



Gaining the Momentum – A Review on Development of Sports Law in China

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This article was contributed by the Beijing Arbitration Commission/Beijing International Arbitration Center (BAC/BIAC). The author is Guo Cai, a Chinese lawyer who specializes in sports and international law. Ms. Cai is part of the BAC/BIAC writing team for Commercial Dispute Resolution in China: An Annual Review and Preview (2020), the latest edition of an annual publication by the BAC/BIAC, which will be published in July 2020. The 2020 edition of the Annual Review will include an inaugural section on sports dispute resolution in China, which will be co-authored by Ms. Cai and Mr. Jeffrey Benz of JAMS.

Overview: Promoting Sports Is Part of National Strategy

The year 2019 has seen rapid developments in China's sports law sector as the government continues to stress the significant role that sports must assume in national strategy, stipulated by the State Council in the **Outline for Building a Leading Sports Nation** on 10 August 2019. The "five strategic missions" identified by the outline indicate the rationale for promoting sports in China: to advance the national fitness campaign, to improve performance in competitive sporting events, to energize the sports industry, to cultivate a vibrant sports culture, and to structure the diplomacy of sport for a new era.

Led by the government strategy, the Chinese sports industry has grown into a **business whose estimated worth in 2017 was RMB 2200 billion**, representing an approximately 37% increase of the total worth of the industry since the issuance of the **Several Opinions of the State Council on Accelerating the Development of Sports Industry and Promoting Sports Consumption** document (often referred to as Document No. 46) in October 2014. These days, as increasing numbers of countries hesitate to host mega sporting events, China seems to be the only jurisdiction with plans to host several international sporting events in a row, including the first FIFA Club World Cup after reform in 2021, the Winter Olympic Games and the Asian Games in 2022, and the AFC Asian Cup in 2023. China's active sports scene inevitably leads to the development of law, elevating sports law in China from its previous marginalized position to center stage.

Heightened Interest and Relevance in Academic Discussions and Legal Practice

Heightened interest in sports law is reflected not only by more frequent and higher quality academic discussions on the subject, but also in the practice of law. Since November 2018, the Beijing Arbitration Commission (BAC) has hosted at least three events focused on sports law, each attended

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by more than 100 participants. On 9 November 2019, the Sports Law Institute of China University of Political Science and Law initiated an academic seminar on legal issues related to the Winter Olympics, in which the chief judge of the local court in Chongli (a major Winter Olympics event venue) discussed practical issues associated with conducting winter sporting activities at local skiing facilities. Soon afterward, in December 2019, the Chongli court issued the Opinion to Provide Judicial Guarantee for the Winter Olympic Games. This opinion highlights an innovative, one-stop dispute resolution mechanism jointly established by the court, skiing resorts, and insurers to resolve common disputes arising from skiing activities.

The revision of Rule 40 of the Olympic Charter in June 2019 also sparked enthusiastic discussions, as potential sponsors, marketing agencies, and other stakeholders keenly researched the exact meaning of the revised rule in the hopes of making the best use of it for their Tokyo Olympic Games marketing campaigns already underway. Chinese star swimmer Sun Yang's athletic career on trial also put the Court of Arbitration for Sport (CAS) under the spotlight. *WADA v. Sun Yang & FINA* (CAS 2019/A/6148) was the second public hearing in CAS history, and the first ever to be livestreamed online. Before the Sun Yang case, CAS was only known to a small circle of academics and practitioners in China; now, it has become a household name.

After the Sun Yang case is decided (probably early this year), there will certainly be another wave of discussion across China on CAS, the sports dispute resolution system, and the anti-doping legal framework. In fact, just three days after the Sun Yang public hearing, the Supreme People's Court announced its **Interpretation on Several Issues Concerning the Application of Law in the Trial of Criminal Cases of Smuggling, Illegal Trading, and Illegal Use of Banned Substances**, effective on 1 January 2020. It is worth noting that the new judicial interpretation is not intended to criminalize athletes, but rather to criminalize those involved in smuggling and trading banned substances, as well as government officials whose abuse of power or negligence

results in serious doping violations. The rationale is that sporting regulations call for the punishment of athletes in violation of doping regulations, but not for people who work for them or have power over them; it is therefore crucial to hold accountable those who push athletes into doping violations. Criminal punishments are thus devised to **“fill in the blanks of the current anti-doping legal system,”** according to Mr. Chen Zhiyu, deputy director of the China Anti-Doping Agency (CHINADA).

Football

In the field of football, considerable debate ensued when China started naturalizing foreign players in the beginning of 2019. Doubts arose regarding the eligibility of Hou Yongyong (reportedly China's first naturalized player) to represent China in international football competitions. Interpretation of articles 5–8 of the FIFA's Regulations Governing the Application of the Statutes was at stake. For months, football analysts, journalists, and even fans diligently engaged in the interpretation of the FIFA regulations.

Another significant issue is the football-specific dispute resolution mechanism, especially in cases related to dissolved clubs. Although most contracts between a club and a player or coach follow a template to provide for dispute resolution by the arbitration commission within the Chinese Football Association (CFA), if a club no longer registers with the CFA, or if it has dissolved, the CFA will not be able to accept any claims against it. Players or coaches who bring claims against such clubs often find themselves deprived of legal means to vindicate their rights, as most local courts with jurisdiction, inexperienced with football specific cases, tend to decline these cases based on the contractual provision of arbitration by the CFA. In one recent case handled by the author, it took four months for the author just to convince the local court that the arbitration by the CFA provided in such contract is not the arbitration per se under the Arbitration Law or the New York Convention for which the court shall defer the jurisdiction to arbitration. It is therefore necessary to facilitate certain communication between the

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CFA and the courts to reach consensus on how to deal with these cases and ensure the protection of the legitimate rights of football players and coaches.

Further Reading

This concise review attempts to offer a big picture of sports law development in China. There are many sports-related legal issues that deserve articles or even chapters of their own, such as the **protection of livestreaming of sporting events** and the recent **NBA controversy in China** that intertwines law, politics, and diplomacy. Interested readers are encouraged to click the links included in this review for more information.

In addition, the BAC/BIAC would like to invite the readers to read the article “Sports Dispute Resolution in China (2020),” which will be published in July 2020 as part of *Commercial Dispute Resolution in China: An Annual Review and Preview (2020)*. The authors will have opportunity to elaborate on issues not covered in detail by this article due to word limit.

Should readers have any suggestions, feedback, or enquiries regarding Commercial Dispute Resolution in China: An Annual Review and Preview (2020), please do not hesitate to contact Mr. Tony Yin, Counsel of BAC/BIAC, International Case Management & Business Development Division, or Ms. Guo Cai (guo.cai@jinmao.com.cn).

The following links will direct the reader to reports on the various sports law events held in China last year:

- **Symposium on “Leading Developments in International Sports Arbitration with a Chinese Twist”**
Successfully Co-Hosted by BAC and JAMS, 10 April 2019
(Report in **English** and in **Chinese**)
- **China Sports Law Week 2019 – “Inclusivity, Integrity and Insights,”** July–August 2019 (report in English only)
- **Beijing Arbitration Commission Sports Dispute Resolution Forum,** 2 August 2019 (report in Chinese only; a bilingual version can be accessed [here](#))
- **Beijing Arbitration Commission – JAMS “Sports Law and Alternative Dispute Resolution in China, A Perfect Match,”** 1 November 2019 (report in Chinese only)
- **Academic Seminar on Winter Olympics Related Legal Issues,** 9 November 2019 (report in Chinese only)