

With China's Sports Ambitions Come Sports Disputes

By **Jeff Benz** (December 14, 2018, 12:19 PM EST)

China's ambitions to become a world leader in professional sports are no secret. As part of a far-reaching economic reform plan, the country declared four years ago it would grow its sports industry into an \$817 billion juggernaut by 2025.

China placed special emphasis on soccer. In fact, government leaders announced a 50-point plan three years ago to become a "superpower" in the sport by 2050. President Xi Jinping, a soccer fan who played in his youth, said at the time: "My biggest hope for Chinese soccer is that its teams become among the world's best."



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Over the last few years, China has put its money where its ambitions are, making high-profile sports investments. Its professional soccer teams have lured elite players with record-shattering contracts. An unnamed Chinese team reportedly even offered superstar Cristiano Ronaldo more than \$100 million a year, although he declined.

The Chinese have also made splashy investments overseas. Chinese billionaire businessman Tony Jiantong Xia bought English football club Aston Villa for \$109 million in 2016, and Chinese real estate developer Walian Wanda Group paid \$650 million in 2015 for the organizer of the Ironman Triathlon races, World Triathlon Corp.

At the same time, home-grown sports businesses have shown signs of life. Alisports, a subsidiary of the e-commerce giant Alibaba Group with a valuation of more than \$1 billion, is spending millions to nurture sports interest in China. Two years ago, for example, it bought the exclusive streaming rights to World Rugby. Alisports, along with other Chinese companies such as Tencent Holdings Limited, are also nurturing the growing market for videogame competitions known as esports, which draws an estimated 135 million viewers in China and is now seen as a potential Olympic event. A Chinese team, Invictus Gaming, won the 2018 League of Legends World Championship, an esports event that drew a record 200 million viewers to the final, almost double the 103.4 million that watched the last Super Bowl.

Disputes to Rise

Naturally, some of the initial euphoria generated around professional sports in China has subsided, but the country is not finished investing. As China's sports industry matures, it will likely see a growth in disputes that will need to be adjudicated fairly and efficiently.

Generally, sports disputes come in a couple different flavors. First, there are commercial disputes, which can involve a variety of transactions and projects, like sponsorship deals, stadium construction, television and streaming rights, licensing of merchandise, buying and selling teams and player contracts. Then there are disputes over rules of competition. These can entail disciplinary actions for things like doping, match-fixing, poor conduct or other forms of cheating.

Many of these disagreements are perfectly suited for alternative dispute resolution, which can offer the speed, cost-efficiency and privacy that traditional court systems cannot. As a result, a number of tribunals around the world have built capabilities to handle sports-related disputes.

The most well-known is the Court of Arbitration for Sport in Lausanne, Switzerland. The CAS was established in 1983 by the International Olympic Committee as a vehicle to resolve an increasing number of international sports-related disputes. It operates independently from any sports organization and like any court, it can issue enforceable awards and judgments. In 2016, nearly 600 cases were submitted to the CAS.

Over the years, sports leagues and organizations have designated the CAS as the primary tribunal to settle their disputes. Those organizations include the Winter and Summer Olympic Games, the Union Européenne de Football Association and the Fédération Internationale de Football Association.

Indeed, JAMS is the dispute resolution provider for the U.S. Center for SafeSport, handling interim measures and formal resolution of claims pertaining to alleged sexual misconduct and other forms of misconduct including bullying, harassment, physical and emotional abuse within the U.S. Olympic and Paralympic Movements.

Chinese See Sports ADR in Action

Some in the Chinese sports world have already been exposed to how disputes can be adjudicated outside traditional courts. One prominent example involves Chinese businessman Li Yonghong, the short-lived owner of Italian soccer club AC Milan. After Younghong bought the club in 2017 from Italian prime minister Silvio Berlusconi, the club's finances came under close scrutiny by the investigators at UEFA.

The organization was probing the club's financial health and its adherence to its Financial Fair Play regulations that prevent clubs from spending more than they earn. In June, UEFA found that AC Milan had violated those rules and banned it from the Europa League competition.

