The
Sports Law Review

Editor
András Gurovits

Law Business Research Ltd
THE LAW REVIEWS

THE Mergers and Acquisitions Review
THE Restructuring Review
THE Private Competition Enforcement Review
THE Dispute Resolution Review
THE Employment Law Review
THE Public Competition Enforcement Review
THE Banking Regulation Review
THE International Arbitration Review
THE Merger Control Review
THE Technology, Media and Telecommunications Review
THE Inward Investment and International Taxation Review
THE Corporate Governance Review
THE Corporate Immigration Review
THE International Investigations Review
THE Projects and Construction Review
THE International Capital Markets Review
THE Real Estate Law Review
THE Private Equity Review
THE Energy Regulation and Markets Review
THE Intellectual Property Review
THE Asset Management Review
THE Private Wealth and Private Client Review
THE Mining Law Review
THE EXECUTIVE REMUNERATION REVIEW
THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW
THE CARTELS AND LENIENCY REVIEW
THE TAX DISPUTES AND LITIGATION REVIEW
THE LIFE SCIENCES LAW REVIEW
THE INSURANCE AND REINSURANCE LAW REVIEW
THE GOVERNMENT PROCUREMENT REVIEW
THE DOMINANCE AND MONOPOLIES REVIEW
THE AVIATION LAW REVIEW
THE FOREIGN INVESTMENT REGULATION REVIEW
THE ASSET TRACING AND RECOVERY REVIEW
THE INTERNATIONAL INSOLVENCY REVIEW
THE OIL AND GAS LAW REVIEW
THE FRANCHISE LAW REVIEW
THE PRODUCT REGULATION AND LIABILITY REVIEW
THE SHIPPING LAW REVIEW
THE ACQUISITION AND LEVERAGED FINANCE REVIEW
THE PRIVACY, DATA PROTECTION AND CYBERSECURITY LAW REVIEW
THE PUBLIC-PRIVATE PARTNERSHIP LAW REVIEW
THE TRANSPORT FINANCE LAW REVIEW
THE SECURITIES LITIGATION REVIEW
THE LENDING AND SECURED FINANCE REVIEW
THE INTERNATIONAL TRADE LAW REVIEW
THE SPORTS LAW REVIEW

www.TheLawReviews.co.uk
The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ADVICE LAW FIRM
AL TAMIMI & COMPANY
ALLEN & GLEDHILL LLP
ALLENDE & BREA
ALTIUS
CASTRÉN & SNELLMAN ATTORNEYS LTD
CHARLES RUSSELL SPEECHLYS LLP
COCCIA DE ANGELIS PARDO & ASSOCIATI
CUATRECASAS, GONÇALVES PEREIRA
GOLDENGATE LAW FIRM
MARTENS RECHTSANWÄLTE
MINTER ELLISON RUDD WATTS
NIEDERER KRAFT & FREY LTD
PINHEIRO NETO ADVOGADOS
PINTÓ RUIZ & DEL VALLE
SOFOKLIS P PILAVIOS LAW FIRM
## CONTENTS

**Editor’s Preface** ........................................................................................................... V
*András Gurovits*

**Chapter 1**
ARGENTINA ...................................................................................................................... 1
*Juan Martin Allende and Laura Inés Kurlat*

**Chapter 2**
BELGIUM ......................................................................................................................... 14
*Sven Demeulemeester*

**Chapter 3**
BRAZIL ................................................................................................................................ 27
*Adolfo Julio Camargo de Carvalho*

**Chapter 4**
DENMARK ......................................................................................................................... 39
*Lars Hilliger*

**Chapter 5**
ENGLAND AND WALES ................................................................................................. 56
*Jon Ellis, Ian Lynam, Paul Shapiro and Ben Rees*

**Chapter 6**
FINLAND ............................................................................................................................ 72
*Pia Ek and Hilma-Karoliina Markkanen*

**Chapter 7**
GERMANY .......................................................................................................................... 84
*Dirk-Reiner Martens and Alexander Engelhard*

**Chapter 8**
GREECE ............................................................................................................................... 108
*Sofoklis P Pilavios and Ioannis Mournianakis*

**Chapter 9**
ITALY ................................................................................................................................... 117
*Mario Vigna and Francisco A Larios*

**Chapter 10**
NEW ZEALAND ................................................................................................................. 134
*Aaron Lloyd*
Chapter 11  
PORTUGAL ................................................................................. 146  
Luís Soares de Sousa

Chapter 12  
SINGAPORE ........................................................................ 157  
Ramesh Selvaraj, Tham Kok Leong, Daren Shiau and  
Usha Chandradas

