



Questionnaire concerning Business, Sports & Fraud

Sports Law Commission

International Business Law Commission

Commercial Fraud Commission

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Lina Mroueh Lefevre
GUTKES 40, rue Vignon 75009 Paris
+33 1 40 26 15 20

Stéphane de Navacelle
NAVACELLE 60, rue Saint Lazare 75009 Paris
+33 1 48 78 76 78

Sports and Fraud: identifying the relevant framework

1. Are there specific legal forms for sports club (e.g. specific type of company structure, association, etc.) in your jurisdiction?

Since Law No. 2012-158 of 1 February 2012 to strengthen the ethics of sport and athletes' rights, forms that can take the sports companies were extended to ordinary companies.

A sports society may take the following forms (Article 122-2 of the Sports Code.):

- “EURL” (limited liability company) with only one partner;
- Public limited company with sporting object;
- Professional sports limited company;
- Limited liability company;
- Public limited company;
- Simplified Joint Stock Company.

Legal form if the sports club is commercial:

- Mixed Economy Company Sporting
 - ➔ Art. L.122-12 and L.122-13 of the Sports Code
- Public limited company with sporting object
 - ➔ Public limited company with sporting object may take the form of a sales company or adopt the formula of the Management Board with the Supervisory Board.
- Oneperson sporting limited liability undertakings
- Public limited professional sporting company

2. How are sports clubs / players grouped? Are they administrative bodies, associations, federations etc.? Please provide a few examples.

There are several forms of sports clubs, namely:

- Sports Associations (article 121-1 to 121-5 of the Sports Code);
- Sports Companies (article 122-1 to 122-11 of the Sports Code);
- Sports Federations (article 131-1 to 131-7 of the Sports Code);
 - ➔ approved Federation (article 131-8 to 131-13 of the Sports Code)
 - ➔ delegate Federation (article 131-14 to 131-22 of the Sports Code)
- Professional Leagues (article 132-1 to 132-2 of the Sports Code).

3. What is the relevant regulatory framework for sports associations/clubs/etc. in your jurisdiction? Is State legislation applicable or is self-regulation applicable? Please provide a few examples.

The relevant regulatory framework for sports associations is the State legislation.

Indeed, we can mention:

- Law No. 2012-158 of 1 February 2012 to strengthen the ethics of sport and athletes' rights;
- Law No. 2010-476 of 12 May 2010 on the opening to competition and regulation of the gambling industry and gambling online;
- Sport Code;
- Penal Code.

4. Are there any sport-specific risks that you may think of? Are there specific legislation for such risks? The following should be considered:

- Finance in connection with donations or subventions, misappropriation of money;
- Decision making process: nepotism, corruption regarding election or selection of the site for a big sport event;
- Health-issues (doping);
- Competition: match fixing, etc.;
- Online gambling.

There are several risks inherent to sport, such as:

- Doping
 - ➔ Art. 232-1 to 232-31 of the Sports Code.
- Online gambling
 - ➔ Law No. 2010-476 of 12 May 2010 on the opening to competition and industry regulation of gambling and gambling online (Article 43).
- The manipulation of matches
 - ➔ Art. 445-2-1 of the Penal Code (passive bribery offense).

The case for compliance

5. How are risks to be evaluated with regard to corruption, fraud and other white-collar crimes? Are there internal control systems? Transparency criteria? Compulsory controls by auditors / administrative?

Approved federations can receive delegation of the Minister of sports for the implementation of a normative power.

This gives them the right and responsibility to issue technical rules of discipline which they are responsible, to draw up the regulations for the organization of events and the rules of safety and ethics applicable to the discipline concerned.

Thus, regulations or standards delegated to each sport have been developed by the relevant sports federations.

The modalities regarding the disciplinary field are developed, to some extent, by each federation approved (in respect of a type regulations developed by state authorities).

These conditions are expected in the disciplinary regulations, including where the scope of disciplinary responsibility, organization and scale of sanctions.

The disciplinary responsibility is managed internally, that is to say within the Federation. It is engaged on the basis of a sanction that has the nature of administrative decision.

The legal regime of disciplinary sanctions of approved sports federations became more and more complex, through all the changes of the law of 16 July 1984 and its implementing provisions now included in the Sports Code.

The disciplinary regulation for framing the Federal Disciplinary power.

It is given in Annex I-6 of the Sports Code and includes 20 items.

Associations to "sporting purpose" who want to participate in such competitions must first obtain a license.

For this, they are required to adopt internal regulations in line with disciplinary rules of procedure established by the federation with which it is affiliated.

For example, to be affiliated with the French Football Federation (FFF) and thus receive approval, the local football sports association will adopt the same disciplinary rules as those established by the FFF.

6. How is compliance applied to sports-organization? What differences are there compared to the “traditional” business world?

The sports federations can adopt model statutes and disciplinary code, under Article 131-8 of the Sports Code. "I. - A license may be issued by the Minister in charge of sports federations which, in order to participate in the execution of a public service mission, have enacted statutes containing certain mandatory provisions and disciplinary rules in accordance with a Bylaw.

