors.

The Board of Directors includes the President (who presides over this body and has a casting vote), five sports companies from the first league and three sports companies from the second league (chosen in accordance with specific rules provided for in LPFP's statutes), and one member of the Portuguese Football Federation's board of directors. This body is responsible for the administration and management of the LPFP, including the appointment of Executive Directors who assist the Board of Directors and the President in their executive tasks. The attributions of the Board of Directors include, among others, commercial exploitation of professional competitions, preparing management reports, accounts, LPFP's budget and activities plan, human resources (including disciplinary power over LPFP's employees), authorising expenses for the acquisition of goods and services, and complying with and enforcing the decisions adopted by the Jurisdictional Committee, as well as by other legal and disciplinary sports bodies. The Board may also establish a body for advisory and external promotion – the High Council – which must be ratified by the General Meeting.

The General Meeting is a deliberative body composed by sports companies (eg, clubs that participate in professional competitions: first league and second league), which have several material attributions, including electing and dismissing LPFP's President, discussing and approving accounts, approving amendments to LPFP statutes, approving regulations, deliberating on the dissolution of the LPFP, excluding associates, and approving distribution of a positive balance obtained from commercial exploitation of professional competitions.

The Audit Committee is the body responsible for, inter alia: auditing the financial administration of the LPFP, ensuring

compliance with the law, statutes and internal regulations; verifying financial documentation and accounts as well as LPFP's assets, real estate and results; preparing reports on its activity and adopting opinions on budget proposals, management reports, accounts and proposals submitted by the Board of Directors; any other matters submitted by other LPFP's bodies.

The Jurisdictional Committee is the body that exercises disciplinary power over sports companies associated to LPFP regarding infringements of the latter's statutes, settles disputes between LPFP and sports companies or between the latter related to membership issues, and provides non-binding opinions on any legal matters submitted by the Board of Directors.

1.3 Judicial/Governmental Supervision

Decisions over disciplinary matters rendered by the federations' disciplinary boards (except those relating to matters arising from the application of technical and disciplinary rules directly related to the practice of the sporting competition itself) may be appealed before the Portuguese Court of Arbitration for Sport (*Tribunal Arbitral do Desporto*, hereinafter TAD). That is to say, the TAD – which is an independent judicial body, in particular from the sport's public administration bodies and the bodies forming part of the sports system – has specific jurisdiction to administer justice in disputes arising out of the sports legal framework or out of sports practice.

The TAD exercises its jurisdiction throughout all the national territory, has its headquarters in the Olympic Committee of Portugal and enjoys, in the judgment of appeals and challenges, full jurisdiction in matters of fact and law.

The TAD is composed of a maximum of 40 arbitrators from a list approved by the Council of Arbitration for Sport, and the arbitrators who are part of it are appointed, in part, among the persons proposed by the Sports Federations, Portuguese Sport Confederation, Professional Leagues, socio-professional organisations of practitioners, coaches, referees and judges, Olympic Athletes Commission, Portuguese Confederation of Coaches' Associations, associations representing other sports agents, the Portuguese Association of Sports Law and the Executive Committee of the Portuguese Olympic Committee and, in another part, by free choice of the Council of Arbitration for Sport.

The attributes of the TAD are divided in two strands: compulsory arbitration and voluntary arbitration. Within the scope of compulsory arbitration, the TAD is empowered to judge disputes arising from the acts and omissions of federations and other sports entities and professional leagues in the exercise of its corresponding regulatory, organisational, management and disciplinary powers and to decide on ap-

Contributed by **Morais Leitão, Galvão Teles, Soares da Silva & Associados, SP, RL.** **Authors:** Dzhamil Oda, Francisco Cortez, Paulo Rendeiro, Sofia Vaz Sampaio

peals submitted against the actions taken by disciplinary bodies of sports federations or by the Portuguese Anti-Doping Authority regarding violations of anti-doping rules.

Jurisdiction to hear disputes arising out of acts and omissions of federations and other sports entities and professional leagues in the context of the exercise of the corresponding regulatory, organisational, management and disciplinary powers encompasses – unless otherwise specified – all the applicable contentious guarantee means provided in the Code of Procedure in the Administrative Courts that may be applicable. However, access to the TAD in the context of compulsory arbitration is only admissible by appeal against decisions of the sports federations' jurisdictional bodies or the final decisions of other sports bodies and professional leagues, to the extent that all the internal means of challenging, appealing or sanctioning acts or omissions provided for under the law or statutory or regulatory norms are exhausted.

The power to judge issues arising from the application of technical and disciplinary rules directly related to the practice of the sports competition itself is excluded from the jurisdiction of the TAD.

1.4 Legal Relations with Players/Unions/Players Associations

In Portugal, there are more associations related to football – including associations or unions of athletes, referees and coaches. In the case of football, several of these associations are ordinary members of the Portuguese Football Federation and, therefore, by right, statutory members of the General Meeting of the institution.

This is the case in the Union of Professional Football Players (*Sindicato dos Jogadores Profissionais de Futebol*), the Portuguese Association of Football Referees (*Associação Portuguesa de Árbitros de Futebol*), the National Association of Football Coaches (*Associação Nacional de Treinadores de Futebol*), the National Association of Football Executives (*Associação Nacional de Dirigentes de Futebol*), the Association of Football Physicians and Nurses (*Associação dos Médicos e Enfermeiros de Futebol*) and the National Association of Sports Nurses and Football Masseurs (*Associação Nacional dos Enfermeiros Desportivos e Massagistas de Futebol*).

The Union of Professional Football Players and the National Association of Football Coaches, as representatives of players and coaches, respectively, are signatories to collective labour agreements entered into with the Portuguese Professional Football League, which establishes the minimum conditions, including remuneration, that must be fulfilled by clubs participating in professional competitions (Liga NOS and LEDMAN Liga Pro) in the employment contracts they enter into with their players and managers.

In other sports, associations representing practitioners and other sports agents, as a rule, are also statutory members of the respective association. This is the case, for example, in the Portuguese Handball Federation (*Federação Portuguesa de Andebol*) – of which the Portuguese Association of Referees and Table Officials (*Associação Portuguesa de Árbitros e de Oficiais de Mesa*), the Association of Handball Players of Portugal (*Associação de Jogadores de Andebol de Portugal*) and the Association of Handball Managers of Portugal (*Associação de Técnicos de Andebol de Portugal*) are members. It is also the case in the Portuguese Basketball Federation (*Federação Portuguesa de Basquetebol*) – of which the Basketball Players' Association (*Associação de Jogadores de Basquetebol*), the National Association of Basketball Judges (*Associação Nacional de Juizes de Basquetebol*) and the National Association of Basketball Coaches (*Associação Nacional de Treinadores de Basquetebol*) are members. Or, to give yet another example, the case of the Portuguese Skating Federation (*Federação Portuguesa de Patinagem*) – which includes as partners the National Association of Skate Hockey Referees (*Associação Nacional de Árbitros de Hóquei em Patins*), the National Association of Athletes (*Associação Nacional de Atletas*) and the National Association of Skate Hockey Coaches (*Associação Nacional de Treinadores de Hóquei em Patins*).

The relationships between the various players in each sports practice through the associations or trade unions (in the case of football players) are not usually established directly with the clubs but rather with the respective federation.

1.5 Individual Sports

As mentioned in **1.1 Legal Structure** above, each specific sports discipline (whether collective or individual) is typically organised under the relevant sports federation, which are non-profit associations, with public utility status attributed by the relevant public authorities. The procedural, substantive and other relevant aspects concerning sports federations and the way sports competitions organised under their auspices are provided for in the Legal Framework for Sports Federations and Conditions for the Attribution of Public Utility Status (Decree-Law 248-B/2008, 31 December 2008, as amended).

As regards individual sports, numerous federations exist, regulating each sport and providing a calendar of competitions in which individual athletes compete, rules on how competitions are conducted, and athletes' discipline, rankings and qualifications.

As for the necessity of athletes to join an individual club, this varies from sport to sport. As an example, tennis players need to be in a specific club to be able to compete in accordance with the rules set by the Portuguese Tennis Federation (*Federação Portuguesa de Ténis*), which holds several com-

petitions and tournaments in different settings, organises the competitions' calendar and establishes a ranking of the sport's practitioners. Another relevant example of an individual sport practised in Portugal is golf, its federation being the Portuguese Golf Federation (*Federação Portuguesa de Golfe*) which, like the Portuguese Tennis Federation, also maintains a ranking of players. Unlike what happens in tennis, golf players do not need to join any specific club.