Chapter 13  
SPAIN ....................................................................................172  
Jordi López Batet and Yago Vázquez Moraga

Chapter 14  
SWITZERLAND ...................................................................... 183  
András Gurovits, Martina Madonna-Quadri and René Fischer

Chapter 15  
UKRAINE ................................................................................ 201  
Anton Sotir

Chapter 16  
UNITED ARAB EMIRATES .................................................. 216  
Steven Bainbridge, Ivor McGettigan and Niall Clancy

Appendix 1  
ABOUT THE AUTHORS ......................................................... 233

Appendix 2  
CONTRIBUTING LAW FIRMS’ CONTACT DETAILS ...245
EDITOR’S PREFACE

In line with the increasing commercialisation of sports events, sports-related legal issues have become a matter of growing interest in the academic field, in the practice of state courts and specialised courts of arbitration, as well as in the daily operations of sports clubs and sports businesses. The number of specialised advisers is growing to keep pace with the increasing need for support in the area of sports and pertaining legal issues.

Sports law is not a single legal topic, but rather a field of law that includes a wide variety of legal areas, such as contract, corporate, intellectual property, civil procedure, arbitration and criminal law. Because of the specificity of the sports sector, where private organisations govern many important aspects of the relevant sports issues, the sports law practitioner has to be familiar not only with the pertaining statutory laws, but also with the set of private rules enacted by the sports governing bodies. While the statutory laws of a particular jurisdiction apply, as a rule, only within the borders of that particular jurisdiction, the private sets of rules of international sports federations such as FIFA, UEFA, FIS, IIHF and IAAF have worldwide reach. The profession of the sports lawyers who are familiar with these international private norms and apply them in their daily practice may, therefore, have a strong international dimension. This notwithstanding, local laws remain relevant in respect of all matters not covered by these private sets of rules, as well as in respect of local mandatory provisions that may prevail or invalidate certain provisions of regulations set forth by sports governing bodies. This was one of the principal reasons behind the launch of the present publication. Its goal is to provide a practical, business-focused analysis of recent developments and their effects on the sports law sector; it will serve as a guidebook for practitioners as to how a selected range of legal topics is dealt with under various national laws. The guidance given herein will, of course, not substitute for any particular local law advice that a party may have to seek in connection with sports-related operations and activities.

Because of certain limitations in terms of the length and complexity of the country-specific chapters, this book can only cover a selection of sports law issues, which the reader will, hopefully, find helpful. Each chapter will start by discussing the legal framework of the relevant jurisdiction permitting sports organisations, such as sports
clubs and sports governing bodies (e.g., national and international sports federations),
to establish themselves and determine their organisational structure, as well as their
disciplinary and other internal proceedings. The section detailing the competence
and organisation of sports governing bodies will explain the degree of autonomy that
sports governing bodies enjoy in the jurisdiction, particularly in terms of organisational
freedoms and the right to establish an internal judiciary system to regulate a particular
sport in the relevant country. The purpose of the dispute resolution system section is
to outline the judiciary system for sports matters in general, including those that have
been dealt with at first instance by sports governing bodies. An overview of the most
relevant issues in the context of the organisation of a sports event is provided in the
next section and, subsequent to that, a discussion on the commercialisation of such
events and sports rights will cover the kinds of event- or sports-related rights that can
be exploited, including rights relating to sponsorship, broadcasting and merchandising.
This section will further analyse ownership of the relevant rights and how these rights
can be transferred.

Our authors then provide sections detailing the relationships between professional
sports and labour law, antitrust law and taxation in their own countries. The section
devoted to specific sports issues will discuss certain acts that may qualify not only as
breaches of the rules and regulations of the sports governing bodies, but also as criminal
offences under local law, such as doping, betting and match fixing.

In the final sections of each chapter the authors provide a review of the year,
outlining recent decisions of courts or arbitral tribunals in their respective jurisdictions
that are of interest and relevance to practitioners and sports organisations in an
international context, before they summarise their conclusions and the outlook for the
coming period.

This first edition of *The Sports Law Review* covers 16 jurisdictions. Each chapter
has been provided by renowned sports law practitioners in the relevant jurisdiction and
as editor of this publication I would like to express my greatest respect for the skilful
contributions of my esteemed colleagues. I trust also that each reader will find the work
of these authors informative and will avail themselves at every opportunity of the valuable
insights contained in these chapters.