Mandatory provisions of the statutes and the disciplinary model regulations are defined by decree of the Council of State issued after the French National Olympic and Sports Committee. "

Article 138-1 of the Sports Code states that "Every approved sports federation establishes a code of ethics and ensure its implementation. The content, the modalities of entry into force and the applicability of the Charter are defined by decree after the French National Olympic and Sports Committee. "

➔ Freedom of Federations in terms of the internal regulations for each discipline

7. Could you give examples of internal compliance process / internal decision-making processes?

Example: Article 5 of the disciplinary regulations of the FFF "Skills":

"These bodies have jurisdiction for the purposes of disciplinary proceedings, cases in the following areas:

1) Facts relating to police courts, cases of indiscipline players, educators, leaders supporters, spectators or any other person performing a mission within a club or federal authority whatsoever.

Outside the context of a match but in relation to this, the facts affecting an official and, more generally, where are breached to individuals or property.

2) Violations to the sporting ethic, serious breaches affecting the honour, the image, the reputation or the reputation of football in the Federation, its leagues and districts or their leaders accountable to any natural or legal person subject to the jurisdiction of the Federation of law. "

The issue of sanctions

8. According to which provisions (e.g. criminal law, regulatory law, and administrative law, etc.) may a sports association be sanctioned in your jurisdiction?

- penal sanctions
 - ➔ Art. 445-1-1 and 445-2-1 of the Penal Code (sport betting)
 - ➔ Art. L.232-25 and L.232-26 of the Penal Code (doping)

- Administrative sanctions
 - ➔ Art. L.232-21 and L.232-22 of the Sports Code (doping).

9. Who may be sanctioned within the association (e.g. the association itself, the board, an employee)? Please provide examples of applicable sanctions in the recent years.

In the case where the sport club is in charge of the organization of the sporting event, several persons could be liable:

- The sport club shall be liable to disciplinary action;
- The criminal liability of the sport club may be incurred (as legal person);
- The club leaders who are affiliated to the sport federation are subjects to its disciplinary rules and may incur disciplinary liability;
- The club leader may be held liable for a personal act of violence but as indirect perpetrator of violence too;
- ➔ The legal person (sport club) liability does not exclude the possibility for the victim to engage the individual criminal liability pursuant to Article 121-2 of the Criminal Code.

In the case where the sport club is not in charge of the organization of the sporting event:

- Its disciplinary liability may be incurred (if it is provided by the regulations of sport federations)

10. How do those sanctions interact with decisions from State courts? Is there a need for enforcement of the sanctions (i.e. is there a filter / exequatur process by State courts, as in arbitration)? Is there a possibility for State courts to consider a case also examined by a regulatory body, e.g. a federation (i.e. is there a risk of “double jeopardy”)?

Appropriate authorities able to settle disputes:

- Authorities of a sporting discipline or of a National sport federation (legal committee, disciplinary board);
- Authorities of National sports and Olympic movement (Sports Arbitration Chamber) or International (Court of Arbitration for Sport);
- Decision monitoring system by authorities of sports movement (obligatory prior conciliation of CNOSF, appeal procedure of TAS);
- Monitoring system by authorities of the National or European ordinary jurisdictions or by specialized authorities dedicated to the fight against doping (AFLD, AMA).
- ➔ Principle of independence between disciplinary action and criminal action. The administrative authority, as the administrative judge, is not bound by the decision of the prosecuting authorities.

Case studies: Online gambling, doping scandals and whistleblowing

11. What are the legal consequences with regards to match-fixing in your jurisdiction? Please specify the relevant legal framework.

➔ Art. 445-1-1 and 445-2-1 of the Penal Code (match fixing)

Three years of imprisonment and EUR 15 000 fine

12. How is online gambling considered in your jurisdiction and how is it dealt with in case of fraud?

Law No. 2010-476 of 12 May 2010 on the opening to competition and industry regulation of gambling and gambling online.

Art. 26 / Art. 27 (fight against disordered gambling)

Art. 31 (transparency of gaming transactions).

13. Are any measures foreseen in your jurisdiction for the protection of “whistle-blowers”?

There are five laws in France that protect whistle-blowers:

- Act of 13 November 2007 on the fight against corruption (created by Article L1161-1 of the Labour Code)
- Law of 29 December 2011 No. 2011-2012 on strengthening the security of Medicines and Health Products (created by section L.5312-4-2 of the Public Health Code)
- Law of 16 April 2013 No. 2013-316 on the independence of the health and environmental expertise and protection of whistle-blowers (created by Article L. 1351-1 of the CSP)
- Law of 11 October 2013 No. 2013-907 on the transparency of public life (Article 25)
- Law No. 2013-1117 of 6 December 2013 on the fight against tax evasion and the large economic and financial crime (created by section L.1132-3-3 TB and Article 6b A (public administration))

14. How is confidential information treated in your jurisdiction? Any risks for whistle-blowers?

Considering the answer to the precedent question, there is little protection for whistle-blowers.

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