The same happens in athletics, in which both the track and field practices are organised under the auspices of a sole sports federation, the Portuguese Athletics Federation (*Federação Portuguesa de Atletismo*), whose athletes do not mandatorily compete through any club. This federation, in addition to organising sports competitions and maintaining a ranking of the respective athletes, develops a plan to support high-performance athletes, where athletes and their coaches, who obtain certain classifications in international competitions or who reach certain objectives, are integrated.

As concerns the sports gambling legal framework, *Santa Casa da Misericórdia de Lisboa*, a non-profit organisation operating under the government's supervision, has the exclusive right to the exploitation and operation of betting on sports events on a territorial basis (Decree-Law 67/2015 and Decree-Law 68/2015, both 29 April 2015). As set in the Decree-Law 66/2015, 29 April 2015, the right of exploiting online gambling and betting on sports events is reserved to the government; however, the government can grant online gambling and betting licences to limited liability companies, if certain requisites are fulfilled.

Regarding match-fixing, Law 50/2007, 31 August 2007, foresees that the use of means that aim to manipulate the results of sports events are considered criminal offences subject to up to five years imprisonment, a term that is lengthened in the case of sports referees and coaches. Match-fixing may also lead to the application of penalties such as suspension from sports competitions for up to three years or prohibition from performing sports duties for a period of up to five years.

All sports events in Portugal are subject to the code and procedures of the World Anti-Doping Agency. Law 38/2012, 28 August 2012 (last amended by Law 93/2015, 13 August 2015), transposed the rules set forth in the World Anti-Doping Code into Portuguese law, establishing the Portuguese Anti-Doping Legal Regime for Sports.

The Portuguese Anti-Doping Authority (ADoP) is the entity responsible for controlling and implementing measures and procedures in order to combat doping in Portugal.

2. Contract Law Principles

2.1 Drafting

Apart from the mandatory licensing procedure required for clubs that have qualified to participate in the official competitions organised by the Portuguese Professional Football League (*Liga Portuguesa de Futebol Profissional* – LPFP), as described in **1.1 Legal Structure** above, the contract between LPFP and the Portuguese Football Federation to govern professional competitions and the players and other employment contracts (which will be further discussed in section **3: Government Regulation – Labour Law**, below), there are no other compulsory agreements that need to be entered into by the league, its owners or the clubs in order to create sports competitions.

Albeit not mandatory in nature, it is fairly common for the several parties involved in the sports circuit to form contracts to regulate its various aspects. As a matter of fact, it is well known that today's sports world involves not only the contest per se but also a myriad of associated matters such as marketing, copyright, broadcasting, merchandising and endorsements, the regulation of which is accomplished by agreements entered into by the relevant stakeholders.

As regards those areas regulated by specific law fields – such as copyright law, intellectual property law, marketing law, constitutional and civil law (concerning athletes' image rights) – the essential rules that preside over the agreements entered into are the fundamental principles of civil law. Regarding those principles, they comprise, essentially, the principle of private parties' autonomy and the principle of contractual freedom, which determine that the parties are free to sign contracts regarding the several matters at stake and also that they are allowed to regulate their content freely as long as it does not infringe mandatory law provisions.

Furthermore, there are also mandatory safety requirements related to sports events depending upon the organisers of competitions, promoters of sporting events and/or owners of sporting facilities, as the case may be, such as the obligation to draft and submit before the relevant public authority regulations for the prevention of violence and regulations for safety and use of public spaces.

2.2 Contractual Dispute Resolution

Currently in Portugal contractual disputes arising from sports contracts may be subject to arbitration or judicial/labour courts, depending on the matter at stake and on the fulfilment of the arbitration requirements.

The Portuguese Court of Arbitration for Sport (*Tribunal Arbitral do Desporto*, hereinafter TAD) was created and its law was approved by Law 74/2013, 6 September 2013, and started operating on 1 October 2015 as an independent ju-

Contributed by Moraes Leitão, Galvão Teles, Soares da Silva & Associados, SP, RL. Authors: Dzhamil Oda, Francisco Cortez, Paulo Rendeiro, Sofia Vaz Sampaio

jurisdictional entity with specific competence to administer justice within the legal framework for sports. It has jurisdiction solely regarding disputes arising after 1 October 2015, except if the parties specifically agree to subject any disputes already pending on 1 October 2015 to its jurisdiction.

According to the TAD's Law, the TAD has competence to intervene both in voluntary arbitration (Articles 6 and 7) and compulsory arbitration (Articles 4 and 5), in mediation (Articles 63 to 75) and also as a consultation body for the issuing of non-binding opinions upon request by any of the public administrative bodies of sports, the Olympic Committee of Portugal, the Paralympic Committee of Portugal, sports federations with the statute of sports public utility, professional leagues and the Portuguese Anti-Doping Authority (Article 33).

With regard to voluntary arbitration, as for contractual disputes, the law provides that any dispute – if not covered by Articles 4 and 5 regarding compulsory arbitration, directly or indirectly related to the practice of sport and that, under the Portuguese Voluntary Arbitration Law (Law 63/2011, 14 December 2011) may be resolved by arbitration – may be subject to TAD's voluntary arbitration.

Under said Voluntary Arbitration Law – based on the UNCITRAL Model Law on International Commercial Arbitration (with the amendments adopted in 2006), but with deviations in several points – the rule regarding the arbitrability of the dispute resides in the economic nature of the dispute (which replaced the previous criterion of disposability of rights), assuming the dispute falls outside the scope of compulsory arbitration and is not exclusively subject to the State Courts' jurisdiction. An arbitral agreement is also valid for any disputes that, despite not having an economic nature, may be subject to transaction between parties (Article 1 of the Voluntary Arbitration Law).

Such disputes may, therefore, be subject to the TAD's voluntary arbitration by means of an arbitral agreement, which may be concluded in the form of an arbitration clause (which refers to future disputes arising out of a particular legal relationship) or an arbitral compromise (where parties submit an already existing dispute to arbitration) or, regarding disputes deriving from an associative relationship, by means of a statutory clause of the relevant federation or other sports entity (Article 6 of the TAD's Law and Article 1 of Voluntary Arbitration Law).

According to TAD Law, this court is also competent, under the voluntary arbitration jurisdiction, to resolve disputes arising from sports labour agreements entered into by athletes or managers and agents or sports organisations, and it is specifically empowered to deal with the regularity and validity of the employment contracts' termination (Article 7).

The same Article 7(2), together with the transitory rule contained in Article 3(3) of Law 74/2013, adds that, after 31 July 2016, the TAD shall have the same competences attributed to the joint arbitral commissions provided for in Law 28/98, 26 June 1998 (such commissions maintaining their competences until then).

However, the purpose and usefulness of this provision – attributing to TAD the same competences of the joint arbitral commissions – seems to be doubtful, to say the least.

Law 28/98, 26 June 1998, which established the legal regime regarding sports labour contracts and sports formation contracts, in its Article 30, under the epigraph "Arbitration Agreement", used to establish that the associations that represented employers and players could provide for in their collective conventions the recourse to arbitration, by attributing exclusive or previous competence to joint arbitral commissions.

Subsequently, some of those entities established in their collective labour contracts such a possibility and determined the specific competence of those commissions. It was the case of the collective labour contract entered into by the Professional Football Portuguese League and the Union of Professional Football Players which established that labour disputes could be subject to arbitration and created, for such effect, a joint arbitral commission with specific competences defined therein.

Recently, however, in a case where at stake was a labour contract entered into by a football player and a sports entity, which contained a clause submitting disputes arising from it to the arbitral commission created by the collective labour contract entered into by the Professional Football Portuguese League and the Union of Professional Football Players, the Oporto Court of Appeal decided that such competence could not simply be deemed transferred to the TAD. The Court of Appeal considered that the submission of a labour dispute to arbitration depended on the express and unequivocal will of the parties and that the possibility of recourse to the TAD had to be provided in the collective labour contract. Hence, the court concluded that, after 1 July 2016, with the extinction of the arbitral commissions, there was a legal vacuum in terms of collective regulation regarding the recourse to voluntary arbitration and that the content of Article 3 of Law 74/2013 – which provides for the transference of competence from the arbitral commissions to the TAD after 30 June 2016 – could not be imposed on those who agreed on submitting disputes to the referred commissions (Decision of 6 November 2017, case No 472/17.4T8VNG. P1).

Law 28/98, 26 June 1998, was in the meanwhile revoked by Law 54/2017, which established the new Legal Framework

for Athletes' Employment Contracts, Sports Training Contracts and Representation or Intermediation Contracts, and which provides in its Article 4 that for the resolution of any disputes arising from sports labour contracts and sports formation contracts, the associations that represent employers and players can establish, in their collective contracts, the recourse to the TAD.