**András Gurovits**
Niederer Kraft & Frey Ltd
Zurich
November 2015
Chapter 3

BRAZIL

Adolpho Julio Camargo de Carvalho

I ORGANISATION OF SPORTS CLUBS AND SPORTS GOVERNING BODIES

i Organisational form

As established by the Brazilian Civil Code, Brazilian sports clubs have been traditionally organised as associations. Initially conceived as entities that were merely dedicated to the educational and leisure aspects that any given sports practice may provide to a community, sports clubs traditionally did not have an economic activity as a purpose (let alone have this as their main purpose).

Law 9,615/98 (also called Pelé’s Law, after Brazil’s most famous footballer) establishes that sports clubs dedicated to the practice of educational, non-professional sports activities (as opposed to the practice of sports activities by professional athletes who earn their living through their participation in remunerated sports events) should organise themselves, and be managed, in the legal form of an association.

Many activities perceived to be vital to the functioning of a sports club (such as the negotiation of any rights over athletes, licensing of products and the negotiation of media rights) may be legally developed secondarily by sports clubs organised as associations. The prime objective of any sports club organised as an association shall be the development of the sporting practice itself.

Sports clubs that have as their main purpose the allocation of profits resulting from the exercise of an economic activity (that is, the employment of capital, workforce (i.e., professional athletes) and equipment material for the sole objective of obtaining profits from sports events) should migrate from their initial organisational legal form (association) to any of the corporate organisation forms provided by the Brazilian Civil Code.
Brazil

Code (namely general partnerships, limited partnerships, limited liability companies, joint-stock companies or limited partnerships with share capital).

The migration of sports clubs to these specific forms of corporate organisation does not occur often in Brazil, despite such migration being more in line with the purposes of professionally developed sports activities worldwide. The lack of initiative in this regard is explained by the fact that most of the time, sports clubs are dedicated to more than one single sports modality (e.g., football, volleyball, swimming) that enjoy different levels of possible commercial exploitation, which motivates sports clubs’ managers to opt to maintain an association as their ‘umbrella’ legal form of choice to organise the functioning of sports clubs.

ii Corporate governance

According to Article 2, Paragraph I of Pelé’s Law, the exploitation and management of professional sports activities constitute an economic activity and shall be subject, inter alia, to the following principles: financial and administrative transparency, sound management and the accountability of its managing officers.

Pelé’s Law also provides that the by-laws of sports clubs and sports administration bodies (such as confederations at the federal level, and federations at the state and municipal levels, defined by the law as ‘sports organisations’) oblige the dismissal of a manager in the following circumstances:

a) if the manager is convicted for any felony in a final judgment;
b) if the manager is found guilty of mismanagement of any public funds in a final administrative decision;
c) if the manager causes the default of the accounting of a sports club or organisation’s accounts;
d) if the manager is removed from an elective office of any sports organisation for his or her irregular management of its assets or his or her reckless management of the above-mentioned organisations;
e) if the manager defaults on any social security or labour contributions; or
f) if the manager is declared insolvent.

Pelé’s Law also provides for the immediate removal of the managers of sports clubs or sports organisations, whether they have been elected or appointed, if any of the above-mentioned factual situations is evidenced, regardless of express provisions to the contrary in this regard in the by-laws of a sports club or sports organisation.

To ensure better corporate governance of sports clubs and sports organisations, Pelé’s Law sets forth minimum accounting requirements for the financial statements of clubs and organisations, at the same time guaranteeing unrestricted access to documents and information related to the management of a sports club or sports organisation to all of its associates or shareholders whenever they are gathered at a club or organisation’s annual general meeting.

Further to this provision, Pelé’s Law establishes that any proceeds from the credits or assets of sports clubs, sports management organisations or organised sports leagues must always revert solely to their own benefit. It also establishes that any damage caused to a sports club or sports organisation’s assets due to culpable mismanagement on the
part of the managers will result in their private assets being used to address such damage. Managers are deemed jointly and severally liable for any unlawful acts of reckless management or any acts that may be considered as being contrary to the provisions of a sports club or organisation’s by-laws. Clubs and organisations may not use their assets to pay their own capital share or offer them as collateral for the benefit of third parties unless the absolute majority of the associates or shareholders gathered at an annual general meeting, in accordance with a club or organisation’s by-laws, decides otherwise.

Pelé’s Law also establishes other general obligations of sports clubs, sports leagues, sport management bodies and sports organisations involved in any competition involving professional athletes, regardless of the legal form adopted by each of them. Clubs and organisations must prepare separate financial statements for each economic activity that they perform. The financial statements shall separate any recreational and non-professional sports activities from a club or organisation’s economic activities in accordance with criteria established by law, and in accordance with the general accounting standards and criteria established by the Brazilian Federal Accounting Council. The financial statements must be independently audited and published on a sports club’s own website and, if applicable, their publication on the website of the sports league or sports organisation to which the club is admitted is an obligation imposed on sports clubs by Pelé’s Law.