AC Milan appealed the ruling to the CAS. The following month in July, a CAS panel partially reversed the UEFA decision, finding that while sanctions were appropriate, exclusion was too severe of a penalty. The panel noted that since UEFA's decision, Youngong had lost ownership of the club and its finances had improved. CAS ordered that the case go back in front of UEFA for a new determination of punishment.

Beijing Enterprises FC, which competes in the China League One, is also party to an arbitration dispute with one of its former players, Victor Anichebe, who has accused the club of rigging matches. Beijing Enterprises has denied the allegation. In a statement on Oct. 1 reported on by the South China Morning Post, it sought to put the focus on Anichebe for failing to live up to his contract with the team and said that the dispute "has been submitted to Fifa, and arbitration is in progress."

What these cases demonstrate is that those who operate in the Chinese sports environment are not

immune from international scrutiny or from the international institutions that govern sport worldwide. This trend will only increase as China's reach into the international sports economy continues to grow.

ADR Institutions in China

Zhonghua Renmin Gongheguo Tiyu Fa, or the Sports Law of the People's Republic of China, was adopted in 1995 by the Standing Committee of the National People's Congress (China's national legislative body). It contains a provision that provides as follows in Article 33: "any disputes arising in competitive sports shall be subject to mediation and arbitration by a sports arbitration body. Rules governing the establishment of a sports arbitration body and the scope of its mandates shall be adopted by the State Council."

The State Council is the chief administrative body of China. To date, no such sports arbitration body or rules governing the use of mediation and arbitration in sport in China have been developed. According to a number of Chinese sources this is for a variety of reasons that go beyond the scope of this article, but one thing is clear — the Chinese government in 1995 saw the need to include in its national sports law the idea of resolving sports disputes through alternative dispute resolution mechanisms.

China's ability to keep growing and govern its sports industry will depend in part on a willingness to submit to arbitration and its ability to develop its own, local institutions capable of resolving disputes swiftly. Regarding the latter, the country already has a solid infrastructure.

The oldest arbitration institution in the country is the China International Economic and Trade Arbitration Commission. Originally established by the Chinese government in 1956 to promote international trade, it has grown into one of the world's busiest arbitral institutions. Last year, it said it accepted 2,298 cases, up 5.36 percent from the previous year. The CIEATC has also reported an increase in the value of disputes arbitrated. Last year, for example, it said that for the first time, more than 100 cases (117) involved disputes valued at more than RMB 100 million.

The Beijing Arbitration Commission/Beijing International Arbitration Center is another large and well-established arbitral institution. Created in 1995, it has grown rapidly, taking in a record 3,550 cases in 2017, a 15 percent increase from 2016. In 2015, it changed its rules to maintain consistency with international best practices, which has helped its standing with non-Chinese parties.

The Shenzhen Court of International Arbitration is making a bid to become the leading arbitration center in Southern China. In October, the SCIA and JAMS announced the formation of a new Sino-American panel of experts qualified to handle a range of cross-border disputes, including those involving sports.

Finally, there is also the Hong Kong International Arbitration Centre, which is coming off one of its busiest years. In 2017, 532 new cases were filed, a 15.7 percent increase from 2016. The total value at stake in those disputes — approximately \$5 billion — represented a 100 percent increase from the \$2.5 billion at stake in 2016. The HKIAC has experience adjudicating sports-related disputes, too. Earlier this year, the South China Morning Post reported HKIAC was administering a dispute initiated by Hong Kong-based Kitchee Sports Club, which is claiming it suffered \$5 million in losses after being refused a place in the 2017 AFC Champions League group stage.

Conclusion

The Chinese sports market is growing dramatically now with affirmative government support and

accompanying scrutiny. Foreign companies trying to navigate this market must find a solid partner with excellent local knowledge and strong connections to the business community and government, and must show a commitment to the market to succeed (as opposed to undertaking an occasional presence).

Foreign companies should also look to ensure that their agreements contain an ADR clause if they want to avoid being subject to local Chinese courts. Utilizing the arbitration and mediation clauses for the institutions listed above is best practice for foreign companies entering into cross border agreements in this region, as the Chinese parties no more want to be subject to say, for example, California law and California courts, than the foreign company wants to be subject to Chinese law before any one of the People's Courts of China.

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