We have no knowledge of any collective contracts having been revised yet to include such recourse to arbitration. On the contrary, the current version of the collective labour contract between the Professional Football Portuguese League and the Union of Professional Football Players, as revised in 2017, does not provide such recourse to the TAD (and actually maintains the arbitral commissions for other effects).

Assuming that the collective contracts do not provide for such a possibility, then the submission of labour disputes to arbitration depends solely on the existence of an arbitral agreement within the individual contract conferring jurisdiction to the TAD.

Regarding the enforcement of sports contracts, a party wishing to enforce a contract and its obligations can file enforcement proceedings with the following purposes: obtain payment of a specific sum of money, request the handing-over of a particular item or request someone to do something or to refrain from doing something. In order to file enforcement proceedings a party must have or obtain an enforceable title (a document with specific characteristics or a judicial/arbitral decision).

A contract may only be directly enforced if it constitutes an enforceable title (a document drawn up or certified by a notary or other competent entity for the purpose in which future performance is agreed or future obligations are set out). Other than that, the party wishing to enforce a contract shall file declarative proceedings before a judicial or an arbitral court if the arbitration requirements are met and then enforce the judicial/arbitral judgment passed within such proceedings.

In the enforcement of a judicial decision, the enforcement request is made as part of the proceedings in which the decision was adopted. In the remaining situations (enforcement of an arbitral award or direct enforcement of a contract) the enforcement proceedings shall be filed separately in an enforcement court/section.

3. Governmental Regulation - Labour Law

3.1 Regulating Individuals in Sporting Events

In terms of sports labour law, our main piece of legislation – besides the Portuguese Labour Code, which shall be applicable on a subsidiary level – is the so-called Legal Framework for Athletes' Employment Contracts, Sports Training Contracts and Representation or Intermediation Contracts currently set out by Law 54/2017, 14 July 2017, which came to replace the longstanding Law 28/98, 26 June 1998.

This new law, which in general terms did not revolutionise the former structure and framework that was in place in Law 28/98, is mainly divided into six sections:

- formation of the sports employment contracts;
- parties' rights, obligations and guarantees;
- temporary and definitive transfer of athletes;
- termination of sports employment contracts;
- sports training contracts; and
- sports intermediaries (see section 7 **Agent Issues** for more details on this topic).

As regards the formation of a sports employment contract, and in particular the legal capacity for an athlete to be a party to it, we should bear in mind, first of all, that only athletes aged 16 or older may legally enter into a sports employment contract; if under age, an athlete should have a respective legal representative also subscribing the contract.

Furthermore, contrary to the general rule set out in the Portuguese Labour Code, sports employment contracts must be executed in writing and are subject to registration with the corresponding sports federation. A sports employment contract should contain, inter alia:

- the parties' identification and date;
- the term (which, generically, cannot be less than one sports season or exceed five sports seasons – three if the athlete is under age);
- express indication with respect to the intervention or non-intervention of an intermediary and the corresponding represented party (this requisite was implemented by Law 54/2017);
- the engaged sports activity;
- an athlete's remuneration; and
- if agreed between the parties, the respective trial period, which cannot exceed 15 days for up to two-year contracts and 30 days for contracts over two years (please note that, differently from the previous regime, the existence of a trial period now depends on it being stated in the contract).

As to the parties' rights, obligations and guarantees, Law 54/2017 states the customary employer/employee rights and

obligations dichotomy, specifying, for example, as obligations on the part of the athlete, the duties of rendering the respective sports activity, participating in training, submitting to medical exams, complying with the employer's code of conduct and with sports ethics and maintaining suitable fitness for competition. On the part of the sports entity the main obligations are, besides the expected duty to pay the athletes an agreed remuneration, the obligation to provide adequate conditions for the performance of sports activities, the duty to allow the athlete to represent his or her national team and the obligation for him or her to undergo all required medical examinations.

Law 54/2017 also gives due protection to the athletes' image rights (see section **6 Intellectual Property** for more detail on IP and image rights in sports) and expressly condemns and prohibits any kind of harassment in the context of the sports labour relationship.

On the subject of temporary and definitive transfers of athletes, Law 54/2017 gives ample room to the regulations implemented by the respective sports federation and also to existing collective bargaining agreements, although affirming certain mandatory principles which have to be complied with by the legislator and/or by the relevant sports federation, in particular (i) the need for authorisation from the athlete in respect of any envisaged transfer, (ii) the joint liability for both the transferor and the transferee with regard to the athlete's remuneration in the event of temporary transfer and, most importantly, (iii) the freedom-of-work principle for out-of-contract athletes, deeming null and void any norm which may limit such standards.

Notwithstanding the freedom-to-work principle, Law 54/2017 accepts as a general principle that the new employer may be accountable to pay compensation for the athlete's development and training, as long as such compensation does not disproportionately affect the freedom for the athlete to enter into a new employment contract. This compensation may alternatively be disbursed by the athlete and shall not be due where the employment contract is terminated with cause by the sportsperson or if the contract is terminated by the employee without just cause.

On the matter of sports employment contract termination, Law 54/2017 is aligned with the customary labour law grounds for termination. That is to say, a sports employment contract can terminate:

- due to expiration of its term;
- by mutual agreement revocation;
- with just cause by the employee;
- with just cause by the employer;
- by rescission during the trial period; and
- via the so-called collective redundancy procedure.

In addition, and this is now expressly foreseen in Law 54/2017, the contract may establish the possibility for the athlete, unilaterally and without cause, to terminate a sports employment contract upon payment to the employer of pre-established compensation. This amount may be reduced by a court of law if it is found to be excessive vis-à-vis the remaining duration of the employment contract. Should the athlete terminate without cause, the new employer shall be, in principle (ie, except if it proves otherwise), jointly liable for payment of compensation to the prior employer.

On the topic of sports training contracts, Law 54/2017 establishes as mandatory that only athletes aged between 14 and 18 years old (and medically fit) can be a party to it and that only certified sports entities may engage in a sports training contract. Athletes must be provided with an adequate work environment and sufficient human and technical resources. The maximum admissible length for these contracts shall be three years and the minimum duration one year (although the contract shall automatically expire at the end of the sports season in which the athlete turns 18 years of age).

The sports training contract has to be executed in writing and will terminate by the expiration of its term, mutual agreement revocation, termination with cause by any of the parties and (this is now expressly foreseen in Law 54/2017) rescission by the athlete at any time, with a minimum 30 days' notice. The sports entity in charge of the athlete's training, during the period preceding the athlete's signing of his or her first sports employment contract with a new employer, shall be entitled to receive training compensation from the latter.

The two major collective-bargaining agreements on this subject are (i) the one which regulates labour relations between sports clubs and football players, entered into between the Portuguese Professional Football League and the Professional Football Players Union, and (ii) the one which regulates the labour relations between sports clubs and football managers entered into between the league and the National Association of Football Managers (the latter one applicable to all football clubs and managers regardless of being part of that league or union, respectively).

Apart from the collective-bargaining agreement for football managers, there is also a specific general legal framework applicable to most sports trainers (including football managers) – Law 40/2012, 28 August 2012 – that governs several aspects related to access and exercise of that activity. Pursuant to this legal framework, sports trainers are subject to adequate professional qualification – contracts entered into by trainers without adequate professional qualification are void. There are certain requirements for obtaining professional qualification, which are based on education or experience. The authority responsible for the issuance of certificates

of professional qualification is the Portuguese Institute for Sports and Youth (IPDJ), which is also the entity that applies sanctions (fines of up to EUR5,000 for individuals and up to EUR10,000 for legal persons) in the case of non-compliance with the rules provided for in Law 40/2012 (disciplinary sanctions are applied by the relevant federations). Issuance of the certificate of professional qualification is subject to fees determined by the competent government members.

As already detailed in section 2.2 **Contractual Dispute Resolution** above, currently in Portugal contractual disputes arising from sports contracts may be subject to arbitration or public courts.

3.2 Remedies of a Legal Violation

See above, 3.1 **Regulating Individuals in Sporting Events.**

4. Governmental Regulation - Antitrust Law

4.1 Role of Competition/Antitrust Law in the Organisation of Professional Sports

Competition law does not directly impact the way professional sports are organised in Portugal. Nevertheless, the Portuguese antitrust framework (notably in terms of restrictive practices and abuse of dominance) is similar to the rules contained in the Treaty on the Functioning of the European Union (TFEU, Articles 101 and 102) and, as such, all conditions being met, is also applicable to conduct adopted by sports organisations (eg, national sports federations and associations, acting both as undertakings and associations of undertakings) in the case of a competition law infringement. As a Member of the European Union, all the relevant European *acquis* in terms of competition rules is also applicable in the Portuguese sports setting.