When receiving any public funding, sports clubs, sport leagues, sport management bodies and sports organisations must also submit their approved financial statements, together with the reports of independent auditors, to the Brazilian National Sports Council (CNE). Without prejudice to the penalties provided for in specific tax, labour and social security legislation, and without prejudice to the associated civil and criminal liabilities, any infringement of these obligations would result in the ineligibility of managers of sport management organisations and sports leagues to perform any duties, either through an elective function or through free appointment, in any sports club or organisation, for a period of 10 years; the ineligibility of managers of sports clubs and organisations to perform any duties, either through an elective function or through free appointment, in any of the organisations, companies or associations directly or indirectly linked to professional competitions of the respective sport, for a period of five years; or both.

Sports clubs or organisations that breach the provisions set forth by Pelé’s Law, as briefly discussed above, would be subject to different degrees of punishment, such as the immediate removal of their managers from any managerial position, and the nullity of all their acts on behalf of the sports club or organisation that may relate to the commission of an offence. The members of management usually include the president of a sports club or sports organisation, as the case may be (or an agent of a club or organisation who currently performs the presidential duties), and any person in a managerial position who commits an offence or fails to act so to avoid its commitment.
II  THE DISPUTE RESOLUTION SYSTEM

i  Access to courts

Brazil’s exclusive jurisdiction for the analysis of sports disputes rests with Sports Justice, which does not belong to the general organisation of the Brazilian judiciary branch, and which is governed by its own procedural rules. Its decisions derive from the application by its judges and courts of, *inter alia*, the Brazilian Code of Sports Justice, enacted by Resolution 29/09, issued by the National Sports Council, and of Pelé’s Law, supplemented by its own case law.

As such, the Brazilian judiciary branch is not deemed to be the appropriate venue for starting legal disputes arising from sporting practices: it has neither the necessary practical expertise to deal with the decision-making process that the parties would expect to obtain from a ruling involving sports matters, nor does it have the appropriate procedures in place for the analysis of such disputes as deemed necessary under the civil law system adopted in Brazil, and it fulfils only a residual, last-resort role in respect of sports disputes (as further discussed below).

Sports Justice formally has a private and autonomous nature, but incorporates into its rulings and decisions both state and private regulatory elements as set forth by different sports leagues. This mixture of different sources of applicable law is, therefore, the single most tangible sign of state intervention in institutions and sports practices with a view to ideally safeguard compliance with constitutional principles and legal remedies in the domain of sport practices.

The Brazilian Constitution of 1988, which established Sports Justice, states that matters solely involving sporting practices should first be brought to the attention of Sports Justice, while not denying the judiciary system from the assessment of such disputes as well. Such assessment, however, is defined by both the Constitution and ordinary laws as being residual in nature, and it must be raised by the involved parties only if constitutional principles are violated by the rulings of the specialised Sports Justice jurisdiction that would effectively deprive the parties of an assessment of the Brazilian judiciary branch of a legal injury that has been committed or is about to be committed. In this sense, the involved parties must mandatorily exhaust all instances of the constituted competent Sports Justice before the jurisdiction of Brazilian judiciary branch is triggered.

Under this particular organisation of access to the courts, some subjects that would intuitively be placed under the scope of the jurisdiction of Sports Justice, however, lie outside of it: for example, violations of rights that can be specifically remedied by other regular courts specially conceived for such matters, as in the case of issues directly related to labour relations between sports clubs and professional athletes, shall always be directed to specialised Brazilian labour courts.

The principles that guide the decision-making process of Sports Justice are the general principles also adopted by the Brazilian judiciary system: none of the principles of full defence, celerity of process, adversarial proceedings, procedural economy, impartiality, independence of the judge, legality, public morality, proportionality and reasonableness is excluded.
ii Sports arbitration

In Brazil, arbitration is mainly regulated by Federal Law No. 9,307 enacted on 23 September 1996, and is usually perceived as a more flexible, speedy and sophisticated method of dispute resolution than litigation before state courts. Sports arbitration in Brazil can, generally speaking, be practised by parties that have civil capacity; the dispute to be settled by arbitration must involve only disposable rights (rights that may be transferred, such as property rights); and the content of the arbitral decision must not be in conflict with good moral conduct and principles.

To submit a dispute to arbitration under Brazilian law, the parties must execute an arbitration agreement that may be in the form of either an arbitration clause or a submission agreement. The execution of such clause or agreement will create an arbitration commitment under which the parties irrevocably agree to waive their rights to submit the dispute to any ordinary jurisdiction.