Additionally, there has been relevant activity by the Portuguese Competition Authority (PCA), notably in the context of football television rights and advertisement slots in stadiums.

In this setting, in 2013 the PCA sanctioned a sports channel for abusing its dominant position in the premium sports pay-TV market, applying a EUR3.7 million fine. The decision of the PCA was confirmed by the Lisbon Court of Appeal in 2015, albeit reducing the fine to EUR2.7 million.

Further, in 2015 the PCA closed a vertical restraints case related to contracts between a Portuguese group of companies active in the market of broadcasting football matches and sports events, and professional football clubs (first and second leagues). This case was closed following commitments which included a cap for the exclusivity period contained in the contracts, limitations on the use of a so-called

suspension clause (which allowed suspending the contracts whenever a club was to be relegated to a lower league), and elimination of pre-emption rights in favour of the group.

More recently, since 2016 the PCA has been monitoring the market for television broadcasting rights of national and international sports contents, following several contracts entered into between pay-TV and/or telecom companies and major Portuguese professional football clubs.

5. Direct Governmental Regulation of Sports

5.1 Structure of Sporting Competitions

The main legal instruments in the Portuguese legal framework that govern how sports competitions must be structured are the Sports Framework Law (Law 5/2007, 16 January 2007), and the Legal Framework for the Sports Federations and the Conditions for the Attribution of Public Utility Status (Decree-Law 248-B/2008, 31 December 2008, as amended).

The general structure for the organisation of sports competitions is provided for in Sports Framework Law which, under the chapter dedicated to “Sports Associations” establishes the following setting:

- Olympic organisation, headed by the Olympic and Paralympic Committees of Portugal, which are responsible on an exclusive basis for the national delegations that participate, respectively, in the Olympic and Paralympic Games, and in other sports competitions organised under the auspices of the International Olympic Committee and International Paralympic Committee;
- sports federations, as defined in section 1.1 **Legal Structure**, above;
- clubs and sports companies – clubs are non-profit associations with the scope of promotion and direct practice of sports disciplines, while sports companies are specific public or limited liability companies established by clubs that participate in professional competitions (although clubs not participating in professional competitions may also establish a sports company). The relevant legal regime for sports companies is provided for in Decree-Law 10/2013, 25 January 2013, as amended.

Hence, apart from the Olympic organisation, the different sports competitions are generally structured under the auspices of the relevant federation which is responsible, *inter alia*, for promoting, regulating and managing on a national level a specific sports discipline or a set of similar or associated sports disciplines, and is granted public utility status. This depends on whether the sports discipline concerned complies with several requirements provided for in the law.

Contributed by Moraes Leitão, Galvão Teles, Soares da Silva & Associados, SP, RL. Authors: Dzhamil Oda, Francisco Cortez, Paulo Rendeiro, Sofia Vaz Sampaio

Federations have the exclusive right to attribute national and regional sports titles and to organise national teams, and their attributions also include regulation of the competitive framework for the relevant sports discipline.

As detailed in section 1.1 **Legal Structure** above, professional sports competitions are organised under a professional national league, which is a non-profit association that exercises its powers by delegation of the relevant federation (including regulating the competitions and establishing the respective requirements for participation), and must be administratively, technically and financially autonomous vis-à-vis the relevant federation.

In the case of collective sports, clubs and sports companies may be grouped as associations. Regarding non-professional sports competitions, these associations may exercise, by delegation of the relevant federation, the powers that are attributed to that federation provided that the association groups all the clubs participating in a specific competition.

Clubs participating in geographically limited competitions are grouped in clubs' associations organised in accordance with the geographical area where such competitions are held. Those associations exercise, by delegation of the relevant federation, the powers that are attributed to that federation.

Federations may not refuse the enrolment of sports agents (athletes, coaches, referees, etc), clubs or sports companies located in Portugal provided that they comply with the regulatory requirements for the affiliation provided in the statutes of the relevant federation.

Representatives of clubs, practitioners, coaches, referees and judges or any other sports agents affiliated with the relevant federation are part of the general meeting of that federation. The general meeting has several powers, including election and dismissal of the members of the federative bodies, approval and amendment of the federation's statutes, ratification of the professional leagues' disciplinary and refereeing regulations, and approval of proposals for the extinction of the federation.

Furthermore, competitions organised with the purpose of granting national or other official titles, as well as those aimed at classifying athletes or clubs that will represent Portugal in international competitions must comply with the following principles:

- free access to all sports agents and clubs located in Portugal that are properly enrolled in the respective federation and fulfil the requirements for participation determined by the federation;

- equality of all athletes in the development of the competitions, without prejudice of the classifications that are established based on exclusively sports criteria;
- publicity of regulations for each competition and of the decisions applying those regulations, as well as of the respective grounds whenever the decisions are adopted in writing; and
- impartiality and neutrality in the judgment of technical and disciplinary issues.

All sports agents (athletes, coaches, referees, managers, etc), clubs or sports companies conducting activities comprised in the statutory scope of the relevant federation are subject to its disciplinary regulations and powers.

More detailed rights, duties, sanctions, disciplinary procedures, and other relevant particularities are contained in the relevant federation statutes and regulations.

Despite the fact that federations are granted public utility status and therefore exercise certain public authority powers, there are other governmental and public authorities with specific attributes related to sports competitions, notably the government member responsible for sports, the National Sports Council (CND), the Portuguese Anti-Doping Authority (ADoP), and the Portuguese Institute for Sports and Youth (IPDJ).

The scope of the powers of the government member responsible for sports includes:

- granting (as well as suspending, cancelling and renewing) public utility status to federations, following prior consultation with the Olympic Committee of Portugal (and, if applicable, with the Paralympic Committee of Portugal) and with the Portuguese Sports Confederation, as well as the opinion of the CND;
- setting the list of collective and individual sports disciplines, after prior consultation with the CND; and
- recognising the professional character of a sports competition.

Currently, the duties of this governmental body are exercised by the Secretary of State for Youth and Sports, within the Ministry of Education.

The CND is an advisory body comprised of representatives of the public administration and the sports associative movement, and its opinion must be obtained regarding several topics related to federations and sports organisation and competitions. This body is also involved in the recognition of the professional character of sports competitions in each specific sports discipline, and responsible for regulating, on a provisional basis, a number of organisational matters related

to professional sports competitions whenever the relevant federation and league are in disagreement.

ADoP is the authority responsible for doping control and enforcement of anti-doping rules in Portugal.

IPDJ is, in the particular context of sporting competitions, the public authority responsible for the application of preventive and repressive measures in the context of sports ethics, notably related to doping, corruption, violence, racism, and xenophobia, as well as truth, loyalty and correctness of competitions and respective results. Pursuant to Law 39/2009, 30 July 2009, as amended, IPDJ has also several powers and attributes (including application of sanctions of up to EUR400,000) in the context of sports events, which comprise among other things monitoring and registration of regulations for prevention of violence and regulations for safety and use of public spaces, liaison with promoters and/or organisers of sports events and public security forces regarding several safety issues related to sports events, and determination of the risk level of the events.

6. Intellectual Property

6.1 Basic Legal Structure

General Overview

As a member of the European Union (EU), the World Trade Organization (WTO) and a signatory of most of the international treaties related to intellectual property, the Portuguese jurisdiction provides for the same intellectual property rights that are present in many other countries – such as patents, trade marks and copyrights – and their scope and nature are similar to that which exists in the rest of Europe.

In terms of the framework of the Portuguese intellectual property system, it is necessary to highlight: (i) the Portuguese Industrial Property Code (approved by Decree-Law 36/2003, 5 March 2003, as amended), which deals with, inter alia, the protection and enforcement of trade marks, patents, and designs; and (ii) the Copyright and Neighbouring Rights Code (approved by Decree-Law 63/85, 14 March 1985, as amended), which regulates, inter alia, copyrights, performance rights and broadcasting rights. Apart from these two major codes, there are several laws and decrees covering specific intellectual property rights and enforcement measures.

Trade Marks

In the field of sports, trade marks are without a doubt the most used and valuable intellectual property rights. Trade marks are fundamental for endorsement deals, sponsorships and merchandising. Many entities in the sports sector know the importance of their brands and have taken measures to protect them through trade-mark registrations. Portuguese sports clubs and leagues typically register their names and

logos as registered trade marks, not only in their “home” country but also abroad. It is also frequent for clubs, leagues and event organisers to register the design of merchandising articles and souvenirs, including clothing.

Following the trends seen in other countries, Portuguese clubs have begun to open their own brand stores and license their trade-mark rights for all types of products. Indeed, the licensing of sports club brands (namely of the “Big Three” – Benfica, Porto and Sporting) is one of the most active areas in the intellectual property field. The licensing deals in this sector adopt, by and large, the customary contractual clauses seen in the licensing of other brands (eg, luxury goods).

Trade-mark infringement is a crime under Portuguese law (Articles 323 and 329 of the Industrial Property Code). It so happens that sports equipment and football club merchandising are some of the articles that are most subject to counterfeiting in Portugal and there have been hundreds of criminal cases surrounding the counterfeiting of sports-related items. In these cases, the clubs or sports equipment companies must file an official complaint for the proceedings to go to trial and they must also normally provide detailed expert reports comparing the genuine articles to the counterfeit ones. The process is often considered somewhat frustrating for brand-owners, since the cost of enforcement can rarely be recovered when the counterfeiting is done on a small scale or by persons with little or no assets in their name.

See **6.2 Rights of Athletes**, below, for information on individual players’ image rights, etc.

Copyright and Neighbouring Rights

Copyright and broadcasting rights are another crucial part of the Portuguese sports ecosystem since it is the way most clubs and event organisers draw revenue from the public sports events that they provide.

The issue of how a sports event is legally protected in Portugal has been highly debated amongst scholars and academics, although it is fairly undisputed that the organiser of the event has certain exclusive rights over it, particularly when it is held in the organiser’s facilities (eg, stadium). This exclusive right to exploit a sports event is sometimes called a “*direito de arena*” (arena right), an expression that was coined in Brazil and is an established legal concept in that country.

In Portugal, the theories behind the “arena right” vary, inter alia, from a customary right akin to an intellectual property right (since a sports event is not covered by an intellectual property right *stricto sensu*), to a new property right or to a contractual right that results from the organiser’s relationship with the athletes. Irrespective of the legal qualification,

it is widely accepted that the organiser of an event or a sports club is entitled to control and exploit the event.

For further information on broadcasting, see **6.4 Laws Restricting the Sale of Broadcasting Rights to Sporting Events**, below.

Marketing

Intellectual property and marketing normally go hand-in-hand. Indeed, the main purpose of marketing is to promote brand awareness and generate consumer loyalty. When companies seek to promote their brands in the sports sector, it is necessary to take into consideration certain rules. By way of example, advertisements cannot associate the consumption of alcoholic beverages with physical exercise (Article 17(1) (f) of the Portuguese Advertising Code) and sports events in which minors participate must not exhibit or mention, either implicitly or explicitly, alcoholic beverage trade marks. It has not been clarified if the minors must actively participate in the event or if the fact that they are mere spectators is sufficient to infringe this rule. The issue has been raised in publications and commentaries but there is no clarifying case law.

Portuguese law also states that the content of a sponsored broadcast may not in any way be influenced by a sponsor to the point of affecting the editorial independence and responsibility of the broadcaster. This issue is often raised in cases where a sponsor of football games tries to get the broadcaster to show the sponsor's brand on-screen immediately after a goal is scored.

For related information on “ambush marketing”, see

6.5 Legal Issues with “Ambush” Marketing, below.

6.2 Rights of Athletes

Athletes are idols for many people. Their skills and talent in playing a sport inspire awe and provide endless joy. Some sportspersons become celebrities known all over the world and have millions of fans greeting them wherever they go. It is therefore understandable why many companies seek to associate themselves with athletes and desire their endorsement for the goods and services that the company sells and provides. An endorsement can be done in many ways, but companies often seek to use the athlete's image and associate it with the company's brand.

A sportsperson's right over his or her image is provided for in several laws in Portugal. First and foremost, the Portuguese Constitution, the highest law in the land, expressly states that each citizen has a right to his or her image. Article 79(1) of the Portuguese Civil Code further provides that it is forbidden to reproduce or commercially exploit a person's image without his or her consent. Articles 72 and 74 of the same code also forbid the use of someone's name or nickname (if

the latter is well-known) without authorisation. Lastly, Article 14(1) of Law 54/2017, 27 July 2017 (the Legal Regime of Sports Contracts) states that every professional sportsperson has the right to use his or her public image related to sports and to oppose that third parties use that image for commercial purposes or other economic ends (without prejudice to the possibility of the sportsperson contractually assigning to a third party any such commercial exploitation). The following paragraph of the same article safeguards the so-called “collective image rights” (ie, the image rights in a team or group of sportspersons context) which belong to the sports entity (ie, the employer), and which can be subject to regulation via collective bargaining agreement.

These legal rules are the basis for endorsement contracts with sportspersons under Portuguese law. An athlete is legally entitled to authorise a third party (typically a company) to use his or her name and/or image for commercial purposes. This authorisation can be given in exchange for a certain remuneration or it can be given for no financial consideration (eg, to endorse a charity). It is also frequent for a sportsperson to authorise his or her club or federation to use the athlete's name and image for commercial and advertising purposes. This possibility has been confirmed by the Portuguese Supreme Court in a judgment handed down on 25 October 2015 (Case 05A2577).

One important particularity of Portuguese law is that, pursuant to Article 81(2) of the Civil Code, all voluntary consents given by an athlete to a third party for the latter to use the former's name and/or image can be freely revoked. This possibility of freely revoking consents does not exempt the athlete from having to indemnify the other party for damages it suffers on account of the revocation.

It should be noted that the rules contained in the Civil Code are further reinforced by the Portuguese Advertising Code. Article 7(2)(e) of this code states that it is forbidden to use someone's image and words in advertising without the person's authorisation.

In light of the above, it is clear that, under Portuguese law, athletes have a great deal of control over the commercial use of their name and image, especially since consents can always be revoked at any time.

It is also worth pointing out that more famous athletes tend to protect their names or nicknames as registered trade marks and domain names. Protection through these type of intellectual property rights allows the sportsperson to strengthen their control over the commercial use of their names and, consequently, increase the value of endorsement deals. Formal protection through registered trade marks and domain names is also relevant to prevent trade mark and

Contributed by Morais Leitão, Galvão Teles, Soares da Silva & Associados, SP, RL. Authors: Dzhamil Oda, Francisco Cortez, Paulo Rendeiro, Sofia Vaz Sampaio

domain name squatting, a scourge that affects many well-known sportspersons.

6.3 League, Club and Sporting Event Rights

See above, **6.1 Basic Legal Structure** and below, **6.4 Laws Restricting the Sale of Broadcast Rights to Sporting Events** for details of league, club or sporting event intellectual property rights.

6.4 Laws Restricting the Sale of Broadcast Rights to Sporting Events

As is well known, the lion's share of the revenue generated by sports events is normally in the broadcasting rights which are licensed to a broadcaster. This is done through a contractual arrangement whereby the event organiser/sports club exercises its arena right and grants to a broadcaster the right to access the event and broadcast it. These contractual arrangements are essentially intellectual property licensing agreements.

In short, it is this ability to exploit intellectual property and arena rights through contractual arrangements that allows clubs and other entities to draw income from sports events and competitions. Given the large audiences that some of these events attract and the advertising fees that broadcasters can charge, the latter are often willing to pay considerable sums of money to secure the broadcasting rights.

As mentioned above, broadcasting rights are normally provided on an exclusive basis. It should be noted, however, that the Portuguese Television Law (namely Article 33 of Law 27/2007, as amended) guarantees the “news access” exception.

The right to produce short news extracts has existed in European Union law since the entry into force of Directive 2007/65/EC on 19 December 2007, although the origins stretch much further back in the national laws of many European countries. The rule exists in order to provide balance between the right and duty to inform (see Article 11 of the Charter of Fundamental Rights of the European Union), on the one hand, and, on the other, the pragmatic awareness that, in some circumstances, events can only be financed if the organisers provide a broadcaster with exclusive television rights. As the Court of Justice of the European Union has summarised in its judgment of Case C-283/11, *Sky Österreich GmbH v Österreichischer Rundfunk*, the right in question “puts any broadcaster in a position to be able to make short news reports and thus to inform the general public of events of high interest to it which are marketed on an exclusive basis by guaranteeing those broadcasters access to those events. That access is guaranteed to them irrespective of their commercial power and financial capacity, on the one hand, and the price paid to acquire the exclusive broadcast-

ing rights, the contractual negotiations with the holders of such rights and the scale of the events at issue, on the other.”

In Portugal, the extent and duration of these short news extracts is fairly well defined in the law, but it continues to be a heated topic since broadcasters constantly seek to test the limits of the criteria foreseen in Article 33 of the Television Law. In addition, there is much debate on whether it is possible to reproduce excerpts of sports events in television programmes dedicated to sports commentary (but that are not classified as news reporting programmes).