The Brazilian Football Confederation (CBF) has appointed a sports arbitration court located in Brazil as the arbitration body to resolve any issues or disputes arising from sports competitions coordinated by CBF. All clubs, athletes, referees, coaches, doctors, trainers, assistants, intermediate athletes and others involved in competitions coordinated by CBF are obliged to make use only of the sports arbitration court to resolve any issues, litigation or disputes that may occur in any of the competitions, thereby being denied ordinary jurisdiction. The only exceptions are those specified in the FIFA regulations.

An arbitration award produces the same effect as a decision handed down by the judiciary branch. Such arbitration award is considered enforceable in the same way as a judicial enforcement instrument. In the case of an arbitration award rendered outside the Brazilian territory, such foreign award must be ratified by the Brazilian Superior Court of Justice in order to be enforceable in Brazil.

III ORGANISATION OF SPORTS EVENTS

Sports law in Brazil has, in general, obeyed the same process of segmentation and specialisation of law as observed in relation to other areas of economic, social and political activities, opening up an era termed the ‘Era of Statutes’ conceived to address legal issues that were previously dealt with through the application of general principles of civil and tort law.

Law 10,671/03 (Sports Fans Act) and Pelé’s Law form the core legal basis of the liability regime applicable to sports events, derogating the application of the Civil Code under the legal principle that special law repeals the application of general laws (lex specialis derogat legi generali).

In this sense, it is important to mention that Pelé’s Law equates a sports fan who attends a sports event to that of a consumer under a consumer relationship, and subjects such sports fan to the regime of strict liability established by Law 8,078/90, the Brazilian Consumers’ Defence Code. Under this regime, organisers of sports events are ultimately responsible for ensuring not only that spectators and athletes alike have the necessary venue and material conditions for the organisation of a given match or sports event, but
also that their safety against risks that can be ultimately traced to the organisation of the sports event itself, which would never materialise otherwise, is effectively guaranteed.

A sports event organiser’s liability is characterised as strict, because the role it eventually undertakes in performing the sports event itself cannot be conceived merely as a ‘best efforts’ obligation under the above-mentioned circumstances. Parallel to the organisation’s regime of strict liability, the directors and managers of the organising entities are also deemed to be jointly and severally liable for any damage incurred by spectators attending sports events organised by them.

Sports organisations must make public the basic guidelines of their relationship with spectators, which must contain information about access to the stadium and to the point of sale of tickets; the organisation’s financial transparency mechanisms, including provisions regarding independent audits; and the means of communication between spectators and sport organisations. Communication between spectators and sport organisations shall occur through the creation of an independent ombudsman, the establishment of an advisory body composed of non-associated spectators and the recognition of associated spectators that have more restricted rights than those of other partners of the sport organisation.

Sports organisations are liable for any violation of the Sports Fans Act. Sanctions imposed on such sport organisations can include the suspension from office or removal of its leaders, an organisation’s disqualification for tax benefits or the suspension for a six-month period from receiving federal fund transfers from the public administration.

Sports spectators may organise themselves into organised sports fan clubs constituted as a legal entity, which shall keep a registration of all its associates and members. If, during a sport event, a sports fan club or any of its associates or members promote any kind of rioting, practice or stimulate violence, or invade a place that is restricted to authorised people only, such sports fan club, as well as its associates and members, will be prevented from attending sport events for a three-year period. Such sports fan club will also be liable for any damage caused by its associates and members in the localisation of the sport event, within its vicinity or on the way into and from the event.

IV COMMERCIALISATION OF SPORTS EVENTS

According to Law 12,395 of 16 March 2011, the arena right (that is, the image rights of professional athletes of any sports event in which they participate), belongs to the sports clubs and organisations and consists of the exclusive right to negotiate, authorise or prohibit the capturing, fixing, transmission, retransmission or reproduction of images, by any means or process.

Unless there is a collective agreement to the contrary, 5 per cent of the revenue from the exploitation of audiovisual sports rights will be transferred to the professional athletes’ unions, and these will redistribute these values equally to the professional athletes that participated in the specific sports event. Arena right costs do not apply to the punctual reproduction of the sport event for journalistic, sporting or educational purposes only.
These rights are established by the Constitution, which determines that the protection of an individual’s participation in a collective work and the reproduction of human voices and images, including in sports activities, shall be provided by law. However, the arena right must not be confused with image rights, given that the arena right is owned by the sports entities, which can negotiate, prohibit or authorise, either for payment or free of charge, the transmission of the show or sporting event in which they participate.

V  SPORTS AND ANTIMONOPOLY LAW

Antitrust conducts in Brazil are disciplined under the provisions of Law 12,529 of 30 November 2012 (Brazilian Antitrust Law), which applies to individuals and legal entities, as well as to any associations of entities or individuals, whether de facto or de jure, incorporated or unincorporated, and even if engaged in business under the legal monopoly system, including sports organisations.

As such, sports organisations that carry out activities of an economic nature that are in conflict with the provisions of the Brazilian Antitrust Law may be regarded as liable for such acts. Since they also perform an economic activity, federations, confederations and leagues are also subject to the Brazilian Antitrust Law even when they are considered to be non-profit organisations.

VI  SPORTS LABOUR LAW

The professional exercise of any athletic activity would be characterised as an employment relation in Brazil, and would be recorded, as for any other professional activity, in the athlete’s work and social security card, a personal identification document as described under Law 5,452/43, the Brazilian Consolidation of Labour Laws (CLT). Such employment contract will also be specifically governed by the provisions of Pelé’s Law, which affords special treatment to the career of professional athletes. However, the reality in Brazil is that employment contracts observing CLT requirements are generally restricted to certain sports, and mostly to football players. For the majority of other sports modalities, an informal hiring model still prevails, in which non-professional athletes’ wages are preferably paid by general sponsors, and not by the sports clubs or associations in their own name.

As far as football (still the single most popular sport in Brazil) is concerned, Pelé’s Law recognises the current reality of the economic exploitation of football in comparison with other sports modalities, and establishes express, mandatory provisions for employment contracts only when such contracts are between professional sports clubs and football players.

Pelé’s Law establishes that professional football players must enter into employment contracts with sports clubs that are in written form, specifying the names of the respective contracting parties and the due remuneration. These requirements do not apply to employment contracts related to other sports modalities. Professional football employment contracts must also contain a specific pecuniary fine for events of default related to its provisions, which shall not surpass 100 times the amount of annual
remuneration owed to the football player, and this must also be provided in written form or otherwise arbitrated by specialised labour courts after the occurrence of an event of default under the employment contract.

Other aspects strictly required for professional football employment contracts not required for other sports’ professional employment contracts are the duration (a minimum of three months and a maximum of five years for football employment contracts); registration (football employment contracts must be mandatorily filed with the national governing confederation for football); and provision of a professional athlete’s minimum age of hiring (16 years of age is the minimum hiring age) and contract renewal mandatory provisions. In addition, football clubs have a right of first refusal regarding the first renewal of any football employment contract.

When it comes to professional athletes’ employment contracts, many practitioners would defend the view that arbitration constitutes a more advantageous method of dispute resolution that the usual submission of each and every labour dispute to the Brazilian courts, because arbitration procedures, being guided by the principle of procedural diligence and the superior expertise regarding the contents of rulings, can provide faster and fairer decisions. Pelé’s Law does allow interested parties in sports organisations to settle disputes by arbitration provided that such dispute has been the subject of a collective convention or agreement between employer and employee, and the possibility of arbitration will only be established on the express consent of both parties through an arbitration clause or arbitration agreement.

VII SPORTS AND TAXATION

Sports organisations may be established as non-profit entities, which are eligible for tax immunity, or as philanthropic, recreational, cultural and scientific institutions or civilian associations, which are tax exempted, as long as they do not enter into professional sports. In such cases, the sports organisations must follow all pre-established legal requirements.

Professional sports entities that do not fall into any of the categories mentioned above are regularly taxed as any other Brazilian corporation. Thus, the exploitation and management of sport activities constitute professional economic activities, and entities must be organised as required by the Civil Code and are subject to the following taxes and contributions: corporate income tax, a contribution on profits, social integration taxes and a social contribution.

One of the most noteworthy aspects of Brazil’s tax incentives system is Law 11,438/06 (Sports Incentive Act), which establishes that sports and parasports projects, once approved by the Ministry of Sports, may receive direct, deductible investment from taxpayers’ income tax.

The Sports Incentive Act effectively provides that corporations taxed on their book income may deduct funds spent on direct investment projects in approved sports projects, either in the form of a single donation or sponsorship, in amounts corresponding to up to 1 per cent of their due income tax for any single fiscal year. Individual taxpayers may deduct the funds they have invested in amounts corresponding to up to 6 per cent of their due income tax for any single fiscal year.
The funds shall be mandatorily invested in the development of single sports and parasports projects, as previously approved by the Ministry of Sports, which shall fall into at least one of the following categories: educational sports, inclusive sports and high-performance sports, organised in the form of amateur competitions. However, the law imposes two important limitations on the allocation of the resources deductible from corporate or individual income tax.