In order to understand sports broadcasting, it is also necessary to be aware that there are certain events that the law-makers have deemed as being of the public interest. The European Union legislature, for example, has singled out some of these important events in the recitals of the Audiovisual Media Services Directive (Directive 2010/13/EU, as consolidated), most notably the Olympic Games, the FIFA World Cup and the UEFA European Championship. In Portugal, the government has also defined a list of sports events that cannot be broadcasted solely on subscription channels but must be simultaneously made available on free-to-air television (see *Despacho* 21 532/2001). In other words, these sports events are identified as being of public interest and the broadcasts should be accessible by all.

Online Streaming

On the enforcement side, sports broadcasters have had extreme difficulty in handling the challenges created by online streaming. When the threat of online streaming first became apparent some years ago, sports channels typically reacted by filing preliminary injunctions and main actions in the judicial courts (namely the Intellectual Property Court). However, enforcing broadcast rights through the courts is a process that takes several months at best and requires many legal formalities.

With a view to easing the copyright infringement problem in Portugal, some of the major copyright-protection stakeholders in Portugal got together and drew up a plan on how to enforce more effectively copyright and broadcasting rights. This led to a memorandum being signed (directly and indirectly) on 30 July 2015 by 18 entities, with the patronage of the Secretary of State for Culture. This self-regulatory solution has been hailed as a revolution in terms of copyright enforcement and a case study throughout the world.

The result of this multi-lateral co-operation effort has been a platform called MAPiNET that is managed by a civic movement with the same name (MAPiNET – *Movimento Cívico Anti Pirataria na Internet*). The manner in which the MAPiNET system operates is as follows:

Contributed by **Morais Leitão, Galvão Teles, Soares da Silva & Associados, SP, RL.** **Authors:** Dzhamil Oda, Francisco Cortez, Paulo Rendeiro, Sofia Vaz Sampaio

- Upon becoming aware of copyright infringing content (eg, a sports match made available online without the necessary authorisation), the owner of the rights denounces the situation to MAPiNET.
- MAPiNET then attempts to contact the site and informs them that they have been denounced and that they have the opportunity to reply and justify the use of the copyright-protected content. MAPiNET does its own research to see if the site merits enforcement. The criterion that is used by MAPiNET is whether the site contains at least 500 illegal works or if two-thirds of the site's content is pirated.
- If there is no response or the users of the content are unable to show that they have the necessary authorisation, a complaint is then made to IGAC (a government entity). In accordance with the agreement that was signed, MAPiNET expects to send to IGAC two blocks of 50 piracy sites per month.
- IGAC then notifies the Internet Service Providers (ISPs) and DNS (the entity in Portugal that manages the.pt domain names) and orders them to block the websites that have been denounced;
- The ISPs and DNS have assumed the commitment of complying with IGAC's order within 15 days and placing the notices "site unavailable" or "site not found" when the site is blocked.

The MAPiNET solution is seen by sports channels as a welcome revolution in Portugal, given that it is fairly fast and inexpensive and does not rely on any judicial intervention. Naturally, there are those also on the other side of the barricade that criticise and complain of the lack of due process and judicial control which may lead to situations of abuse and illegality. At present, the MAPiNET solution is highly recommendable for sports broadcasters that wish to prevent or cease illegal streaming and placing of content on the internet.

6.5 Legal Issues with "Ambush" Marketing

Ambush marketing is a marketing strategy in which an advertiser takes advantage of a prominent event and launches an advertising campaign associated to that event without being an official sponsor (ie, without having paid sponsorship fees). Ambush advertisers typically associate themselves to events by indirect means – where the advertiser alludes to the imagery and themes of an event without any references to specific trade marks – or by direct means – where the advertiser makes statements in their marketing that mislead consumers into believing they are officially associated with the event (including the fraudulent use of official names and trade marks).

Direct ambush marketing is clearly forbidden by Portuguese law. The unauthorised use of registered trade marks is prohibited by industrial property legislation (Articles 258 and 323 of the Industrial Property Code) and unfair competition

legislation (Article 317 of the same code). Furthermore, it is normally also considered false or misleading advertising, which is forbidden and punishable under the Portuguese Advertising Code and the Legal Regime of Unfair Commercial Practices (Decree-Law 57/2008, 26 March 2008).

Ambush marketing has been a concern for the organisers of major sporting events for some time, since these practices can significantly devalue the exclusive sponsorship rights that are sold to companies and, in some cases, infringe upon the organisers' intellectual property.

In an effort to control ambush marketing, organisers (including, most prominently, FIFA, UEFA and the International Olympic Committee) have, in recent years, required host countries to enact special laws restricting the use of their associated intellectual property. In Portugal, this occurred in 2004 when UEFA's European Championship was held in this country. Indeed, prior to the event, the Portuguese government enacted Decree-Law 86/2004, 17 April 2004, that specifically protected and reserved certain symbols, signs, designations and expressions and created specific penalties for infringers.

Indirect ambush marketing is harder to prevent since it is not always clear where the frontier of legality falls. Indeed, there is often a grey area between marketing campaigns that seek to support a national team, on the one hand, and a misleading and unethical unauthorised association of a brand to a sports event, on the other. To prevent indirect ambush marketing, affected parties must typically resort to the provisions that forbid unfair competition and unfair commercial practices. However, the lack of specific rules regarding ambush marketing has led to many cases being unsuccessful.

In Portugal, it is possible to file a complaint with the *Auto-Regulação Publicitária* (formerly ICAP – *Instituto Civil de Actividade Publicitária*), an entity that manages a self-regulation advertising code and arbitration centre. To file a complaint with this self-regulatory entity it is not necessary for the parties to be members. Furthermore, it is necessary to note that the decisions are not legally enforceable, but they do carry significant weight and are highly respected. Over the past two decades, this self-regulatory advertising agency has produced a fair amount of case law on ambush marketing (eg, Decision 11J / 2014: *Federação Portuguesa de Futebol v Pingo Doce*, *Distribuição Alimentar*; Decision 10J / 2014: *Olivedesportos v ITMP Alimentar*) and it is seen as the best forum for litigating advertising disputes.

7. Agent Issues

7.1 Basic Role and Importance of Agents

Agents (or intermediaries) have an important role in Portugal, notably in football, in the context of representation of athletes and clubs in transfers and the conclusion of employment contracts. This is reflected in the spending with intermediary commissions, namely in transactions where Portuguese football clubs are the releasing party. According to available data on the Portuguese Football Federation's (FPF) website, between 1 April 2016 and 1 March 2017, 187 transactions were intermediated by agents, leading to almost EUR50 million spent with commissions. Whereas circa EUR233,000 was paid to agents by football players, clubs have spent circa EUR49 million. Currently, there are 296 intermediaries registered before the FPF.

Furthermore, pursuant to FIFA TMS' report on intermediaries in international transfers (for the period between January 2013 and November 2017), Portuguese football clubs spent USD161.1 million on intermediary commissions, being the third greatest spenders after the English and Italian clubs. Between January 2013 and November 2017, there were 125 transfers in Portugal where the releasing club was represented by an intermediary, which represents 11% of the overall number of transfers during the same period. In addition, the expenses of releasing clubs with intermediary commissions are higher (USD86.6 million) than those of engaging clubs (USD74.6 million), which relates to the growing development of Portuguese clubs' scouting departments, leading to large transactions involving Portuguese young players or players from other countries (especially Brazil and other South American countries) trained and developed in Portugal. While agent commission for outgoing transfers is significant, there is substantial profit made by the selling club, owing to the high transfer fees involved.

7.2 Regulation of Agents

Agent (or intermediary) activity in Portugal is regulated in detail by the government and, in the case of football, also by the Portuguese Football Federation (FPF) following the approval of the FIFA Regulations on Working with Intermediaries (FIFA Regulations). The FPF Regulations on Intermediaries (FPF Regulations) are effective as from 1 April 2015 and in some matters go beyond the minimum standards provided for in FIFA Regulations. Additionally, there are also some differences between the FIFA Regulations and the FPF Regulations due to the specificities of the Portuguese legal framework on sports agents, which comprises Laws 5/2007, 16 January 2007 (Sports Framework Law), 54/2017, July 2017 (Legal Framework for Athletes' Employment Contracts, Sports Training Contracts and Representation or Intermediation Contracts), and 50/2007, 31 August 2007 (Legal Framework for Criminal Liability for Unsporting Behaviour). Hence, Article 1(2) of the FPF Regulations

expressly foresees that "[i]n case of conflict between these Regulations and FIFA Regulations on Working with Intermediaries, these FPF Regulations shall prevail".