The first limitation is the prohibition of a donor or sponsor deducting from its income tax amounts invested in projects that eventually benefit sports or parasports initiatives that are promoted by individuals or sports organisations that are somehow related to the corporate or individual taxpayer. Tax authorities would consider the following to be related to a sponsor or donor:

\(a\) any legal entity in which the sponsor or donor holds a managerial position or equity interest, or in which the sponsor or donor is a partner, with such limitation applying from the date of effective investment of the funds and being retroactive for the previous 12 months;

\(b\) a spouse, relatives up to the third degree of kinship (including in-laws), and employees of the sponsor, donor or the owners, officers, shareholders or members of any legal entity linked to the sponsor or donor; and

\(c\) any entity deemed to be affiliated with, or the parent or a subsidiary of the sponsor or donor, or any entity having among its members, shareholders, directors or partners any of the above-mentioned entities.

The second relevant limitation is the prohibition of the use of funds deductible from corporate or individual income tax for the direct remuneration of professional athletes in any sport modality.

The accountability of sports projects benefiting from the tax incentive regime established by the Sports Incentive Act is exercised through the enforcement of the relevancy parameters applicable to the processing, evaluation and approval by the Ministry of Sports of the framework of each sports project submitted, as well as through the monitoring and tracking of the implementation of duly approved projects by the Ministry of Sports.

Ministry of Sports Ordinance 120/09 deals with the accountability requirements imposed on the approved sports and parasports projects. Besides the need to provide proof of the faithful fulfilment of the objectives and goals outlined in the original project, the proponent sports organisation is responsible for the submission of documents, financial statements and even photographic material to evidence the investment of all funds obtained through the beneficial terms of the tax incentive set out by the Sports Incentive Act.

The accountability procedures imposed on sports or parasports projects is effectively conducted by specialised technicians that are authorised by the Ministry of Sport, in the event of any irregularity, to block bank accounts owned by the proponent sports organisation, and that are even authorised to proceed with the entry of the defaulting proponent sports organisation in the default register maintained by the Integrated Financial Management System of the Federal Government.
VIII SPECIFIC SPORTS ISSUES

The economic exploitation of sports in Brazil is subject to the principles of financial and managerial transparency, sound management, the liability of sports managers and differential treatment of professional and non-professional practices. Disregarding any of these principles will motivate the filing of administrative proceedings, and may ultimately result in sanctions (such as warnings, written censures, fines, suspension, and disaffiliation or disassociation) being imposed on sports clubs and organisations. These sanctions are applicable to specific sports issues such as doping, betting and manipulation.

i Doping

The Brazilian legal system incorporated, through Decree-Law 6,653/08, the International Convention against Doping in Sports signed in Paris on 19 October 2005 in order to prevent and combat doping in sports, and ultimately aiming at the eradication of such practice in Brazil.

Decree 7,630/11 created the Brazilian Anti-Doping Agency, which is linked to the Ministry of Sports and whose duties include the promotion and coordination of the fight against doping in professional and amateur sports in an independent and organised manner, both within and outside organised competitions, in accordance with the rules established by the World Anti-Doping Agency, and the protocols and commitments assumed by Brazil.

There are also rules enacted by the Ministry of Sports, through CNE, which regulate the performance of anti-doping examinations within the scope of sports competitions by the competent authorities, particularly Resolution 2/04. Although these rules do not discuss the performance of anti-doping examinations by sports entities on their own athletes or any applicable punishment to the sports entities themselves for any doping offences discovered during such examinations, the law establishes an administrative punishment for a professional athlete deemed guilty of doping consisting of his or her suspension from all sporting events, in any modality, for up to 360 days and, in the event of recidivism, a lifetime ban from sports.

ii Betting

In Brazil, gaming agreements and bets are, generally speaking, regulated by the Civil Code, and can be classified as permitted (authorised or regulated), prohibited (illegal) or tolerated (not illegal).

Permitted bets are those that are expressly allowed by specific laws and regulations, such as federal lotteries and horse race betting (in authorised clubs).

Prohibited bets are those generally known as ‘games of luck’, in which luck is a decisive factor. Such bets are considered by Article 50 of Decree-Law 3,688/41 to be misdemeanours that are punishable with fines and even imprisonment.

Tolerated bets are those in which the results do not depend exclusively on luck, but also on the skills, intellectual or physical ability of players. They are not considered to be misdemeanours, with any obligations arising from them being unenforceable.

In general, sports bets in Brazil are considered to be games of luck, and therefore are not generally allowed unless authorised by a specific law in this regard, since their
provision without such authorisation could be considered a misdemeanour. One of the modalities of sports betting that is currently authorised is the Federal Sports Lottery, a form of lottery run by the federal government.

The Federal Sports Lottery was created by Decree-Law 594/69 and is regulated by Decree 66,118/70, which establishes the destination of its revenues. The rules and regulations applicable to the Federal Sports Lottery allow the exploration of all modalities of games related to sports results.

There are currently two betting modalities in the Federal Sports Lottery for football, which remains the sole sports modality in Brazil capable of providing enough betting revenue to justify its implementation. These are ‘Loteca’, which is the traditional sports lottery, in which participants can bet on the results of football matches, and ‘Lotogol’, in which the participants can bet on the exact result of up to five different football matches. The revenues obtained from such games are destined to be invested into programmes related to the assistance of families, infants and teenagers, sports activities, and physical education and literacy programmes.

Betting in respect of other sports modalities would generically also be considered as games of luck, unless expressly authorised by law. For that reason, to be permitted and considered legal, any new sports betting must be instituted by the Brazilian Executive, approved by the Ministry of Finance and operated by Caixa Econômica Federal (CEF), a public, federal financial institution charged with the management of any current or future Federal Sports Lottery, as defined under Article 1 of Law 11,345/06.

It is possible, however, for CEF to delegate the operation of the betting to one of its licensees through a bidding procedure, as defined in administrative regulations enacted by CEF itself (especially through Circular CEF 471/09). The proceedings and the terms of such licensing would, in this case, be established unilaterally by CEF, and must be accepted by the licensee.

Furthermore, no sports betting in Brazil, as it is currently regulated, can pose any kind of risk to the state. Because of this, participants can only be awarded with 46 per cent of the total betting amount collected according to Article 2, Item I of Law 11,345/06. Any other form of award that does not maintain this proportion between the betting amount collected and the amount awarded to participants will not be approved or authorised by CEF under the currently applicable laws and such sports betting will, therefore, be automatically considered to be an illegal game of luck, and also a misdemeanour, subject to the punishments established under Decree-Law 3,688/41.

### iii Manipulation

Any competitors, referees, inspectors, managers, organisers or individuals connected with a sport organisation or with a sport event that contributes to the manipulation of a sport result will be civilly and criminally liable for its acts and consequences. The manipulation of a sport event result may also be prosecuted as a Brazilian institute known as ‘loss of a chance’, under which the offender may be found guilty and obligated to indemnify the injured party for the probability of gain lost by the conduct of the individual that caused or contributed to the manipulation.
Grey market sales

The sale of sports events tickets through channels other than those established by the event organiser is forbidden in Brazil as it is held to be detrimental to spectators of sports events.

The Sports Fans Act establishes that practices related to grey market sales, such as selling sports event tickets for a higher price than the price printed on the ticket, and providing, diverting or facilitating the distribution of tickets for a sale price higher than that printed on the ticket as criminal offences. Sanctions can vary from one to four years’ imprisonment plus a fine.

THE YEAR IN REVIEW

On 5 August 2015, the Federal Senate approved, with some reservations, Law No. 13,555 (Sport Tax Liability Act), which establishes principles and practices regarding the tax liability and financial accountability, as well as the transparent and democratic management, of sports organisations of football. The Sport Tax Liability Act also created the Public Authority of Soccer Management, APFUT, an authority responsible for the supervision of football clubs.

OUTLOOK AND CONCLUSIONS

The themes discussed above are some of the most relevant in relation to the application of sports law in Brazil today.

As the host nation of the XXXI Summer Olympiad to be held in Rio de Janeiro from 5 to 21 August 2016 (in which more than 10,500 athletes from the 206 national Olympic committees will take part, and featuring at least 28 different sports modalities), Brazil will experience an increase in the number of transactions and projects involving sports law in varying degrees. Areas such as tax planning for sports clubs, leagues, management entities and sponsors, the negotiation of sports events broadcasting contracts, negotiations regarding the regulation and transfer of athletes at the domestic or international level, and corporate restructuring involving sports clubs, to name but a few, will remain as trending aspects in the short and medium term. The outlook for the future of Brazil’s sports sector is promising.
ADOLPHO JULIO CAMARGO DE CARVALHO
Pinheiro Neto Advogados
Adolpho Julio C de Carvalho has been a partner at Pinheiro Neto Advogados since 2005, where he has worked since 1993. He has a diverse practice, advising clients on project financing, aviation and maritime law, mergers and acquisitions, sports and related projects.

PINHEIRO NETO ADVOGADOS
Rua Hungria, 1100
01455-906 São Paulo
Brazil
Tel: +55 11 3247 8400
Fax: +55 11 3247 8600
ajcarvalho@pn.com.br
www.pinheironeto.com.br