Both natural and legal persons may conduct intermediation activity in Portugal, subject to prior registration before the competent national sports federation. In the case of football (which is the only federation in Portugal that regulates intermediation activity), the intermediaries must be registered before the FPF, in accordance with the terms and conditions provided for in the FPF Regulations, which include submitting documentation to confirm the good reputation of the intermediary and to rule out any incompatibilities to conduct this activity, obtaining a civil liability insurance (minimum EUR50,000 cover for damages), and paying a registration fee (currently EUR1,000). When selecting and engaging an intermediary, players and clubs should act with due diligence and, in particular, before the beginning of the provision of the relevant services, should confirm that the respective intermediaries are registered with FPF and sign a representation contract. It is worth noting that clubs, players and intermediaries are not allowed to propose to any other party involved in a transaction (directly or indirectly), that such a transaction becomes dependent on, or conditioned by, the agreement of the player with a particular intermediary.

Furthermore, intermediaries may represent only one of the parties in the context of a transaction and no deviations from this rule are allowed. This provision derives from Article 36(2) of Law 54/2017, which, in the case of football, does not allow an intermediary to represent both a player and a club. Additionally, intermediaries cannot represent minors, a solution that contrasts with FIFA Regulations that allow representation of minors and prohibit only the remuneration of such activity.

There are several legal and regulatory rules governing a set of aspects of representation contracts, namely the respective content, term, and remuneration, among other matters. For instance, representation contracts must be concluded in writing, their maximum duration is two years and automatic renewals are prohibited. In the context of football, representation contracts must be registered before the FPF, and several disclosure duties apply on intermediaries, clubs and players. If the representation contract is entered into with a player, his or her signature must be certified, and the contract must mention that he or she was provided with a copy.

In the case of representation of athletes by intermediaries, the law provided a cap in the respective commission of 10% of the athlete's net remuneration and the obligation to pay the intermediary shall be in place only during the time-period the representation contract is in force.

Taking into account the scope of requirements that may apply to intermediation activity in Portugal, care is required before providing such services in the national territory.

8. Tort Law

8.1 Dealing with Injuries Sustained by Sporting Competitors

In Portugal, sports competitors are entitled to receive compensation due to sustained injuries. Nevertheless, it is important to distinguish between professional athletes and non-professional athletes.

With regard to professional athletes, Law 27/2011, 16 June 2011, establishes the rules governing damage compensation for work accidents in sports. Therefore, in the case of death, permanent total incapacity or permanent partial incapacity, the professional sporting competitor is entitled to receive an annual pension, which is calculated in accordance with a number of criteria; in the case of death, the competitor's heirs are entitled to receive the pension.

On the one hand, in the case of death or permanent total incapacity, the annual pension is limited to the following amounts: until the age of 35, the pension maximum limit corresponds to 14 times the amount resulting from the multiplication of 15 times the monthly minimum salary (which is currently set at EUR580); after the age of 35, the maximum limit corresponds to 14 times the amount resulting from the multiplication of eight times the monthly minimum salary.

On the other hand, in the case of permanent partial incapacity, the corresponding amounts are lower: until the age of 35, the maximum limit corresponds to 14 times the amount resulting from the multiplication of eight times the monthly minimum salary; after the age of 35, the maximum limit corresponds to 14 times the amount resulting from the multiplication of five times the monthly minimum salary.

Furthermore, in the case of temporary incapacity of a professional athlete, damage compensation is limited to the amount eventually due in accordance with the mandatory sports insurance contracted. This is also applicable for non-professional athletes, regarding any type of incapacity.

Articles 42 and 43 of the Sports Framework Law (Law 5/2007, 16 January 2007), combined with the Framework Law for Mandatory Sports Insurance (Decree-Law 10/2009, 12 January 2009), determines that the following individuals shall benefit from sports insurance:

- sporting agents (athletes, referees, coaches and sports managers) registered within a sports federation;

- athletes participating in sports activities on public infrastructures; and
- athletes participating in sports events.

Hence, the following entities are obliged to contract sports insurance: sports federations, entities responsible for managing/administering public sports infrastructures and, finally, the organisers of sports events. Consequently, sports insurance must cover (i) grant for death or permanent incapacity (total or partial), and (ii) payment of treatment expenses, including hospitalisation.

In addition to the above, high-performance athletes and professional athletes are obliged to subscribe, respectively, to health insurance and insurance against accidents at work.

8.2 Dealing with Injuries Sustained by Fans Attending Athletic Competitions

Portuguese courts have ruled on several occasions that the organisers of sports events may be liable for injuries sustained by fans attending sports competitions, awarding compensation to the injured fans. In these cases, the organisers have been deemed liable for violation and omission of duties of caution.

A model case of liability for omission (Article 486 of the Portuguese Civil Code) and improper organisation was heard by Portuguese superior courts, in the commonly designated “Very light case” in which a fan attending the final of the Football Cup of Portugal threw a firecracker into the stand of the fans of the opposing team, causing the death of one of the fans. The organiser of the event – the Portuguese Football Federation – was convicted for poor organisation and the omission of the duty to take measures in order to avoid the throwing of such firecrackers. Cumulatively, the fan who threw the firecracker was held responsible, both civilly and criminally.

It is worth mentioning Law 39/2009, 30 July 2009 (last amended by Law 52/2013, 25 July 2013), which establishes the legal framework for combating violence, racism, xenophobia and intolerance in sports events. This regime plays a preventive role in order to reduce injuries to fans attending athletic competitions; see also section 8 **Gender/Racial Discrimination**, below.

The regime sets the rules governing security measures at sports events, and foresees the necessary measures that must be adopted by organisers of sports events in order to preserve the safety of attending fans.

Furthermore, it establishes a sanctioning regime applicable to fans attending sporting events, with penalties and sanctions for disorderly conduct. The following behaviours are punishable with imprisonment (of up to eight years) or

corresponding fine: damage to public transportation, facilities or equipment used by the public; participation in riots during travel to or from sports events; throwing objects or liquid products; invasion of sports events areas; and offence to others' physical integrity.

9. Gender/Racial Discrimination

9.1 Legal Protections Addressing Equality of Opportunity

First and foremost, the general principle of non-discrimination and equality of opportunity for every person is provided for in the Portuguese Constitution, namely in Article 13: "1. All the citizens have the same social dignity and are equal before the law. 2. No one shall be privileged, benefited, impaired, deprived of any right or exempted from any duty due to his/her origin, gender, race, language, territory of origin, religion, political or ideological beliefs, education, economical situation, social condition or sexual orientation". The Charter of Fundamental Rights of the European Union – which provides similar general principles of non-discrimination (Article 21) – is also applicable in the Portuguese jurisdiction.

Furthermore, the main legal instrument addressing equality of opportunities specifically in sport is the Sports Framework Law (Law 5/2007, 16 January), which provides the principles governing sport legislation. As a Framework Law, it provides the lawmakers with guidelines to be adopted in further regulation. Notwithstanding, it is probably the most important piece of legislation on this subject and all further legislation and regulation must abide by it.

Article 2 of the Sports Framework Law, under the title "principle of equality and universality", reproduces the general principle contained in the Portuguese Constitution, stating that "[t]he right to physical and sport activity is granted to all, regardless of ethnic origin, gender, race, colour, language, religion, political beliefs", and also that "[t]he physical activity and sports must contribute to the promotion of a balanced and non-discriminatory situation between men and women". Hence, the equality of opportunity is not only addressed in the Portuguese legislation, but is also expressly provided for in one of the most important pieces of legislation regarding sports.

In addition to the above, there is also some soft law regarding non-discrimination, such as the V National Plan for Gender Equality, Citizenship and Non-discrimination 2014-2017, approved by Council of Ministers Resolution 103/2014, 12 December 2014, which aims at implementing measures that promote the balanced and non-discriminatory participation of women and men in the various sports traditionally practised by the other sex.

9.2 Issues Regarding Gender Testing and Gender Discrimination

There are no known cases of gender testing in Portugal, nor have any issues regarding gender discrimination in sports arisen up to date.

9.3 Basic Legal Framework Protecting Employees or Independent Contractors

The Portuguese Labour Code (Law 7/2009, 12 February 2009), applicable to sports employment contracts ex vi Article 3 of Law 54/2017, 14 July 2017 (which establishes the Legal Framework for Athletes' Employment Contracts, Sports' Training Contracts and Representation or Intermediation Contracts), provides as a general rule (Article 22(2)) that "workers or job applicants shall not be benefited, given advantage, prejudiced or deprived of any right or be excused from any duty on the basis of, inter alia, their parentage, age, gender, sexual orientation, marital status, genetic heritage, reduced working capacity, disability, chronic illness, nationality, ethnic origin, religion, political or ideological convictions and trade union membership", considering also as sexual discrimination "any and all exclusions or restrictions of access to any occupation or training required to gain access to such occupation placed on a job applicant or worker on the basis of their gender" (Article 27(1)). The Labour Code furthermore establishes that "job advertisements and other forms of advertising relating to pre-selection and recruitment shall not contain any direct or indirect restriction, specification or sex-based preference" (Article 27(2)).

10. Drug Testing and Conduct Regulations

10.1 World Anti-Doping Agency (WADA)

All sporting events in Portugal are subject to the code and procedures of the World Anti-Doping Agency. In fact, Law 38/2012, 28 August 2012, as amended, transposed into Portuguese law the rules set forth in the World Anti-Doping Code, establishing the Portuguese Anti-Doping Legal Framework for Sports.

The Portuguese Anti-Doping Authority (ADoP) is the entity responsible for controlling and implementing measures and procedures in order to fight doping in Portugal. ADoP has been increasing its activity; according to the last available data, in 2016, it collected and analysed around 3,826 blood samples.

It should be noted that sports federations are obliged to guarantee that their anti-doping regulations are in accordance with Law 38/2012 and with the recommendations set forth in the World Anti-Doping Code. Failure to do so entails cutting public funding to the sports federation concerned (amongst other possible sanctions).

Contributed by **Morais Leitão, Galvão Teles, Soares da Silva & Associados, SP, RL.** **Authors:** Dzhamil Oda, Francisco Cortez, Paulo Rendeiro, Sofia Vaz Sampaio

The list of forbidden substances and methods is subject to annual review. ADoP is the entity responsible for the review of the list, which is subsequently approved and published by the Portuguese Government through a Ministerial Order. The most recent list for 2018 was published in Ministerial Order 381/2017, 19 December 2017.

Pursuant to Law 38/2012, the infringement of anti-doping rules may be subject to the following consequences:

- Criminal Offence:
 - (a) trafficking or attempted trafficking of prohibited substances may be subject to imprisonment for up to five years;
 - (b) administration or attempted administration of prohibited substances may be subject to imprisonment for up to three years;
- Administrative Offence:
 - (a) disturbance of the methods aimed at controlling doping is subject to a fine;
 - (b) possession of a forbidden substance by the athlete or a member of the staff is subject to a fine;
- Disciplinary Offence:
 - (a) infringement of anti-doping rules is deemed a disciplinary offence, subject to suspension of up to 25 years;
- Sports Penalties:
 - (a) infringement of anti-doping rules may result in the athlete's disqualification, with the corresponding consequences, namely losing results, medals, points or prizes.

Moreover, it is also worth noting that the rules set forth on the European Anti-Doping Convention and in the UNESCO Convention against Doping in Sport are also applicable in Portugal.

10.2 PED Rules

Portuguese Performance Enhancing Drugs (PED) rules are not determined by collective bargaining with unions. In fact, unions do not have any type of intervention concerning PED rules and anti-doping measures and procedures.

Pursuant to Article 59 of Law 38/2012, ADoP delegates sports federations the power to conduct disciplinary proceedings and the application of sanctions for violation of anti-doping rules. However, sports federations are obliged to have an internal appeal body to which the athlete can submit an appeal of the disciplinary decision.

The decision from the disciplinary bodies of the sports federation may be appealed by the athlete before the Portuguese Court of Arbitration for Sports (*Tribunal Arbitral do Desporto*, hereinafter TAD); in the previous legal framework the decisions were appealable before the Court of Arbitration

for Sports in Lausanne. Furthermore, even though ADoP has delegated the disciplinary measures and proceedings to the sports federations, in a case of disagreement with the disciplinary decision by the sports federation, ADoP is also entitled to appeal before the TAD.

There are already some recent doping cases decided by the TAD in the context of the legal framework contained in Law 38/2012, inter alia:

- case 6/2016, involving athletics and concerning an appeal of a decision of the Portuguese Athletics Federation – award not available;
- case 31/2016, involving a football player (positive drug test) and concerning an appeal of a decision of the Portuguese Football Federation;
- case 3/2017, related to a cyclist (also, apparently, a positive drug test) and concerning an appeal of a decision of the Portuguese Cycling Federation;
- cases 66/2017 and 4/2018, also concerning appeals of decisions of the Portuguese Cycling Federation – awards not available; and
- case 7/2018, related to an appeal of a decision of the Portuguese Sailing Federation – award not available.

10.3 Legal Issues Regarding Athlete Suspensions or Discipline

In case 31/2016 (involving a football player – positive drug test – and concerning an appeal of a decision of the Portuguese Football Federation), the Portuguese Football Federation applied a sanction of a one-year suspension from sports practice. In case 3/2017 (related to a cyclist – also, apparently, a positive drug test – and concerning an appeal of a decision of the Portuguese Cycling Federation) the athlete was sanctioned with a one-year suspension from sports practice, annulment of sports results achieved in competitions from a specific date and a fine of EUR500.

In both the cases the TAD did not uphold the arguments submitted by the athletes. In case 31/2016, the TAD confirmed the decision of the Portuguese Football Federation; in case 3/2017, the TAD considered that the right to appeal the decision of the Portuguese Cycling Federation was time-barred.

11. College/Amateur Sports

11.1 Regulations and Legal Structures Conducted by Academic Institutions

Even though college sports in Portugal are still very far from receiving the recognition that they have in some other countries, we have been witnessing an increase in the number of participants, as well in the number of choices available for students.

PORTUGAL LAW AND PRACTICE

Contributed by *Morais Leitão, Galvão Teles, Soares da Silva & Associados, SP, RL*. **Authors:** Dzhamil Oda, Francisco Cortez, Paulo Rendeiro, Sofia Vaz Sampaio

In recent years, college sports have attracted more attention, even from potential employers, because there are clear physical and mental health benefits from participating in sports. In addition, the ability to play in group sports in college where there can be pressure to achieve may say a lot about someone's "soft skills".

Unlike in some other countries, in Portugal players do not usually transfer from college sports to professional teams. In fact, players – in most sports – commonly start their careers in academies established by clubs, which makes college sports less competitive.

This being said, and just to put things in context, the focus on college sports in Portugal formally began in 1940, with the creation of the IDU – *Inspecção do Desporto Universitário* (College Sport Inspection). In 1945, five years later, the first college tournaments took place. Since then, Portugal has witnessed a movement based on the transfer of self-regulatory powers to legal bodies closer to this reality. This phenomenon had its peak with the creation in 1990 of the FADU, the College Sport Academic Federation (*Federação Académica do Desporto Universitário*), granted with the status of sports public utility, meaning that it has the necessary competence to exercise both regulatory and disciplinary powers. Nowadays, FADU has more than 10,000 members, divided into 52 sports categories.

FADU is a multi-sport federation aiming to develop the practice of different sport categories, especially those regarding college students. It is governed by the sports federation's legal framework (Law 248-B/2008, 31 December 2008), as well as its own bylaws.

Said bylaws comprise, in Article 2, the purposes of FADU, amongst which are: to promote, regulate and direct college sports in Portugal; to represent its members and their interests; to represent Portuguese college sports before Inter-

national Academic Associations; to promote and organise tournaments and other national competitions between college teams; and to promote and organise college national teams.

It is also in FADU's legal power to organise national college championships and to grant respective national titles, to select the student athletes that will represent Portugal in international competitions, to exercise disciplinary power and to participate in the elaboration of Portuguese sports public policies.

Even though there is some legislation regarding young semi-professional athletes who are still students, whether in high-school or in college, which allows them, for example, to be absent from classes a greater number of times, to do exams at a different time, the same does not apply to college sports.

As noted above, college sports in Portugal are essentially amateur. Despite some initiatives by political parties, there is still a lack of specific regulation in matters concerning the status of the student athlete. Until the coming into force of a national regulation, each university is establishing its own rules.

Analysing the bylaws of some of the biggest Portuguese universities (Oporto University, and NOVA Lisbon University), one might conclude that some rights are already given to athletes: a priority in choosing class schedules, extra time to turn in papers, and opportunity to take written exams outside of the competition season. There are also some responsibilities: to attend 75% of the classes, to maintain good grades – and, of course, always to be ethical and play fairly when representing the university.

As we can see, there is quite a long way to go in Portuguese college sports. However, the future looks interesting and exciting.

Morais Leitão, Galvão Teles, Soares da Silva & Associados

Rua Castilho, 165
1070-050 Lisboa

Tel: +351 213 817 400
Fax: +351 213 817 499
Email: mlgtslisboa@mlgts.pt
Web: www.mlgts.pt

MORAIS LEITÃO
GALVÃO TELES
SOARES DA SILVA